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REGISTER OF REGULATIONS

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Virginia Code Commission

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THE VIRGINIA REGISTER INFORMATION PAGE

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

ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

An agency wishing to adopt, amend, or repeal regulations must first publish 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 proposal 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 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 (JCAR) 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 changes made to the proposed regulation 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*.

The agency shall suspend the regulatory process for 30 days when it receives requests from 25 or more individuals to solicit additional public comment, 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 exemption from certain provisions of the Administrative Process Act for agency regulations deemed by the Governor to be noncontroversial. To use this process, Governor's concurrence is required and advance notice must be provided to certain legislative committees. Fast-track regulations will become effective on the date noted in the regulatory action if no objections to using the process are filed in accordance with § 2.2-4012.1.

EMERGENCY REGULATIONS

Pursuant to § 2.2-4011 of the Code of Virginia, an agency, upon consultation with the Attorney General, and at the discretion of the Governor, may adopt emergency regulations that are necessitated by an emergency situation. An agency may also adopt an emergency regulation when Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment. The emergency regulation becomes operative upon its adoption and filing with the Registrar of Regulations, unless a later date is specified. Emergency regulations are limited to no more than 12 months in duration; however, may be extended for six months under certain circumstances as provided for in § 2.2-4011 D. Emergency regulations are published as soon as possible in the *Register*. During the time the emergency status is in effect, the agency may proceed with the adoption of permanent regulations through the usual procedures. To begin promulgating the replacement regulation, the agency must (i) file the Notice of Intended Regulatory Action with the Registrar within 60 days of the effective date of the emergency regulation and (ii) file the proposed regulation with the Registrar within 180 days of the effective date of the emergency regulation. 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. **28:2 VA.R. 47-141 September 26, 2011**, refers to Volume 28, Issue 2, pages 47 through 141 of the *Virginia Register* issued on September 26, 2011.

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**, Chairman; **Gregory D. Habeeb**; **James M. LeMunyon**; **Ryan T. McDougle**; **Robert L. Calhoun**; **E.M. Miller, Jr.**; **Thomas M. Moncure, Jr.**; **Wesley G. Russell, Jr.**; **Charles S. Sharp**; **Robert L. Tavenner**; **Patricia L. West**; **J. Jasen Eige** or **Jeffrey S. Palmore**.

Staff of the Virginia Register: **Jane D. Chaffin**, Registrar of Regulations; **June T. Chandler**, Assistant Registrar.

PUBLICATION SCHEDULE AND DEADLINES

This schedule is available on the *Register's* Internet home page (<http://register.dls.virginia.gov>).

June 2012 through July 2013

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
28:21	May 30, 2012	June 18, 2012
28:22	June 13, 2012	July 2, 2012
28:23	June 27, 2012	July 16, 2012
28:24	July 11, 2012	July 30, 2012
28:25	July 25, 2012	August 13, 2012
28:26	August 8, 2012	August 27, 2012
29:1	August 22, 2012	September 10, 2012
29:2	September 5, 2012	September 24, 2012
29:3	September 19, 2012	October 8, 2012
29:4	October 3, 2012	October 22, 2012
29:5	October 17, 2012	November 5, 2012
29:6	October 31, 2012	November 19, 2012
29:7	November 13, 2012 (Tuesday)	December 3, 2012
29:8	November 28, 2012	December 17, 2012
29:9	December 11, 2012 (Tuesday)	December 31, 2012
29:10	December 26, 2012	January 14, 2013
29:11	January 9, 2013	January 28, 2013
29:12	January 23, 2013	February 11, 2013
29:13	February 6, 2013	February 25, 2013
29:14	February 20, 2013	March 11, 2013
29:150	March 6, 2013	March 25, 2013
29:16	March 20, 2013	April 8, 2013
29:17	April 3, 2013	April 22, 2013
29:18	April 17, 2013	May 6, 2013
29:19	May 1, 2013	May 20, 2013
29:20	May 15, 2013	June 3, 2013
29:21	May 29, 2013	June 17, 2013
29:22	June 12, 2013	July 1, 2013
29:23	June 26, 2013	July 15, 2013
29:24	July 10, 2013	July 29, 2013

*Filing deadlines are Wednesdays unless otherwise specified.

PETITIONS FOR RULEMAKING

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF OPTOMETRY

Agency Decision

Title of Regulation: 18VAC105-20. Regulations Governing the Practice of Optometry.

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

Name of Petitioner: Dillis Lee.

Nature of Petitioner's Request: To amend regulations for standards of practice relating to the requirement of an optometrist for a patient to sign a contract agreement without informed consent about the procedures and examinations to be performed.

Agency Decision: Request denied.

Statement of Reason for Decision: At its meeting on May 9, 2012, the board voted to deny the petition because the requirements for informed consent in current regulations are sufficient to protect patients. An adequate eye examination conducted by an optometrist would include an examination for any medical conditions that might exist.

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

VA.R. Doc. No. R12-18; Filed May 22, 2012, 11:56 a.m.

BOARD OF VETERINARY MEDICINE

Agency Decision

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

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

Name of Petitioner: Diane C. Carey.

Nature of Petitioner's Request:

1. All animal hospitals must post in each examination room and at the sign in (reception desk) a notice with the hours that the hospital is staffed, including a notice that the hospital is not staffed after business hours if that is applicable. This notice shall be prominently displayed in each examination room and at the sign in desk. This notice shall be at least 7 inches by 11 inches with a minimum font of 36.

2. All clients must be given a copy of the disclosure form that states the hours of the hospital for the clients to keep in their home files.

3. Any time that an animal is being kept overnight, the animal hospital must obtain a new signed disclosure form stating the hours and a copy is to be given to the client at the time the animal is left at the hospital.

Agency Decision: Request denied.

Statement of Reason for Decision: The board has determined that the current law (§ 54.1-3806.1 of the Code of Virginia) adequately provides for disclosure on continuous medical care and that a requirement for a consent form to be signed each time the animal is left on premises would be unnecessarily burdensome.

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

VA.R. Doc. No. R12-14; Filed May 18, 2012, 3:22 p.m.

NOTICES OF INTENDED REGULATORY ACTION

TITLE 22. SOCIAL SERVICES

STATE BOARD OF SOCIAL SERVICES

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Board of Social Services intends to consider repealing **22VAC40-72, Standards for Licensed Assisted Living Facilities**, and adopting **22VAC40-73, Standards for Licensed Assisted Living Facilities** to replace it. The new regulation is to be a comprehensive revision of the existing standards to provide greater protection for adults in care, improve the organization of the standards, increase clarity and consistency, and eliminate unnecessarily burdensome or intrusive requirements. The goals of the new regulation are to better meet the needs of an increasingly vulnerable population of residents who are aged, infirm, or disabled and to do so in a cost-effective manner.

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

Statutory Authority: §§ 63.2-217 and 63.2-1732 of the Code of Virginia.

Public Comment Deadline: July 18, 2012.

Agency Contact: Judith McGreal, Licensing Program Consultant, Department of Social Services, Division of Licensing Programs, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7157, FAX (804) 726-7132, TTY (800) 828-1120, or email judith.mcgregal@dss.virginia.gov.

VA.R. Doc. No. R12-3227; Filed May 17, 2012, 9:26 a.m.

REGULATIONS

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

Symbol Key

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

TITLE 4. CONSERVATION AND NATURAL RESOURCES

MARINE RESOURCES COMMISSION

<p><u>REGISTRAR'S NOTICE:</u> The Marine Resources Commission is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 11 of the Code of Virginia; however, the commission is required to publish the full text of final regulations.</p>

Final Regulation

Title of Regulation: **4VAC20-490. Pertaining to Sharks (amending 4VAC20-490-42).**

Statutory Authority: § 28.2-201 of the Code of Virginia.

Effective Date: June 1, 2012.

Agency Contact: Jane Warren, Agency Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, FAX (757) 247-2002, or email betty.warren@mrc.virginia.gov.

Summary:

The amendments establish that the spiny dogfish commercial landings quota for May 1, 2012, through April 30, 2013, is limited to 3,764,732 pounds.

4VAC20-490-42. Spiny dogfish commercial quota and catch limitations.

A. For the 12-month period of ~~May 1, 2011~~ May 1, 2012, through ~~April 30, 2012~~ April 30, 2013, the spiny dogfish commercial landings quota shall be limited to ~~2,148,224~~ 3,764,732 pounds.

B. It shall be unlawful for any person to take, possess aboard any vessel or land in Virginia any spiny dogfish harvested from federal waters for commercial purposes after it has been announced that the federal quota for spiny dogfish has been taken.

C. It shall be unlawful for any person to take, possess aboard any vessel or land in Virginia more than 3,000 pounds of spiny dogfish per day for commercial purposes.

D. It shall be unlawful for any person to harvest or to land in Virginia any spiny dogfish for commercial purposes after the quota specified in subsection A of this section has been landed and announced as such.

E. Any spiny dogfish harvested from state waters or federal waters, for commercial purposes, shall only be sold to a federally permitted dealer.

F. It shall be unlawful for any buyer of seafood to receive any spiny dogfish after any commercial harvest or landing quota described in this section has been attained and announced as such.

VA.R. Doc. No. R12-3219; Filed May 24, 2012, 11:58 a.m.

Final Regulation

Title of Regulation: **4VAC20-540. Pertaining to Spanish and King Mackerel (amending 4VAC20-540-50).**

Statutory Authority: §§ 28.2-201 and 28.2-203 of the Code of Virginia.

Effective Date: June 1, 2012.

Agency Contact: Jane Warren, Agency Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, FAX (757) 247-2002, or email betty.warren@mrc.virginia.gov.

Summary:

The amendment makes it unlawful for any person to land in Virginia any amount of Spanish mackerel in excess of 3,500 pounds from any vessel in any one day.

4VAC20-540-50. Trip limit established.

It shall be unlawful for any person to land in Virginia any amount of Spanish mackerel in excess of 3,500 pounds ~~per~~ from any vessel per trip in any one day.

VA.R. Doc. No. R12-3220; Filed May 24, 2012, 12:32 p.m.

Final Regulation

Title of Regulation: **4VAC20-960. Pertaining to Tautog (amending 4VAC20-960-45, 4VAC20-960-47).**

Statutory Authority: § 28.2-201 of the Code of Virginia.

Effective Date: June 1, 2012.

Agency Contact: Jane Warren, Agency Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, FAX (757) 247-2002, or email betty.warren@mrc.virginia.gov.

Summary:

The amendments establish (i) a recreational possession limit of four tautog per person, (ii) a recreational closed fishing season from April 16 through July 31, and (iii) a commercial closed fishing season from January 18 through March 15 and May 1 through August 31.

Regulations

4VAC20-960-45. Recreational fishing season and possession limits.

A. It shall be unlawful for any person fishing with hook and line, rod and reel, spear, gig or other recreational gear to possess more than ~~three~~ four tautog. When fishing is from a boat or vessel where the entire catch is held in a common hold or container, the possession limit shall be for the boat or vessel and shall be equal to the number of persons on board legally eligible to fish multiplied by ~~three~~ four. The captain or operator of the boat or vessel shall be responsible for any boat or vessel possession limit. Any tautog taken after the possession limit has been reached shall be returned to the water immediately.

B. Possession of any quantity of tautog which exceeds the possession limit described in subsection A of this section shall be presumed to be for commercial purposes.

C. The 2012 recreational fishing season shall be closed from April 16 through ~~September 23~~ July 31.

D. It shall be unlawful for any person fishing recreationally to take, catch, or possess any tautog during any closed recreational fishing season.

4VAC20-960-47. Commercial fishing season and possession limits.

The 2012 commercial fishing season shall be closed from January 18 through March 15 and May 1 through ~~November 12~~ August 31, and it shall be unlawful for any person to possess tautog for commercial purposes during this period.

VA.R. Doc. No. R12-3221; Filed May 24, 2012, 12:45 p.m.

Final Regulation

Title of Regulation: **4VAC20-1230. Pertaining to Restrictions on Shellfish (amending 4VAC20-1230-10, 4VAC20-1230-20, 4VAC20-1230-30).**

Statutory Authority: § 28.2-201 of the Code of Virginia.

Effective Date: May 31, 2012.

Agency Contact: Jane Warren, Agency Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, FAX (757) 247-2002, or email betty.warren@mrc.virginia.gov.

Summary:

The amendments establish the times and number of hours for harvesting oysters during the months of May through September; establish a green "Restricted-Use Shellstock Tag" and a curfew time of 12 p.m. for use by the Virginia Department of Health, Division of Shellfish Sanitation certified shucker-packers when oysters are being harvested for shucking purposes only; and allow harvestors to use approved mechanical refrigeration or ice storage containers for oysters in order to work after the curfew times and harvest hour limits.

4VAC20-1230-10. Purpose.

The purpose of this chapter is to establish harvest times and handling procedures for shellfish, excluding seed oysters, harvested during the months of May through September, in order to protect the health of the public for commercial purposes or any other use. The time, from initial harvest to when temperature control of that harvest is required, begins once the first shellstock harvested is no longer submerged and extends to the time that any harvested oysters are placed in mechanical refrigeration or are continuously and completely covered by a layer of ice in a storage container that has been approved by the Virginia Department of Health, Division of Shellfish Sanitation.

4VAC20-1230-20. Definitions.

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

"Container" means any bag, ~~box,~~ sack, tote, ~~or conveyance, such as a boat or truck,~~ or other receptacle that contains shellfish to be held ~~or transported, in any type of conveyance, for transport from the harvest area to the landing site and from the landing site to the point of sale or other use.~~

"Conveyance" means any form of transport, either mechanical, such as a boat or truck, or nonmechanical that is used to transport shellfish from the harvest area to the landing site or from the landing site to a certified dealer or other use.

"Direct marketing" means any shellfish or shellstock that is landed and sold without shucking or postharvest processing.

"Harvest" means the act of removing any shellfish or shellstock from a designated harvest area and placing that shellfish or shellstock in a container or on or in a man-made conveyance or other means of transport.

"Layer" means a single thickness or coating spread out and covering a an entire surface.

"Mechanical refrigeration" means storage in a container that is approved by the Virginia Department of Health, Division of Shellfish Sanitation and capable of cooling to and maintaining an ambient temperature of 45°F or less.

"Oysters" means those oysters 2-1/2 inches or greater in shell length.

"Restricted-use shellstock" means shellstock or shellfish harvested from approved shellfish growing areas that shall not be sold for raw consumption or directly marketed for raw consumption.

"Restricted-use shellstock tag" means a Virginia Marine Resources Commission-issued green tag that shall only be used by a certified dealer who has a current certificate of inspection as a shucker packer for shellstock or shellfish harvested from a single harvest area in any one day. Use of any such tag indicates that shellstock is intended for further processing prior to distribution to retail or food service.

"Seed clams" means those clams less than 30 mm in shell length and more than six months from harvest for human consumption.

"Seed oysters" mean those oysters less than 2-1/2 inches in shell length and more than six months from harvest for human consumption.

"Shading" means to shelter by intercepting the direct rays of the sun to protect the shellfish from heat using a tarp or cover.

"Shellfish" or "shellstock" means all species of bivalve molluscan shellfish.

"Shucker packer" means a person who shucks and packs shellfish under a certificate of inspection issued by the Virginia Department of Health, Division of Shellfish Sanitation.

"Temperature control" means ~~management of the environmental temperature, by means~~ the use of ice or mechanical refrigeration, which is capable of lowering the temperature of the shellstock and maintaining it at 50°F (10°C) or less, as approved by the Virginia Department of Health (~~VDH~~), Division of Shellfish Sanitation.

4VAC20-1230-30. Public health and warm water harvest restrictions.

A. No provisions in this chapter shall apply to seed clams or seed oysters.

B. It shall be unlawful for any person to have any cat, dog, or other animal on board a vessel during the harvest of shellfish.

C. From May 1 through September 30, any vessel used for the harvest of shellfish, from either public or private grounds, shall provide shading over the area that serves as storage for the shellfish when the shellfish are on board that vessel. All shellfish in the vessel shall be offloaded every day. Shading shall not be required for vessels transporting clam seed or seed oysters for replanting.

D. From May 1 through September 30, all shellfish shall be shaded during land-based deliveries.

E. From May 1 through September 30, all land-based deliveries of shellfish requiring more than 60 minutes after offloading is complete shall be made aboard trucks or conveyances equipped with mechanical refrigeration capable of maintaining 45°F or less, except that shellfish may be continuously and completely covered by a layer of ice, according to procedures approved by the ~~VDH~~ Virginia Department of Health, Division of Shellfish Sanitation. Mechanically refrigerated containers of shellfish shall be in operation during transport. Any operator of a truck that is delivering shellfish using a truck not owned by a certified shellfish dealer shall possess a truck refrigeration certificate issued by the ~~VDH~~ Virginia Department of Health, Division of Shellfish Sanitation. Upon receipt of any shellfish ~~at the shore-based plant~~, certified shellfish dealers ~~must~~ shall immediately place any shellfish received from the harvester under temperature control.

F. From June 15 through August 31, it shall be unlawful for any person to leave the dock or shore, prior to one hour before sunrise, to harvest or attempt to harvest oysters from private grounds.

~~G. From May 1 through June 14, it shall be unlawful for any person to harvest oysters from public or private grounds after 11 a.m., and oysters harvested before 11 a.m. shall be placed in VDH Division of Shellfish Sanitation approved mechanical refrigeration or storage containers and completely covered by a layer of ice by 11 a.m. that same day. From May 1 to September 30, except for those persons permitted in accordance with subsection H or I of this section, it shall be lawful for any person to harvest oysters from open areas of public or private ground, provided those oysters are fully offloaded and placed into Virginia Department of Health, Division of Shellfish Sanitation-approved mechanical refrigeration or continuously and completely covered by a layer of ice in a Virginia Department of Health, Division of Shellfish Sanitation-approved storage container, only under the following designated curfew schedule that specifies an end to harvest time, by month:~~

1. May 1 through May 31, by 11 a.m.;

2. June 1 through June 30, by 10 a.m.;

3. July 1 through July 31, by 10 a.m.;

4. August 1 through August 31, by 10 a.m.; and

5. September 1 through September 30, by 12 p.m.

~~H. From June 15 through August 31, it shall be unlawful for any person to harvest oysters from public or private grounds after 10 a.m., and oysters harvested before 10 a.m. shall be placed in VDH Division of Shellfish Sanitation approved mechanical refrigeration or storage containers and completely covered by a layer of ice by 10 a.m. that same day. It shall only be lawful to harvest oysters from open areas of public or private ground, as an exception to the provisions of subsections G and I of this section, provided:~~

1. The harvester has applied for and been granted a permit by the Virginia Marine Resources Commission to harvest oysters after the designated curfew harvesting times as provided in subsection G of this section.

2. A Virginia Marine Resources Commission-approved global positioning system tracking device shall be on board the harvest vessel or with the harvester and must be in continuous operation from the time that vessel or harvester leaves the dock or shore until the vessel or harvester returns to the dock or shore, and the oysters harvested are offloaded from that vessel or onto the dock or shore and placed into mechanical refrigeration or continuously and completely covered by a layer of ice in a storage container approved by the Virginia Department of Health, Division of Shellfish Sanitation.

3. The total time, from the time the vessel or harvester leaves the dock or shore until the oysters are placed in Virginia Department of Health, Division of Shellfish

Regulations

Sanitation-approved mechanical refrigeration or continuously and completely covered by a layer of ice in a Virginia Department of Health, Division of Shellfish Sanitation-approved storage container, shall not exceed the following:

- a. Five hours during the months of May and September;
- b. Three hours during the month of June; and
- c. Two hours during the months of July and August.

~~I. From September 1 through September 30, it shall be unlawful for any person to harvest oysters from public or private grounds after noon, and oysters harvested before noon shall be placed in VDH Division of Shellfish Sanitation-approved mechanical refrigeration or storage containers and completely covered by a layer of ice by noon that same day. It shall only be lawful to harvest oysters from open areas of public or private ground, as an exception to the provisions of subsections G and H of this section, provided:~~

1. The harvester has applied for and been issued a Virginia Department of Health, Division of Shellfish Sanitation vessel approval certificate for mechanical refrigeration or icing in a storage container that is on board the vessel at all times during the harvest of oysters.

2. Oysters are placed in mechanical refrigeration or continuously and completely covered by a layer of ice in a storage container on board the vessel from the start of harvest and throughout the harvest period until the oysters are offloaded.

~~J. Except as described in subsections L and M of this section, oysters may be harvested after the designated harvesting time described in subsections G, H, and I of this section, provided (i) the total time, from the time the vessel or harvester leaves the dock or shore until the oysters are placed in VDH Division of Shellfish Sanitation approved mechanical refrigeration or completely covered by a layer of ice in a storage container, shall not exceed five hours; (ii) there is a Virginia Marine Resources Commission-approved Global Positioning System tracking device on board the harvest vessel or with the harvester that is in continuous operation, from the time that vessel or harvester leaves the dock or shore until the vessel or harvester returns to the dock or shore and the oysters are offloaded from that vessel or onto the shore; and (iii) the harvester has applied for and been granted a permit by the Virginia Marine Resources Commission to harvest oysters after these designated harvesting times, and that harvester has designated a landing site for that permit. From May 1 through September 30, oysters may be harvested from open areas of private or public ground as restricted-use shellstock, provided:~~

1. The harvester has been issued green restricted-use shellstock tags by a Virginia Department of Health, Division of Shellfish Sanitation-certified shucker packer and has tagged all oysters with restricted-use shellstock tags;

2. The harvester does not possess on board the vessel any oysters designated for direct marketing or raw consumption; and

3. All oysters are harvested no later than 12 p.m. and placed in mechanical refrigeration or continuously and completely covered by a layer of ice in a storage container, both approved by the Virginia Department of Health Division of Shellfish Sanitation, by noon that same day.

~~K. From May 1 through September 30, a Bulk Seed Permit shall be obtained from the Virginia Marine Resources Commission for the harvest of any natural (wild) seed oysters that include oysters greater than 2-1/2 inches. Any person who harvests any natural (wild) seed oysters that include oysters greater than 2-1/2 inches and is not in possession of a Bulk Seed Permit issued by the Virginia Marine Resources Commission shall be in violation of this chapter.~~

~~L. Any person may handle oysters as part of a cage aquaculture operation for husbandry purposes after the designated harvesting times described in subsections subsection G, H, and I of this section, provided that person possesses a valid Cage Aquaculture Husbandry Permit from the Virginia Marine Resources Commission. Any person who handles oysters in cage oyster aquaculture operations after the designated harvesting times described in subsections subsection G, H, and I of this section and does not possess a Cage Oyster Aquaculture Husbandry Permit issued by the Virginia Marine Resources Commission shall be in violation of this chapter.~~

~~M. Oysters may be harvested in open areas of the James River and its adjacent tributaries, upstream from the Monitor Merrimac Memorial Bridge Tunnel, in addition to the designated harvesting times in subsections G, H, and I of this section, provided (i) there is a VDH Division of Shellfish Sanitation-approved mechanical refrigeration or ice storage container on board the harvesting vessel; (ii) the harvester has applied for and been issued a VDH Division of Shellfish Sanitation Vessel approval certificate that is required to be on board the vessel at all times during the harvest of oysters and has designated a landing site for that permit; and (iii) the oysters are placed in the VDH Division of Shellfish Sanitation approved mechanical refrigeration in operation or an ice storage container with a layer of ice that completely covers the oysters from the start of harvest and throughout the harvest period until the oysters are offloaded.~~

VA.R. Doc. No. R12-3216; Filed May 25, 2012, 11:54 a.m.

Final Regulation

Title of Regulation: 4VAC20-1250. Pertaining to the Tagging of Shellfish (amending 4VAC20-1250-10, 4VAC20-1250-20, 4VAC20-1250-30; adding 4VAC20-1250-50).

Statutory Authority: §§ 28.2-201 and 28.2-801 of the Code of Virginia.

Effective Date: May 31, 2012.

Agency Contact: Jane Warren, Agency Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, FAX (757) 247-2002, or email betty.warren@mrc.virginia.gov.

Summary:

The amendments (i) require shellfish to be tagged during transport from the harvest area to the landing site and from the landing site to the certified dealer, and the tags must indicate the time the harvest began and the time the shellfish are offloaded and placed under temperature control; (ii) set the minimum specifications for single harvest areas; and (iii) establish a green restricted-use shellstock tag for shucker-packers operations.

4VAC20-1250-10. Purpose.

The purpose of this chapter is to establish a method of identifying harvested shellfish, according to its original Virginia harvest area, at any time of the year.

4VAC20-1250-20. Definitions.

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

"Bulk shellfish tag" means a shellfish tag that shall only be used for shellfish harvested from a single harvest area in any one day and accompanies a conveyance containing multiple containers of shellfish.

"Certified dealer" means a person to whom certification is issued by the Virginia Department of Health for the purposes of introducing shellfish into commerce.

"Certified dealer tag" means a shellfish tag, which is approved by the Virginia Department of Health, Division of Shellfish Sanitation, that shall only be used for shellfish harvested from a single harvest area, in any one day, and those shellfish are either loose in a conveyance or in a single container.

"Container" means any bag, box, sack, tote, or conveyance, such as a boat or truck, or other receptacle that contains shellfish to be held or transported, in any type of conveyance, for transport from the harvest area to the landing site and from the landing site to the point of sale or other use.

"Conveyance" means any form of transport, either mechanical, such as a boat or truck, or nonmechanical that is used to transport shellfish from the harvest area to the landing site or from the landing site to a certified dealer or other use.

"Direct marketing" means any shellfish or shellstock that is landed and sold without any post-harvest processing.

"Harvest" means the act of removing any shellfish or shellstock from a designated harvest area and placing that shellfish or shellstock in a container or on or in a man-made conveyance or other means of transport.

"Land" or "landing" means to (i) enter port with finfish, shellfish, crustaceans, or other marine seafood on board any

boat or vessel; (ii) begin offloading finfish, shellfish, crustaceans, or other marine seafood; or (iii) offload finfish, shellfish, crustaceans, or other marine seafood.

"Oysters" mean those oysters 2-1/2 inches or greater in shell length.

"Restricted-use shellstock" means shellstock or shellfish harvested from approved shellfish growing areas that shall not be sold for direct marketing or raw consumption.

"Restricted-use shellstock tag" means a Virginia Marine Resources Commission-issued green tag that shall only be used by a certified dealer who has a current certificate of inspection as a shucker packer for shellstock or shellfish harvested from a single harvest area in any one day. Use of any such tag indicates that shellstock is intended for further processing prior to distribution to retail or food service.

"Shellfish" or "shellstock" means all species of bivalve molluscan shellfish.

"Single harvest area" means one of the water areas established by the Virginia Marine Resources Commission for reporting fisheries statistics.

"Shellfish harvester tag" means a shellfish tag that shall only be used for shellfish harvested from a single harvest area, in any one day, and those shellfish are either loose in a conveyance or in a single container.

"Shucker packer" means a person who shucks and packs shellfish under a certificate of inspection issued by the Virginia Department of Health, Division of Shellfish Sanitation.

"Temperature control" means the use of ice or mechanical refrigeration, which is capable of lowering the temperature of the shellstock and maintaining it at 50°F (10°C) or less, as approved by the Virginia Department of Health, Division of Shellfish Sanitation.

4VAC20-1250-30. Shellfish identification.

A. Any person harvesting shellfish for commercial purposes shall affix a shellfish harvester tag to each container of shellfish as soon as possible after, except as provided in subsection E of this section, before leaving any single harvest area but before harvesting shellfish from another harvest area or offloading the shellfish. The shellfish harvester tag shall remain in place while the shellfish are transported from the harvest area to the landing site and from the landing site to a certified dealer and shall or for any other use. Any transport of shellfish to a certified dealer requires that the shellfish harvester tag remain affixed to each container of shellfish until the container is emptied or shipped and re-tagged by a certified dealer. For any quantities of harvested shellfish sold in bulk that are loose and not containerized aboard a boat, the harvester shall prepare a single tag, for that quantity of shellfish, which shall accompany that quantity of shellfish during transport from the landing site to the dealer facilities.

B. The shellfish harvester tag, the bulk shellfish tag, and the green restricted-use shellstock tag shall be durable,

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waterproof, ~~and~~ approved by the Virginia Marine Resources Commission (VMRC) or the Virginia Department of Health (VDH) prior to use, and ~~shall be~~ at least 13.8 square inches in size.

C. The shellfish harvester tag shall contain all of the following indelible and legible information, in the following order:

1. The harvester's ~~VMRC~~ Virginia Marine Resources Commission identification number (~~last four digits~~) or ~~VMRC~~ Virginia Marine Resources Commission oyster aquaculture harvester permit number or clam aquaculture harvester permit number ~~or VDH Certificate of Inspection number~~;

2. The date of harvest, ~~time that any shellfish harvest began, and time that harvested shellfish were offloaded and placed under temperature control~~;

3. ~~An acknowledgement of whether or not those shellfish, described in subdivision 2 of this subsection, were placed in a Virginia Department of Health, Division of Shellfish Sanitation-approved storage container with a layer of ice that continuously and completely covered the oysters~~;

~~3.~~ 4. The most accurate identification of the harvest location or aquaculture site, including the abbreviated name of the state of harvest and the ~~commission's~~ Virginia Marine Resources Commission's designation of the growing area by indexing, administrative, or geographic designation, ~~and the minimum identification requirement shall be to specify a single harvest area from the listing, as described in 4VAC20-1250-50~~;

4. ~~5.~~ The type and quantity of harvested shellfish; and

5. ~~6.~~ The following statement, in bold capitalized letters: "THIS TAG IS REQUIRED TO BE ATTACHED, UNTIL THE CONTAINER IS EMPTY OR IS RE-TAGGED, AND THEREAFTER KEPT ON FILE FOR 90 DAYS."

D. For any quantities of shellfish commercially harvested from a single harvest area, in any one day, that are loose and not containerized aboard any conveyance, the harvester shall prepare a shellfish harvester tag for that quantity of shellfish, which shall accompany that quantity of shellfish during transport from the single harvest area to the landing site and from the landing site to a certified dealer, or for any other use.

~~D.~~ E. When multiple containers of shellfish are harvested from a single harvest area, in any one day, and placed in a ~~bulk container~~ any conveyance, the lot may be tagged with a ~~single~~ bulk shellfish tag ~~that, for that quantity of shellfish, which shall accompany the that quantity of shellfish during transport from the harvest area to the landing site and from the landing site to the a certified dealer facility, or for any other use.~~ In addition to the information required in subsection C of this section, ~~the~~ any bulk shellfish tag shall also include:

1. The following statement in bold capitalized letters: "ALL SHELLFISH CONTAINERS IN THIS LOT HAVE

THE SAME HARVEST DATE AND ARE FROM A SINGLE AREA OF HARVEST"; and

2. The number of individual containers in the lot.

~~E. Whenever any shellfish are harvested, whether loose, in bulk, or in containers, and are not tagged as required by subsection C of this section, this shall constitute a violation of this chapter, and the entire quantity of untagged shellfish shall be subject to seizure and disposed of in accordance with 4VAC20-1250-40.~~

F. Certified shucker packers shall use a green restricted-use shellstock tag for the harvest of restricted-use shellstock from a single harvest area in any one day. The restricted-use shellstock tag shall accompany that quantity of shellfish during transport from the harvest area to the landing site and from the landing site to the certified shucker packer. In addition to the information required in subsection C of this section, any restricted-use shellstock tag shall also include:

1. The certified shucker packer name and address; the Virginia Department of Health, Division of Shellfish and Sanitation certification number; and the following statement in bold capitalized letters: "FOR SHUCKING BY A CERTIFIED DEALER OR POST HARVEST PROCESSING ONLY"; and

2. The quantity of restricted-use shellstock in the lot.

G. Certified dealers may use their certified dealer tag in place of a shellfish harvester tag as provided in subsection A of this section, except as provided in subsection F of this section.

4VAC20-1250-50. Designated single harvest areas.

A listing of water area names for use by harvesters to designate harvest areas.

<u>Back Bay</u>	<u>Mobjack Bay</u>
<u>Back River</u>	<u>Nansemond River</u>
<u>Bogue Bay</u>	<u>Nomini River</u>
<u>Bradford Bay</u>	<u>North River</u>
<u>Burton's Bay</u>	<u>North Landing River</u>
<u>Chesapeake Bay Lower East</u>	<u>Outlet Bay</u>
<u>Chesapeake Bay Lower West</u>	<u>Oyster Bay Seaside Eastern Shore</u>
<u>Chesapeake Bay Upper East</u>	<u>Pagan River</u>
<u>Chesapeake Bay Upper West</u>	<u>Pamunkey River</u>
<u>Chickahominy River</u>	<u>Piankatank River</u>
<u>Chincoteague Bay</u>	<u>Pocomoke River</u>
<u>Chuckatuck Creek</u>	<u>Pocomoke Sound</u>

<u>Coan River</u>	<u>Poquoson River</u>
<u>Cobb Bay Seaside Eastern Shore</u>	<u>Potomac Creek</u>
<u>Corrotoman River</u>	<u>Rappahannock River Middle</u>
<u>Currioman River</u>	<u>Rappahannock River Lower</u>
<u>East River</u>	<u>Rappahannock River Upper</u>
<u>Elizabeth River</u>	<u>Rosier Creek</u>
<u>Fleets Bay</u>	<u>Severn Creek</u>
<u>Gargathy Bay</u>	<u>South Bay</u>
<u>Great Wicomico River</u>	<u>Swash Bay</u>
<u>Hog Island Bay</u>	<u>Tangier Sound</u>
<u>Horn Harbor</u>	<u>Upper Machodoc Creek</u>
<u>James River Middle</u>	<u>Upshur Bay</u>
<u>James River Lower</u>	<u>Ware River</u>
<u>James River Upper</u>	<u>Warwick River</u>
<u>Kegotank Bay</u>	<u>Watts Bay</u>
<u>Lafayette River</u>	<u>Willoughby Bay</u>
<u>Little Wicomico River</u>	<u>Winter Harbor</u>
<u>Lower Machodoc Creek</u>	<u>Yeocomico River</u>
<u>Lynnhaven Bay</u>	<u>York River Middle</u>
<u>Magothy Bay</u>	<u>York River Lower</u>
<u>Mattaponi River</u>	<u>York River Upper</u>
<u>Mattox Creek</u>	<u>Ocean Eastern Shore</u>
<u>Metomkin Bay</u>	<u>Ocean Virginia Beach</u>
<u>Milford Haven</u>	

Title of Regulation: 4VAC25-31. Reclamation Regulations for Mineral Mining (amending 4VAC25-31-310, 4VAC25-31-570).

Statutory Authority: §§ 45.1-161.3 and 45.1-180.3 of the Code of Virginia.

Effective Date: July 18, 2012.

Agency Contact: Michael Skiffington, Regulatory Coordinator, Department of Mines, Minerals and Energy, 1100 Bank Street, 8th Floor, Richmond, VA 23219-3402, telephone (804) 692-3212, FAX (804) 692-3237, TTY (800) 828-1120, or email mike.skiffington@dmme.virginia.gov.

Summary:

Chapter 803 of the 2012 Acts of Assembly abolishes the Board of Surface Mining Review and transfers its responsibilities to the Department of Mines, Mineral and Energy effective July 1, 2012. In addition, Chapter 803 provides that an operator may request a review of a permit revocation or bond forfeiture pursuant to the provisions of Article 3 of the Virginia Administrative Process Act. This regulatory action removes references to the Board of Surface Mining Review and updates the bond forfeiture appeal provision to reference the Administrative Process Act.

4VAC25-31-310. Bond forfeiture.

A. If the permittee refuses or is unable to comply with an order by the director under § 45.1-186.1 of the Code of Virginia, fails to comply with the terms of the permit, or defaults on the conditions under which the bond was accepted, the division shall take the following action to revoke the permit and forfeit the bond or bonds for the permit area or a portion of the permit area:

1. Send written notification by certified mail, return receipt requested, to the permittee and the surety on the bond informing them of the decision to revoke the permit and forfeit all or part of the bond, and the reasons for this action.
2. Advise the permittee and surety of the conditions under which forfeiture may be avoided. Such conditions may include:
 - a. Agreement by the permittee or another party to perform reclamation operations in accordance with a compliance schedule acceptable to the division, which meets the conditions of the permit and the reclamation plan, and demonstrates that such party has the ability to satisfy the conditions; or
 - b. The division may allow a surety to complete the reclamation plan if the surety can demonstrate an ability to complete the reclamation in accordance with the approved reclamation plan. Except where the division may approve partial release, no surety liability shall be released until successful completion of all reclamation under the terms of the permit.

VA.R. Doc. No. R12-3150; Filed May 25, 2012, 11:57 a.m.

DEPARTMENT OF MINES, MINERALS AND ENERGY

Final Regulation

REGISTRAR'S NOTICE: The Department of Mines, Minerals and Energy is claiming an exemption from 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 where no agency discretion is involved. The Department of Mines, Minerals and Energy will receive, consider, and respond to petitions from any interested person at any time with respect to reconsideration or revision.

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B. In the event forfeiture of the bond is required, the division shall:

1. Proceed to collect the forfeited amount as provided by Virginia law for the collection of defaulted bonds or other debts if actions to avoid forfeiture have not been taken, if any rights of appeal have not been exercised within a time established by the division, or if such appeal is unsuccessful.

2. Use funds collected from bond forfeiture to complete the reclamation plan on the permit area.

C. Upon default the division may cause the forfeiture of any and all bonds deposited to complete reclamation for which the bonds were posted. Bond liability shall extend to the entire permit area under conditions of forfeiture.

D. Reclamation costs in excess of the forfeited bond amount will constitute a debt of the operator to the Commonwealth of Virginia and shall be collected in accordance with § 45.1-186.2 of the Code of Virginia.

E. In the event the amount of performance bond forfeited was more than the amount necessary to complete reclamation, the unused funds shall be returned by the division to the party from whom they were collected.

F. Appeal of bond forfeiture decisions may be made by the operator ~~to the Board of Surface Mining Review~~ by providing notice of appeal to the director in accordance with §§ ~~45.1-186.1 and 45.1-194 of the Code of Virginia~~ Article 3 (§ 2.2-4018 et seq.) of the Administrative Process Act. If the operator files a notice of appeal, then the director's orders revoking the permit and declaring forfeiture shall be held in abeyance until the appeal is determined ~~by the Board of Surface Mining Review~~.

4VAC25-31-570. Formal review.

Orders of the director, which are final agency actions for which no further informal resolution is available, shall be appropriately identified and may be appealed ~~to the Board of Surface Mining Review~~ in accordance with § 45.1-194 of the Code of Virginia.

V.A.R. Doc. No. R12-3209; Filed May 16, 2012, 3:32 p.m.

Final Regulation

REGISTRAR'S NOTICE: The Department of Mines, Minerals and Energy is claiming an exemption from 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 where no agency discretion is involved. The Department of Mines, Minerals and Energy will receive, consider, and respond to petitions from any interested person at any time with respect to reconsideration or revision.

Titles of Regulations: **4VAC25-35. Certification Requirements for Mineral Miners (amending 4VAC25-35-10, 4VAC25-35-30, 4VAC25-35-40, 4VAC25-35-120).**

4VAC25-40. Safety and Health Regulations for Mineral Mining (amending 4VAC25-40-40).

4VAC25-150. Virginia Gas and Oil Regulation (amending 4VAC25-150-250).

Statutory Authority:

4VAC25-35: § 45.1-161.292:19 of the Code of Virginia.

4VAC25-40: §§ 45.1-161.3, 45.1-161.294, and 45.1-161.305 of the Code of Virginia.

4VAC25-150: §§ 45.1-161.3 and 45.1-361.27 of the Code of Virginia.

Effective Date: July 18, 2012.

Agency Contact: Michael Skiffington, Regulatory Coordinator, Department of Mines, Minerals and Energy, 1100 Bank Street, 8th Floor, Richmond, VA 23219-3402, telephone (804) 692-3212, FAX (804) 692-3237, TTY (800) 828-1120, or email mike.skiffington@dmme.virginia.gov.

Summary:

Chapter 803 of the 2012 Acts of Assembly abolishes the Board of Mineral Mining Examiners and transfers its responsibilities to the Department of Mines, Minerals and Energy effective July 1, 2012. This regulatory action amends the regulation to comport with Chapter 803 by removing references to the Board of Mineral Mining Examiners.

Part I

General and Specific Requirements

4VAC25-35-10. Initial certification requirements.

A. Applicants shall submit:

1. ~~The Application for Certification Examination form (BMME-1).~~ An application for certification examination in a form acceptable to the division.

2. A copy of all degrees required for certification and a valid first aid certificate or card or as noted in Part II, Minimum Certification Requirements (4VAC25-35-50 et seq.). When not otherwise specified, first aid cards shall be issued by an organization that uses nationally recognized standards and is approved by the Division of Mineral Mining (DMM), e.g., American Red Cross and National Safety Council.

3. A \$10 fee for each examination application received at least five working days prior to an examination. Cash will be accepted if paying in person at a ~~Department of Mines, Minerals and Energy (DMME)~~ department office.

4. ~~A Verification of Work Experience form (BMME 2)~~ Verification of work experience in a form acceptable to the division and documentation of equivalent work experience for approval by ~~DMM~~ the division, if required for the certification. ~~This form~~ Work experience shall be ~~signed~~ verified by a company official who is knowledgeable of the experience of the applicant.

B. Applicants shall fulfill the requirements of 4VAC25-35-10 and accumulate the required years of experience within five years of taking the examination or start the process over including payment of fee.

C. Applicants for the general mineral miner certification shall submit a \$10 processing fee with their application.

~~D. Persons requesting replacement of a lost or destroyed certificate shall submit a letter to DMM with a \$1.00 fee. Cash will be accepted if paying in person at a DMME office.~~

4VAC25-35-30. Reciprocity requirements.

Reciprocity shall be available for certified persons in other states as provided for in § 45.1-161.292:24 of the Code of Virginia. Applicants for reciprocity must submit ~~a current copy of their pocket card or certificate~~ proof of current certification, examination grades, and documentation of equivalent work experience for review and approval by the ~~Board of Mineral Mining Examiners (BMME) department.~~

4VAC25-35-40. Renewal requirements.

~~A. Certificates issued by the Board of Examiners (BOE) shall not be accepted as valid after July 1, 1999.~~

~~B. DMM~~ A. The division will send renewal notices to the last known address of the certificate holder at least 180 days prior to the expiration of the certificate. Certified persons shall apply for renewal of certificates by submitting ~~the Application for Renewal form (BMME 3) and the Verification of Work Experience form (BMME 2) to DMM~~ an application for renewal and verification of work experience in a form acceptable to the division no more than 180 days prior to the expiration of their certificate. The ~~forms~~ application shall be submitted in time to be received at least five working days prior to the date of the examination or refresher class.

~~C. B.~~ Certified persons, except mine inspectors, who have worked a cumulative minimum of 24 months in the last five years shall select one of two options to renew their certificates; either take an examination or complete a refresher class on any changes in regulations and law since the initial certification or the certificate was last renewed. No examination or class shall be required if there have been no such changes.

~~D. C.~~ Certified persons shall take the examination described in 4VAC25-35-20 if their certificate has expired, they have not worked in the area for which they are certified for a cumulative minimum of 24 months in the last five years, or DMM has issued the individual violations that have not been corrected.

~~E. D.~~ Successful completion of the mine inspector renewal shall suffice for renewing the mine foreman certification.

~~F. E.~~ Applicants for renewal of certifications shall hold a valid first aid certificate or card to renew their certification.

~~G. F.~~ Applicants shall submit a \$10 fee for the examination or the refresher class which shall be received at least five

working days prior to the examination or class. Cash will be accepted if paying in person at a ~~DMME~~ department office.

4VAC25-35-120. General mineral miner.

A. As set forth in § 45.1-161.292:28 of the Code of Virginia, miners commencing work after January 1, 1997, shall have a general mineral miner certification. For the purposes of these regulations, "commencing work" means after employment but before beginning job duties. Persons excluded from the general mineral miner certification are those involved in delivery, office work, maintenance, service and construction work, other than the extraction and processing of minerals, who are contracted by the mine operator. Hazard training as required by 30 CFR Part 46 or 30 CFR Part 48 shall be provided to these persons.

B. Applicants shall complete certification training in first aid and mineral mining regulations and law which is conducted by a training instructor approved by DMM, a certified MSHA instructor, or a certified mine foreman. Training shall include the following topics, subtopics and practical applications:

1. First aid training shall convey a knowledge of first aid practices including identification of trauma symptoms, recognition and treatment of external and internal bleeding, shock, fractures, and exposure to extreme heat or cold. ~~To prove to the BMME that an applicant has knowledge of first aid practices, the training~~ Training shall include a demonstration of skills or passing a written examination, as evidenced by the instructor certification ~~as contained in the BMME 4 form~~ submitted in a form acceptable to the division.

2. Law and regulation training shall convey highlights of the mineral mine safety laws of Virginia and the safety and health regulations of Virginia. Specifically, information shall be provided on miner responsibilities and accountability, certification requirements, violations, penalties, appeals and reporting violations to DMM. ~~To prove to the BMME that an applicant has knowledge of the mineral mine safety laws of Virginia and the safety and health regulations, the training~~ Training shall include a demonstration of skills or passing a written examination, as evidenced by the instructor certification ~~as contained in the BMME 4 form~~ submitted in a form acceptable to the division.

C. The trainer will certify to the ~~BMME~~ department that the training and demonstrations required by § 45.1-161.292:28 B of the Code of Virginia and this section have occurred ~~by completing the BMME 4 form.~~

D. Applicants who hold a valid first aid card or certificate as noted in 4VAC25-35-10 shall be considered to have met the first aid requirements.

E. Applicants who have completed training may commence work and shall be considered provisionally certified for up to 60 days from the date the instructor completes the training.

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F. The instructor shall submit ~~a BMME 4 form~~ verification of certification in a form acceptable to the division and the \$10 fee for each applicant who completes the training, together with a class roster of all persons who complete the training, within 30 days of the training date.

G. The mine operator shall maintain the following records for those miners required to obtain a general mineral miner certification and those who qualify for exemption, starting January 1, 1997:

1. The employee name, address, phone number.
2. The job title, employment date and general mineral miner number if applicable.
3. The date training was completed and the instructor providing it for nonexempt employees.
4. If the employee is exempt from the requirements, the date they began working in the mineral mining industry in Virginia.

FORMS (4VAC25-35) (Repealed.)

~~Application for Certification Examination, DMM BMME 1 (rev. 7/11).~~

~~Verification of Work Experience Form, DMM BMME 2 (rev. 2/06).~~

~~Application for Renewal, DMM BMME 3 (rev. 2/06).~~

~~Verification of Training Completed for General Mineral Miner (GMM) Certification, DMM BMME 4 (rev. 2/99).~~

4VAC25-40-40. Certification.

Any person who is responsible for mining or blasting activities shall be certified by the ~~Board of Mineral Mining Examiners~~ department and governed by the Certification Requirements for Mineral Mining, ~~4VAC25 Chapter 35~~ 4VAC25-35.

4VAC25-150-250. Blasting and explosives.

A. Applicability. This section governs all blasting on gas, oil or geophysical sites, except for:

1. Blasting being conducted as part of seismic exploration where explosives are placed and shot in a borehole to generate seismic waves; or
2. Use of a device containing explosives for perforating a well.

B. Certification.

1. All blasting on gas, oil and geophysical sites shall be conducted by a person who is certified by the ~~Board of Mineral Mining Examiners~~ department, the Board of Coal Mining Examiners, or by the Virginia Department of Housing and Community Development.
2. The director may accept a certificate issued by another state in lieu of the certification required in subdivision B 1 of this section, provided the ~~Board of Mineral Mining Examiners~~ department, the Board of Coal Mining Examiners, or the Department of Housing and Community Development has approved reciprocity with that state.

C. Blasting safety. Blasting shall be conducted in a manner designed to prevent injury to persons, or damage to features described in the operations plan under 4VAC25-150-100 B.

1. When blasting is conducted within 200 feet of a pipeline or high-voltage transmission line, the blaster shall take due precautionary measures for the protection of the pipeline or high-voltage transmission line, and shall notify the owner of the facility or his agent that such blasting is intended.
2. Flyrock shall not be allowed to fall farther from the blast than one-half the distance between the blast and the nearest inhabited building, and in no case outside of the permitted area.
3. When blasting near a highway, the blaster must ensure that all traffic is stopped at a safe distance from the blast. Blasting areas shall be posted with warning signs.
4. All blasting shall be conducted during daylight hours, one-half hour before sunrise to one-half hour after sunset, unless approved by the director.
5. Misfires.
 - a. The handling of a misfired blast shall be under the direct supervision of a certified blaster.
 - b. When a misfire occurs, the blaster shall wait for at least 15 minutes or the period of time recommended by the manufacturer of the explosives and the detonator, whichever is longer, before allowing anyone to return to the blast site.
6. Blasting signals.
 - a. Before a blast is fired, a warning signal audible to a distance of at least one-half mile shall be given by the blaster in charge, who shall make certain that all surplus explosives are in a safe place and that all persons are at a safe distance from the blast site or under sufficient cover to protect them from the effects of the blast.
 - b. A code of warning signals shall be established and posted in one or more conspicuous places on the permitted site, and all employees shall be required to conform to the code.
7. Explosives and detonators shall be placed in substantial, nonconductive, closed containers (such as those containers meeting standards prescribed by the Institute of Makers of Explosives) when brought on the permitted site. Explosives and detonators shall not be kept in the same container. Containers shall be posted with warning signs.
8. Storage of explosives and detonators on gas, oil or geophysical sites is allowed only with prior approval by the director.
9. The permittee shall report to the Division of Gas and Oil by the quickest means possible any theft or unaccounted-for loss of explosives. When reporting such a theft or loss, the permittee shall indicate other local, state and federal authorities contacted.

10. Damaged or deteriorated explosives and detonators shall be destroyed by a certified blaster in accordance with the manufacturer's recommendations.

D. Ground vibration.

1. The ground-vibration limits in this subsection shall not apply on surface property owned or leased by the permittee, or on property for which the surface owner gives a written waiver specifically releasing the operator from the limits.

2. Blasting without seismographic monitoring. Blasting may be conducted by a certified blaster without seismographic monitoring provided the maximum charge is determined by the formula $W = (D/D_s)^2$ where W is the maximum weight of explosive in pounds per delay (eight milliseconds or greater); D is the actual distance in feet from the blast location to the nearest inhabited building; and D_s is the scaled distance factor to be applied without seismic monitoring, as found in Table 1.25.D-1.

TABLE 1.25.D-1: MAXIMUM ALLOWABLE PEAK VELOCITY

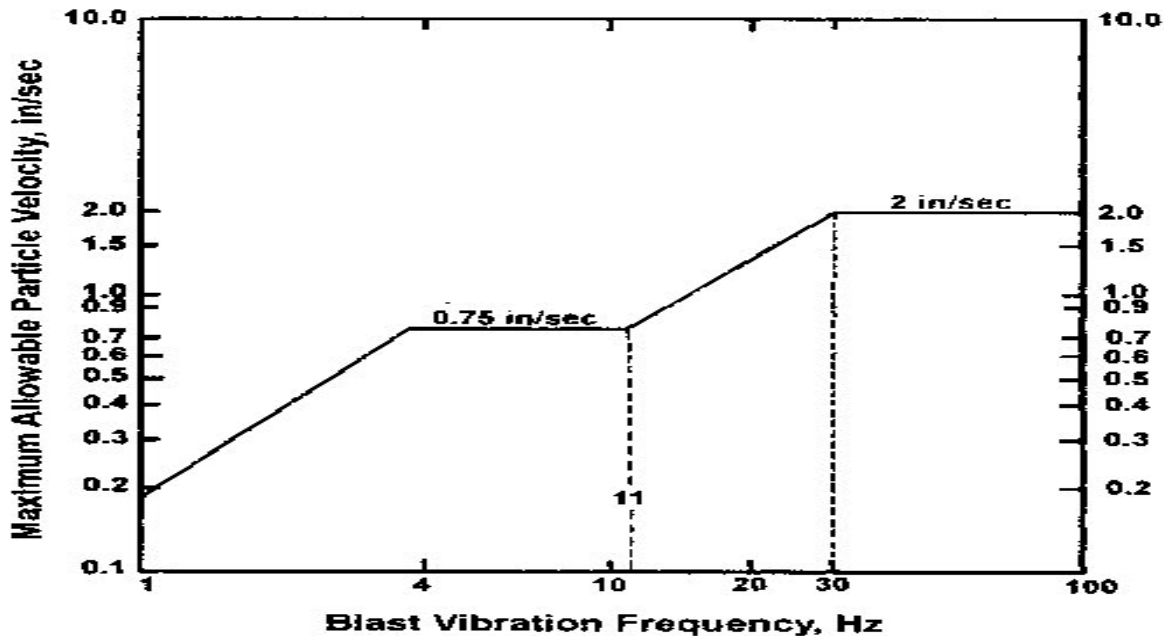
Distance (D) from blasting site in feet	Maximum allowable peak particle velocity (V_{max}) for ground vibration, in inches/second	Scaled Distance Factor (D_s) to be applied without seismic monitoring
0 to 300	1.25	50
301 to 5000	1.00	55
5001 and beyond	0.75	65

3. Blasting with seismographic monitoring.

a. A permittee may use the ground-vibration limits in Table 1.25.D-2 to determine the maximum allowable peak particle velocity. If Table 1.25.D-2 is used, a seismographic record including both particle velocity and vibration-frequency levels shall be provided for each blast. The method for the analysis of the predominant frequency contained in the blasting records shall be approved by the director before implementation of this alternative blasting level.

b. The permittee may choose to record every blast. As long as the seismographic records indicate particle velocities have remained within the limits prescribed in Tables 1.25.D-1 or 1.25.D-2, the permittee shall be considered to be in compliance with this subsection.

Table 1.25.D-2: ALTERNATIVE BLASTING LEVEL CRITERIA
(Source modified from figure B-1, Bureau of Mines R(8507))



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c. Ground vibration shall be measured as the particle velocity. Particle velocity shall be recorded in three mutually perpendicular directions. The maximum allowable peak particle velocity shall apply to each of the three measurements.

d. All seismic tests carried out for the purposes of this section shall be analyzed by a qualified seismologist.

e. All seismic tests carried out for the purposes of this section shall be conducted with a seismograph that has an upper-end flat frequency response of at least 200 Hz.

E. Airblast shall not exceed the maximum limits prescribed in Table 1.25.E-1 at the location of any inhabited building. The 0.1 Hz or lower, flat response or C-weighted, slow response shall be used only when approved by the director.

Table 1.25.E-1: AIRBLAST LIMITS

Lower Frequency Limit of measuring system, in Hz (+3db)		Measurement Level, in db
0.1 Hz or Lower	Flat Response	134 Peak
2 Hz or Lower	Flat Response	133 Peak
6 Hz or Lower	Flat Response	129 Peak
C-weighted	Slow Response	105 Peak

F. If the director concludes that blasting on a particular site has potential to create unsafe conditions, then he may:

1. Require the permittee to monitor ground vibration and airblast for all blasts on the site for a specified period of time;
2. Impose more stringent limits on ground vibration and airblast levels than those specified in this section. The director may order the permittee to obtain an evaluation of the blast site by a vibration consultant or a technical representative of the explosives manufacturer before imposing a more stringent limit. Blasting may not resume on the site being evaluated until the evaluation and recommendations are submitted to the director, and the director has given his approval.

G. Records.

1. The permittee shall keep records of all blasts, and these records shall contain the following:
 - a. Name of company or contractor;
 - b. Location, date, and time of the blast;
 - c. Name, signature, and certification number of the blaster in charge;
 - d. Type of material blasted;
 - e. Number of holes; their burden and spacing;
 - f. Diameter and depth of the holes;
 - g. Types of explosives used;

- h. Total amount of explosives used per hole;
- i. Maximum weight of explosives per delay period;
- j. Method of firing and the type of circuit;
- k. Direction and distance in feet to the nearest inhabited building;
- l. Weather conditions (including wind directions, etc.);
- m. Height or length of stemming;
- n. Description of any mats or other protection used;
- o. Type of detonators and delay periods used; and
- p. Any seismograph reports, including:
 - (1) The name and signature of the person operating the seismograph;
 - (2) The name of the person analyzing the seismograph record;
 - (3) The exact location of the seismograph in relation to the blast;
 - (4) The date and time of the reading; and
 - (5) The seismograph reading.

2. The permittee shall retain all records of blasting, including seismograph reports, for at least three years. On request, the permittee shall make these records available for inspection by the director.

VA.R. Doc. No. R12-3201; Filed May 16, 2012, 3:34 p.m.

TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

FORENSIC SCIENCE BOARD

Final Regulation

Title of Regulation: 6VAC40-60. DNA Data Bank Regulations (adding 6VAC40-60-10 through 6VAC40-60-60).

Statutory Authority: §§ 9.1-1110 and 19.2-310.5 of the Code of Virginia.

Effective Date: July 16, 2012.

Agency Contact: Stephanie Merritt, Department Counsel, Department of Forensic Science, 700 North Fifth Street, Richmond, VA 23219, telephone (804) 786-6848, FAX (804) 786-6857, or email stephanie.merritt@dfs.virginia.gov.

Summary:

Pursuant to § 19.2-310.5 of the Code of Virginia, the regulation establishes the methods for obtaining information from the Virginia DNA data bank and procedures for verifying the identity and authority of persons requesting information from the Virginia DNA data bank.

The regulations (i) allow police departments, the Department of Corrections (DOC), the Department of Juvenile Justice (DJJ), attorneys for the Commonwealth or the United States Department of Justice, and the Office of the Chief Medical Examiner to gain access to information in the Virginia DNA data bank in connection with the submission of physical evidence for forensic laboratory examination; (ii) specify how law-enforcement officers may submit a request for information; (iii) mandate that information provided to DOC and DJJ be transmitted through a secure electronic exchange; (iv) specify that out-of-state requests for information relating to the Virginia DNA data bank be made in writing to the Virginia CODIS administrator by an out-of-state CODIS administrator; and (v) note that § 9.1-1104 of the Code of Virginia governs requests for data bank information made by the accused or his attorney.

Amendments since publication of the proposed (i) add electronic submission as an acceptable means of delivery for a written request for information and (ii) remove references to the department's Request for Laboratory Examination form, Evidence Handling and Laboratory Capabilities Guide, and CODIS Operating Policies and Procedures Manual.

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

CHAPTER 60
DNA DATA BANK REGULATIONS

6VAC40-60-10. Definitions.

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

"CODIS" means the Combined DNA Index System.

"Department" means the Virginia Department of Forensic Science.

"DNA" means deoxyribonucleic acid.

"DNA data bank" means the Virginia State DNA Index System (SDIS) maintained by the department, which is a database of DNA profiles associated with the corresponding personally identifying information.

"DNA profile" means the results of DNA analysis of a sample of human biological evidence.

"Law-enforcement agency" means any federal, state, or local government law-enforcement organization.

["~~RFLE~~" means ~~Request for Laboratory Examination, an official form provided by the department.~~]

"Subject" means the individual from whom a sample of human biological evidence has been obtained.

6VAC40-60-20. Request for information from a law-enforcement officer regarding whether an individual's DNA profile is in the DNA data bank.

A. A request for information regarding whether an individual's DNA profile is in the DNA data bank shall be in writing, addressed to the department's DNA data bank administrator, and signed by the requesting law-enforcement officer.

1. The request shall contain as much of the following information as is available to the requestor at the time of the request: the individual's full name, known aliases, assigned or claimed social security number, date of birth, race, gender, and state identification number.

2. The request shall state that the information is being obtained in furtherance of an official investigation of a specified criminal offense that occurred within the jurisdiction of the requesting law-enforcement agency.

B. The written request shall be on the official letterhead of the requesting officer's law-enforcement agency and sent to the department's central laboratory at 700 North Fifth Street, Richmond, Virginia 23219, via United States mail or commercial mail delivery service, [electronic transmission,] or by facsimile.

C. In the alternative, the request may be made in person at the department's central laboratory at 700 North Fifth Street, Richmond, Virginia 23219. If not presented on the official letterhead of the requesting officer's law-enforcement agency, the requesting officer shall reduce the request to writing consistent with subsection A of this section and certify his authority to request such information. Thereupon, the identity of the requestor shall be verified by department personnel by inspection of the requestor's identification card and badge number. Department personnel shall (i) affirm in writing, below the signature of the requesting officer, that the officer's identification was verified; (ii) record the officer's badge number; and (iii) sign and date such verification.

6VAC40-60-30. Request for DNA data bank information relating to specific Virginia forensic laboratory examinations involving the analysis and comparison of two or more samples.

A. A duly authorized member of a law-enforcement agency or private police department designated as a criminal justice agency by the Department of Criminal Justice Services as defined in § 9.1-101 of the Code of Virginia, attorneys for the Commonwealth, attorneys for the United States Department of Justice, or a duly authorized member of the Office of the Chief Medical Examiner may obtain information from the DNA data bank in connection with the submission of physical evidence for forensic laboratory examination. A request for such laboratory examination shall be submitted in writing on [a form supplied by] the [~~department's Request for Laboratory Examination (RFLE) form~~ department]. [~~The RFLE and any related physical evidence shall be submitted pursuant to the procedures established in the department's~~

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~~Evidence Handling & Laboratory Capabilities Guide, which is available online at the department's website.]~~

B. A request from an accused or his attorney shall be governed by the provisions of § 9.1-1104 of the Code of Virginia.

C. A request for information from the DNA data bank concerning the results of an analysis and comparison of the identification characteristics of human biological evidence shall be in writing, addressed to the department's DNA data bank administrator, and signed by the requestor.

1. The request shall contain as much of the following information as is available to the requestor at the time of the request: the subject's full name, known aliases, assigned or claimed social security number, date of birth, race, gender, and state identification number.

2. The request shall state that the information is being obtained in furtherance of an official investigation of a specified criminal offense that occurred within the jurisdiction of the requesting law-enforcement agency.

3. The written request shall be on the official letterhead of the requestor's agency and sent to the department's central laboratory at 700 North Fifth Street, Richmond, Virginia 23219, via United States mail or commercial mail delivery service, or by facsimile.

4. In the alternative, the request may be made in person at the department's central laboratory at 700 North Fifth Street, Richmond, Virginia 23219. If not presented on the official letterhead of the requestor's agency, the requestor shall reduce the request to writing consistent with subsection A of this section and certify his authority to request such information. Thereupon, the identity of the requestor shall be verified by department personnel by inspection of the requestor's agency identification card. Department personnel shall (i) affirm in writing, below the signature of the requestor, that the requestor's identification was verified; (ii) record the requestor's agency identification number if applicable; and (iii) sign and date such verification.

6VAC40-60-40. Requests for DNA data bank information relating to out-of-state forensic laboratory examination.

~~Requests for DNA data bank information relating to out-of-state forensic laboratory examinations shall be submitted [pursuant to the procedures established in the CODIS Operating Policies and Procedures Manual, which is available online at the department's website in writing to the Virginia CODIS administrator by the out-of-state CODIS administrator or their designee].~~

6VAC40-60-50. Provision of DNA data bank information to the Virginia Department of Corrections and the Department of Juvenile Justice.

Any information from the DNA data bank provided to a duly authorized representative of the Department of Corrections pursuant to § 19.2-310.2 of the Code of Virginia

or to the Department of Juvenile Justice pursuant to § 16.1-299.1 of the Code of Virginia shall be by a secure electronic exchange of data.

6VAC40-60-60. Department employee access to the DNA data bank.

The department shall maintain a list of employee positions that require regular access to the DNA data bank and samples submitted as a necessary function of the job. This list shall be available online at the department's website.

[~~FORMS (6VAC40-60)~~

~~[Virginia Department of Forensic Science Request for Laboratory Examination, 100 F100 \(eff. 8/08\).](#)~~

~~DOCUMENTS INCORPORATED BY REFERENCE (6VAC40-60)~~

~~[CODIS Operating Policies and Procedures Manual, 210-D100, Revision 2, July 27, 2009, Biology Program Manager, Virginia Department of Forensic Science.](#)~~

~~[Evidence Handling & Laboratory Capabilities Guide, February 2010 edition, Forensic Training Section, Virginia Department of Forensic Science.](#)]~~

VA.R. Doc. No. R10-2425; Filed May 24, 2012, 4:09 p.m.



TITLE 9. ENVIRONMENT

DEPARTMENT OF ENVIRONMENTAL QUALITY

Final Regulation

Title of Regulation: 9VAC15-60. Small Renewable Energy Projects (Solar) Permit by Rule (adding 9VAC15-60-10 through 9VAC15-60-140).

Statutory Authority: § 10.1-1197.6 of the Code of Virginia.

Effective Date: July 18, 2012.

Agency Contact: Carol C. Wampler, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4579, FAX (804) 698-4346, or email carol.wampler@deq.virginia.gov.

Summary:

Pursuant to Chapters 808 and 854 of the 2009 Acts of Assembly, the regulation establishes requirements for permits by rule for solar-energy projects with rated capacity not exceeding 100 megawatts. The regulation describes how the Department of Environmental Quality will address analysis of potential environmental impacts, mitigation plans, facility site planning, public participation, permit fees, interagency consultations, compliance, and enforcement.

Changes since publication of the proposed regulation (i) clarify definitions, citations, applicability, and procedure; (ii) add refinements to the scope of the de minimis provision; and (iii) move a basic desktop survey of known

historic resources and of threatened or endangered species from the regulation to future agency guidance for projects covered by the de minimis provision.

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 60

SMALL RENEWABLE ENERGY PROJECTS (SOLAR)

PERMIT BY RULE

Part I

Definitions and Applicability

9VAC15-60-10. Definitions.

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

"Applicant" means the owner or operator who submits an application to the department for a permit by rule pursuant to this chapter.

"Archive search" means a search of DHR's cultural resource inventory for the presence of previously recorded archaeological sites and for architectural structures and districts.

"Coastal Avian Protection Zones" or "CAPZ" means the areas designated on the map of "Coastal Avian Protection Zones" generated on the department's Coastal GEMS geospatial data system (9VAC15-60-120 C 1).

"Concentrating photovoltaics" or "CPV" means PV systems with equipment to focus or direct sunlight on the PV cells. For purposes of this chapter, CPV is included in the definition of PV.

"Department" means the Department of Environmental Quality, its director, or the director's designee.

"DCR" means the Department of Conservation and Recreation.

"DGIF" means the Department of Game and Inland Fisheries.

"DHR" means the Department of Historic Resources.

"Disturbance zone" means the area within the site directly impacted by construction and operation of the solar energy project and within 100 feet of the boundary of the directly impacted area.

"Historic resource" means any prehistoric or historic district, site, building, structure, object, or cultural landscape that is included or meets the criteria necessary for inclusion in the Virginia Landmarks Register pursuant to the authorities of § 10.1-2205 of the Code of Virginia and in accordance with 17VAC5-30-40 through 17VAC5-30-70.

"Integrated PV" means photovoltaics incorporated into building materials, such as shingles.

"Interconnection point" means the point or points where the solar energy project connects to a project substation for transmission to the electrical grid.

"Natural heritage resource" 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.

"Operator" means the person responsible for the overall operation and management of a solar energy project.

"Other solar technologies" means materials or devices or methodologies of producing electricity from sunlight other than PV or CPV.

"Owner" means the person who owns all or a portion of a solar energy project.

"Parking lot" means an improved area, usually divided into individual spaces and covered with pavement or gravel, intended for the parking of motor vehicles.

"Permit by rule" means provisions of the regulations stating that a project or activity is deemed to have a permit if it meets the requirements of the provision.

"Person" means any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, county, city, town, or other political subdivision of the Commonwealth, any interstate body, or any other legal entity.

"Photovoltaic" or "PV" means materials and devices that absorb sunlight and convert it directly into electricity by semiconductors.

"Photovoltaic cell" or "PV cell" means a solid state device that converts sunlight directly into electricity. PV cells may be connected together to form PV modules, which in turn may be combined and connected to form PV arrays (often called PV panels).

"Photovoltaic system" or "PV system" means PV cells, which may be connected into one or more PV modules or arrays, including any appurtenant wiring, electric connections, mounting hardware, power-conditioning equipment (inverter), and storage batteries.

"Preconstruction" means any time prior to commencing land-clearing operations necessary for the installation of energy-generating structures at the small solar energy project.

"Rated capacity" means the maximum capacity of a solar energy project based on Photovoltaic USA Test Conditions (PVUSA Test Conditions) rating.

"Site" means the area containing a solar energy project that is under common ownership or operating control. Electrical infrastructure and other appurtenant structures up to the interconnection point shall be considered to be within the site.

"Small renewable energy project" means (i) an electrical generation facility with a rated capacity not exceeding 100

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megawatts that generates electricity only from sunlight, wind, falling water, wave motion, tides, or geothermal power; or (ii) an electrical generation facility with a rated capacity not exceeding 20 megawatts that generates electricity only from biomass, energy from waste, or municipal solid waste.

"Small solar energy project," "solar energy project," or "project" means a small renewable energy project that (i) generates electricity from sunlight, [~~whose main purpose is to supply electricity,~~] consisting of one or more PV systems and other appurtenant structures and facilities within the boundaries of the site; and (ii) is designed for, or capable of, operation at a rated capacity equal to or less than 100 megawatts. Two or more solar energy projects otherwise spatially separated but under common ownership or operational control, which [~~if connected to the electrical grid,~~] are connected to the electrical grid under a single interconnection agreement, shall be considered a single solar energy project. Nothing in this definition shall imply that a permit by rule is required for the construction of test structures to determine the appropriateness of a site for the development of a solar energy project.

"T&E," "state threatened or endangered species," or "state-listed species" means any wildlife species designated as a Virginia endangered or threatened species by DGIF pursuant to the § 29.1-563-570 of the Code of Virginia and 4VAC15-20-130.

"VLR" means the Virginia Landmarks Register (9VAC15-60-120 B 1).

"VLR-eligible" means those historic resources that meet the criteria necessary for inclusion on the VLR pursuant to 17VAC5-30-40 through 17VAC5-30-70 but are not listed in VLR.

"VLR-listed" means those historic resources that have been listed in the VLR in accordance with the criteria of 17VAC5-30-40 through 17VAC5-30-70.

"Wildlife" means wild animals; except, however, that T&E insect species shall only be addressed as part of natural heritage resources and shall not be considered T&E wildlife.

9VAC15-60-20. Authority and applicability.

A. This regulation is issued under authority of Article 5 (§ 10.1-1197.5 et seq.) of Chapter 11.1 of Title 10.1 of the Code of Virginia. The regulation contains requirements for solar-powered electric generation projects consisting of PV systems and associated facilities with [~~either no connection to the electrical grid or~~] a single interconnection to the electrical grid that are designed for, or capable of, operation at a rated capacity equal to or less than 100 megawatts.

B. The department has determined that a permit by rule is required for small solar energy projects with a rated capacity greater than five megawatts and a disturbance zone greater than 10 acres, provided that the projects do not otherwise meet the criteria for Part III (9VAC15-60-130) of this chapter, and this regulation contains the permit by rule

provisions for these projects in Part II (9VAC15-60-30 et seq.) of this chapter.

C. The department has determined that different provisions should apply to projects that meet the criteria as set forth in Part III (9VAC15-60-130) of this chapter, and this regulation contains the requirements, if any, for these projects in Part III (9VAC15-60-130 A and 9VAC15-60-130 B) of this chapter. Projects that meet the criteria for Part III of this chapter are deemed to be covered by the permit by rule.

D. The department has determined that small renewable energy projects utilizing other solar technologies shall fulfill all of the requirements in 9VAC15-40 as prescribed for small wind energy projects, unless (i) the owner or operator of the proposed project presents to the department information indicating that the other solar technology presents no greater likelihood of significant adverse impacts to natural resources than does PV technology and (ii) the department determines that it is appropriate for the proposed project utilizing the other solar technology to meet the requirements of this chapter or of some modification to either 9VAC15-40 or 9VAC15-60, as prescribed by the department for that particular project.

Part II

Permit by Rule Provisions

9VAC15-60-30. Application for permit by rule for solar energy projects with rated capacity greater than five megawatts and disturbance zone greater than 10 acres.

A. The owner or operator of a small solar energy project with a rated capacity greater than five megawatts and a disturbance zone greater than 10 acres, provided that the project does not otherwise meet the criteria for Part III (9VAC15-60-130 A or B) of this chapter, shall submit to the department a complete application in which he satisfactorily accomplishes all of the following:

1. In accordance with § 10.1-1197.6 B 1 of the Code of Virginia, and as early in the project development process as practicable, furnishes to the department a notice of intent, to be published in the Virginia Register, that he intends to submit the necessary documentation for a permit by rule for a small renewable energy project;
2. In accordance with § 10.1-1197.6 B 2 of the Code of Virginia, furnishes to the department a certification by the governing body of the locality or localities wherein the small renewable energy project will be located that the project complies with all applicable land use ordinances;
3. In accordance with § 10.1-1197.6 B 3 of the Code of Virginia, furnishes to the department copies of all interconnection studies undertaken by the regional transmission organization or transmission owner, or both, on behalf of the small renewable energy project [~~if the project will be connected to the electrical grid~~];
4. In accordance with § 10.1-1197.6 B 4 of the Code of Virginia, furnishes to the department a copy of the final

interconnection agreement [~~if any~~] between the small renewable energy project and the regional transmission organization or transmission owner indicating that the connection of the small renewable energy project will not cause a reliability problem for the system. If the final agreement is not available, the most recent interconnection study shall be sufficient for the purposes of this section. When a final interconnection agreement is complete, it shall be provided to the department. The department shall forward a copy of the agreement or study to the State Corporation Commission;

5. In accordance with § 10.1-1197.6 B 5 of the Code of Virginia, furnishes to the department a certification signed by a professional engineer licensed in Virginia that the maximum generation capacity of the small solar energy project, as designed, does not exceed 100 megawatts;

6. In accordance with § 10.1-1197.6 B 6 of the Code of Virginia, furnishes to the department an analysis of potential environmental impacts of the small renewable energy project's operations on attainment of national ambient air quality standards;

7. In accordance with § 10.1-1197.6 B 7 of the Code of Virginia, furnishes to the department, where relevant, an analysis of the beneficial and adverse impacts of the proposed project on natural resources. The owner or operator shall perform the analyses prescribed in 9VAC15-60-40. For wildlife, that analysis shall be based on information on the presence, activity, and migratory behavior of wildlife to be collected at the site for a period of time dictated by the site conditions and biology of the wildlife being studied, not exceeding 12 months;

8. In accordance with § 10.1-1197.6 B 8 of the Code of Virginia, furnishes to the department a mitigation plan pursuant to 9VAC15-60-60 that details reasonable actions to be taken by the owner or operator to avoid, minimize, or otherwise mitigate such impacts, and to measure the efficacy of those actions; provided, however, that the provisions of this subdivision shall only be required if the department determines, pursuant to 9VAC15-60-50, that the information collected pursuant to § 10.1-1197.6 B 7 of the Code of Virginia and 9VAC15-60-40 indicates that significant adverse impacts to wildlife or historic resources are likely. The mitigation plan shall be an addendum to the operating plan of the solar energy project and the owner or operator shall implement the mitigation plan as deemed complete and adequate by the department. The mitigation plan shall be an enforceable part of the permit by rule;

9. In accordance with § 10.1-1197.6 B 9 of the Code of Virginia, furnishes to the department a certification signed by a professional engineer licensed in Virginia that the project is designed in accordance with 9VAC15-60-80;

10. In accordance with § 10.1-1197.6 B 10 of the Code of Virginia, furnishes to the department an operating plan that includes a description of how the project will be operated

in compliance with its mitigation plan, if such a mitigation plan is required pursuant to 9VAC15-60-50;

11. In accordance with § 10.1-1197.6 B 11 of the Code of Virginia, furnishes to the department a detailed site plan meeting the requirements of 9VAC15-60-70;

12. In accordance with § 10.1-1197.6 B 12 of the Code of Virginia, furnishes to the department a certification signed by the applicant that the small solar energy project has applied for or obtained all necessary environmental permits;

13. Prior to authorization of the project and in accordance with § 10.1-1197.6 B 13 and 14 of the Code of Virginia, conducts a 30-day public review and comment period and holds a public meeting pursuant to 9VAC15-60-90. The public meeting shall be held in the locality or, if the project is located in more than one locality, in a place proximate to the location of the proposed project. Following the public meeting and public comment period, the applicant shall prepare a report summarizing the issues raised by the public and include any written comments received and the applicant's response to those comments. The report shall be provided to the department as part of this application; and

14. In accordance with 9VAC15-60-110, furnishes to the department the appropriate fee.

B. Within 90 days of receiving all of the required documents and fees listed in subsection A of this section, the department shall determine, after consultation with other agencies in the Secretariat of Natural Resources, whether the application is complete and whether it adequately meets the requirements of this chapter pursuant to § 10.1-1197.7 A of the Code of Virginia.

1. If the department determines that the application meets the requirements of this chapter, then the department shall notify the applicant in writing that he is authorized to construct and operate a small solar energy project pursuant to this chapter.

2. If the department determines that the application does not meet the requirements of this chapter, then the department shall notify the applicant in writing and specify the deficiencies.

3. If the applicant chooses to correct deficiencies in a previously submitted application, the department shall follow the procedures of this subsection and notify the applicant whether the revised application meets the requirements of this chapter within 60 days of receiving the revised application.

4. Any case decision by the department pursuant to this subsection shall be subject to the process and appeal provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

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9VAC15-60-40. Analysis of the beneficial and adverse impacts on natural resources.

A. Analyses of wildlife. To fulfill the requirements of § 10.1-1197.6 B 7 of the Code of Virginia, the applicant shall conduct preconstruction wildlife analyses. The analyses of wildlife shall include the following:

1. Desktop surveys and maps. The applicant shall obtain a wildlife report and map generated from DGIF's Virginia Fish and Wildlife Information Service web-based application (9VAC15-60-120 C 3) or from a data and mapping system including the most recent data available from DGIF's subscriber-based Wildlife Environmental Review Map Service of the following: (i) known wildlife species and habitat features on the site or within two miles of the boundary of the site and (ii) known or potential sea turtle nesting beaches located within one-half mile of the disturbance zone.

2. Desktop map for avian resources in Coastal Avian Protection Zones (CAPZ). The applicant shall consult the "Coastal Avian Protection Zones" map generated on the department's Coastal GEMS geospatial data system (9VAC15-60-120 C 1) and determine whether the proposed solar energy project site will be located in part or in whole within one or more CAPZ.

B. Analyses of historic resources. To fulfill the requirements of § 10.1-1197.6 B 7 of the Code of Virginia, the applicant shall also conduct a preconstruction historic resources analysis. The analysis shall be conducted by a qualified professional meeting the professional qualification standards of the Secretary of the Interior's Standards for Archeology and Historic Preservation (9VAC15-60-120 B 2) in the appropriate discipline. The analysis shall include each of the following:

1. Compilation of known historic resources. The applicant shall gather information on known historic resources within the disturbance zone and within one-half mile of the disturbance zone boundary and present this information on the context map referenced in 9VAC15-60-70 B, or as an overlay to this context map, as well as in tabular format.

2. Architectural survey. The applicant shall conduct a field survey of all architectural resources, including cultural landscapes, 50 years of age or older within the disturbance zone and within one-half mile of the disturbance zone boundary and evaluate the eligibility of any identified resource for listing in the VLR.

3. Archaeological survey. The applicant shall conduct an archaeological field survey of the disturbance zone and evaluate the eligibility of any identified archaeological site for listing in the VLR. As an alternative to performing this archaeological survey, the applicant may make a demonstration to the department that the project will utilize nonpenetrating footings technology and that any necessary grading of the site prior to construction does not have the potential to adversely impact any archaeological resource.

C. Analyses of other natural resources. To fulfill the requirements of § 10.1-1197.6 B 7 of the Code of Virginia, the applicant shall also conduct a preconstruction desktop survey of natural heritage resources within the disturbance zone.

D. Summary report. The applicant shall provide to the department a report presenting the findings of the studies and analyses conducted pursuant to subsections A, B, and C of this section, along with all data and supporting documents. The applicant shall assess and describe the expected beneficial and adverse impacts, if any, of the proposed project on wildlife and historic resources identified by these studies and analyses.

9VAC15-60-50. Determination of likely significant adverse impacts.

A. The department shall find that significant adverse impacts to wildlife are likely whenever the wildlife analyses prescribed in 9VAC15-60-40 A document that any of the following conditions exists:

1. State-listed T&E wildlife are found to occur within the disturbance zone or the disturbance zone is located on or within one-half mile of a known or potential sea turtle nesting beach.

2. The disturbance zone is located in part or in whole within zones 1, 2, 3, 4, 5, 10, 11, 12, or 14 on the Coastal Avian Protection Zones (CAPZ) map.

B. The department shall find that significant adverse impacts to historic resources are likely whenever the historic resources analyses prescribed by 9VAC15-60-40 B indicate that the proposed project is likely to diminish significantly any aspect of a historic resource's integrity.

9VAC15-60-60. Mitigation plan.

A. If the department determines that significant adverse impacts to wildlife or historic resources or both are likely, then the applicant shall prepare a mitigation plan.

B. Mitigation measures for significant adverse impacts to wildlife shall include:

1. For state-listed T&E wildlife, the applicant shall take all reasonable measures to avoid significant adverse impacts or shall demonstrate in the mitigation plan what significant adverse impacts cannot practicably be avoided and why additional proposed actions are reasonable. These additional proposed actions may include best practices to avoid, minimize, or offset adverse impacts to resources analyzed pursuant to 9VAC15-60-40 A or C.

2. For proposed projects where the disturbance zone is located on or within one-half mile of a known or potential sea turtle nesting beach, the applicant shall take all reasonable measures to avoid significant adverse impacts or shall demonstrate in the mitigation plan what significant adverse impacts cannot practicably be avoided, and why additional proposed mitigation actions are reasonable. Mitigation measures shall include the following:

a. Avoiding construction within likely sea turtle crawl or nesting habitats during the turtle nesting and hatching season (May 20 through October 31). If avoiding construction during this period is not possible, then conducting daily crawl surveys of the disturbance zone (May 20 through August 31) and one mile beyond the northern and southern reaches of the disturbance zone (hereinafter "sea turtle nest survey zone") between sunrise and 9 a.m. by qualified individuals who have the ability to distinguish accurately between nesting and nonnesting emergencies.

b. If construction is scheduled during the nesting season, then including measures to protect nests and hatchlings found within the sea turtle nest survey zone.

c. Minimizing nighttime construction during the nesting season and designing project lighting during the construction and operational phases to minimize impacts on nesting sea turtles and hatchlings.

3. For projects located in part or in whole within zones 1, 2, 3, 4, 5, 10, 11, 12, or 14 on the Coastal Avian Protection Zones (CAPZ) map, contribute \$1,000.00 per megawatt of rated capacity, or partial megawatt thereof, to a fund designated by the department in support of scientific research investigating the impacts of projects in CAPZ on avian resources.

C. Mitigation measures for significant adverse impacts to historic resources shall include:

1. Significant adverse impacts to VLR-eligible or VLR-listed architectural resources shall be minimized, to the extent practicable, through design of the solar energy project or the installation of vegetative or other screening.

2. If significant adverse impacts to VLR-eligible or VLR-listed architectural resources cannot be avoided or minimized such that impacts are no longer significantly adverse, then the applicant shall develop a reasonable and proportionate mitigation plan that offsets the significantly adverse impacts and has a demonstrable public benefit and benefit for the affected or similar resource.

3. If any identified VLR-eligible or VLR-listed archaeological site cannot be avoided or minimized to such a degree as to avoid a significant adverse impact, significant adverse impacts of the project will be mitigated through archaeological data recovery.

9VAC15-60-70. Site plan and context map requirements.

A. The applicant shall submit a site plan that includes maps showing the physical features, topography, and land cover of the area within the site, both before and after construction of the proposed project. The site plan shall be submitted at a scale sufficient to show, and shall include, the following: (i) the boundaries of the site; (ii) the location, height, and dimensions of all existing and proposed PV systems, other structures, fencing, and other infrastructure; (iii) the location, grades, and dimensions of all temporary and permanent on-

site and access roads from the nearest county or state maintained road; and (iv) water bodies, waterways, wetlands, and drainage channels.

B. The applicant shall submit a context map including the area encompassed by the site and within five miles of the site boundary. The context map shall show state and federal resource lands and other protected areas, Coastal Avian Protection Zones, historic resources, state roads, waterways, locality boundaries, forests, open spaces, and transmission and substation infrastructure.

9VAC15-60-80. Small solar energy project design standards.

The design and installation of the small solar energy project shall incorporate any requirements of the mitigation plan that pertain to design and installation if a mitigation plan is required pursuant to 9VAC15-60-50.

9VAC15-60-90. Public participation.

A. Before the initiation of any construction at the small solar energy project, the applicant shall comply with this section. The owner or operator shall first publish a notice once a week for two consecutive weeks in a major local newspaper of general circulation informing the public that he intends to construct and operate a project eligible for a permit by rule. No later than the date of newspaper publication of the initial notice, the owner or operator shall submit to the department a copy of the notice along with electronic copies of all documents that the applicant plans to submit in support of the application. The notice shall include:

1. A brief description of the proposed project and its location, including the approximate dimensions of the site, approximate number and configuration of PV systems, and approximate maximum height of PV systems;

2. A statement that the purpose of the public participation is to (i) acquaint the public with the technical aspects of the proposed project and how the standards and the requirements of this chapter will be met, (ii) identify issues of concern, (iii) facilitate communication, and (iv) establish a dialogue between the owner or operator and persons who may be affected by the project;

3. Announcement of a 30-day comment period in accordance with subsection C of this section, and the name, telephone number, address, and email address of the applicant who can be contacted by the interested persons to answer questions or to whom comments shall be sent;

4. Announcement of the date, time, and place for a public meeting held in accordance with subsection D of this section; and

5. Location where copies of the documentation to be submitted to the department in support of the permit by rule application will be available for inspection.

B. The owner or operator shall place a copy of the documentation in a location accessible to the public during

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business hours for the duration of the 30-day comment period in the vicinity of the proposed project.

C. The public shall be provided at least 30 days to comment on the technical and the regulatory aspects of the proposal. The comment period shall begin no sooner than 15 days after the applicant initially publishes the notice in the local newspaper.

D. The applicant shall hold a public meeting not earlier than 15 days after the beginning of the 30-day public comment period and no later than seven days before the close of the 30-day comment period. The meeting shall be held in the locality or, if the project is located in more than one locality, in a place proximate to the location of the proposed project.

E. For purposes of this chapter, the applicant and any interested party who submits written comments on the proposal to the applicant during the public comment period or who signs in and provides oral comments at the public meeting shall be deemed to have participated in the proceeding for a permit by rule under this chapter and pursuant to § 10.1-1197.7 B of the Code of Virginia.

9VAC15-60-100. Change of ownership, project modifications, termination.

A. Change of ownership. A permit by rule may be transferred to a new owner or operator if:

1. The current owner or operator notifies the department at least 30 days in advance of the transfer date by submittal of a notice per subdivision 2 of this subsection;

2. The notice shall include a written agreement between the existing and new owner or operator containing a specific date for transfer of permit responsibility, coverage, and liability between them; and

3. The transfer of the permit by rule to the new owner or operator shall be effective on the date specified in the agreement described in subdivision 2 of this subsection.

B. Project modifications. Provided project modifications are in accordance with the requirements of this permit by rule and do not increase the rated capacity of the small solar energy project, the owner or operator of a project authorized under a permit by rule may modify its design or operation or both by furnishing to the department new certificates prepared by a professional engineer, new documentation required under 9VAC15-60-30, and the appropriate fee in accordance with 9VAC15-60-110. The department shall review the received modification submittal in accordance with the provisions of subsection B of 9VAC15-60-30.

C. Permit by rule termination. The department may terminate the permit by rule whenever the department finds that:

1. The applicant has knowingly or willfully misrepresented or failed to disclose a material fact in any report or certification required under this chapter; or

2. After the department has taken enforcement actions pursuant to 9VAC15-60-140, the owner or operator persistently operates the project in significant violation of the project's mitigation plan.

Prior to terminating a permit by rule pursuant to subdivision 1 or 2 of this subsection, the department shall hold an informal fact-finding proceeding pursuant to § 2.2-4019 of the Virginia Administrative Process Act in order to assess whether to continue with termination of the permit by rule or to issue any other appropriate order. If the department determines that it should continue with the termination of the permit by rule, the department shall hold a formal hearing pursuant to § 2.2-4020 of the Virginia Administrative Process Act. Notice of the formal hearing shall be delivered to the owner or operator. Any owner or operator whose permit by rule is terminated by the department shall cease operating his small solar energy project.

9VAC15-60-110. Fees for projects subject to Part II of this chapter.

A. Purpose. The purpose of this section is to establish schedules and procedures pertaining to the payment and collection of fees from any applicant seeking a new permit by rule or a modification to an existing permit by rule for a small solar energy project subject to Part II (9VAC15-60-30 et seq.) of this chapter.

B. Permit fee payment and deposit. Fees for permit by rule applications or modifications shall be paid by the applicant as follows:

1. Due date. All permit application fees or modification fees are due on submittal day of the application or modification package.

2. Method of payment. Fees shall be paid by check, draft, or postal money order made payable to "Treasurer of Virginia/DEQ" and shall be sent to the Department of Environmental Quality, Receipts Control, P.O. Box 10150, Richmond, VA 23240.

3. Incomplete payments. All incomplete payments shall be deemed nonpayments.

4. Late payment. No application or modification submittal will be deemed complete until the department receives proper payment.

C. Fee schedules. Each application for a permit by rule and each application for a modification of a permit by rule is a separate action and shall be assessed a separate fee. The amount of the permit application fee is based on the costs associated with the permitting program required by this chapter. The fee schedules are shown in the following table:

Type of Action	Fee
Permit by rule application – by rated capacity:	
>5 MW up to and including 25 MW	\$8,000
>25 MW up to and including 50 MW	\$10,000

>50 MW up to and including 75 MW	\$12,000
>75 MW up to and including 100 MW	\$14,000
Permit by rule modification – for any project subject to Part II of this chapter	\$4,000

D. Use of fees. Fees are assessed for the purpose of defraying the department's costs of administering and enforcing the provisions of this chapter including, but not limited to, permit by rule processing, permit by rule modification processing, and inspection and monitoring of small solar energy projects to ensure compliance with this chapter. Fees collected pursuant to this section shall be used for the administrative and enforcement purposes specified in this chapter and in § 10.1-1197.6 E of the Code of Virginia.

E. Fund. The fees, received by the department in accordance with this chapter, shall be deposited in the Small Renewable Energy Project Fee Fund.

F. Periodic review of fees. Beginning July 1, 2013, and periodically thereafter, the department shall review the schedule of fees established pursuant to this section to ensure that the total fees collected are sufficient to cover 100% of the department's direct costs associated with use of the fees.

9VAC15-60-120. Internet accessible resources.

A. This chapter refers to resources to be used by applicants in gathering information to be submitted to the department. These resources are available through the Internet; therefore, in order to assist applicants, the uniform resource locator or Internet address is provided for each of the references listed in this section.

B. Internet available resources.

1. The Virginia Landmarks Register, Virginia Department of Historic Resources, 2801 Kensington Avenue, Richmond, Virginia. Available at the following Internet address: <http://www.dhr.virginia.gov/registers/register.htm>.

2. Professional Qualifications Standards, the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation, as amended and annotated (48 FR 44716-740, September 29, 1983), National Parks Service, Washington, DC. Available at the following Internet address: http://www.nps.gov/history/local-law/arch_stnds_9.htm.

3. The Natural Communities of Virginia, Classification of Ecological Community Groups, [~~Second Approximation, Version 2.4, June 2011,~~] Virginia Department of Conservation and Recreation, Division of Natural Heritage, Richmond, [~~VA~~ Virginia]. Available at the following Internet address: http://www.dcr.virginia.gov/natural_heritage/ncintro.shtml.

4. Virginia's Comprehensive Wildlife Conservation Strategy, 2005 (referred to as the Virginia Wildlife Action Plan), Virginia Department of Game and Inland Fisheries, 4010 West Broad Street, Richmond, Virginia. Available at

the following Internet address: <http://www.bewildvirginia.org/wildlifeplan/>.

C. Internet applications.

1. Coastal GEMS application, 2010, Virginia Department of Environmental Quality. Available at the following Internet address: <http://www.deq.virginia.gov/coastal/coastalgems.html>.

NOTE: This website is maintained by the department. Assistance and information may be obtained by contacting Virginia Coastal Zone Management Program, Virginia Department of Environmental Quality, 629 E. Main Street, Richmond, Virginia 23219, (804) 698-4000.

2. [Virginia] Natural Landscape Assessment, [2010,] Virginia Department of Conservation and Recreation. Available at the following Internet address: for detailed information on ecological cores go to http://www.dcr.virginia.gov/natural_heritage/vclnavnla.shtm.

Land maps may be viewed at DCR's Land Conservation Data Explorer Geographic Information System website at <http://www.vaconservedlands.org/gis.aspx>.

NOTE: The website is maintained by DCR. Actual shapefiles and metadata are available for free by contacting a DCR staff person at vaconslands@dcr.virginia.gov or DCR, Division of Natural Heritage, 217 Governor Street, Richmond, Virginia 23219, (804) 786-7951.

3. Virginia Fish and Wildlife Information Service 2010, Virginia Department of Game and Inland Fisheries. Available at the following Internet address: <http://www.vafwis.org/fwis/>.

NOTE: This website is maintained by DGIF and is accessible to the public as "visitors," or to registered subscribers. Registration, however, is required for access to resource-specific or species-specific locational data and records. Assistance and information may be obtained by contacting DGIF, Fish and Wildlife Information Service, 4010 West Broad Street, Richmond, Virginia 23230, (804) 367-6913.

Part III

Provisions for Projects Less Than or Equal to Five Megawatts or Less Than or Equal to 10 Acres or Meeting Certain Categorical Criteria

9VAC15-60-130. Small solar energy projects less than or equal to five megawatts or less than or equal to 10 acres or meeting certain categorical criteria.

A. The owner or operator of a small solar energy project is not required to submit any notification or certification to the department if he meets at least one of the following criteria:

1. The small solar energy project has either a rated capacity equal to or less than 500 kilowatts or a disturbance zone equal to or less than two acres; or

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2. The small solar project falls within at least one of the following categories, without regard to the rated capacity or the disturbance zone of the project:

a. The small solar energy project is mounted on a single-family or duplex private residence.

b. The small solar energy project is mounted on one or more buildings less than 50 years old [or, if 50 years of age or older, have been evaluated and determined by DHR within the preceding seven years to be not VLR-eligible].

c. The small solar energy project is mounted over one or more existing parking lots [, existing roads, or other previously disturbed areas and any impacts to undisturbed areas do not exceed an additional two acres].

d. The small solar energy project utilizes integrated PV only, provided that the building or structure on which the integrated PV materials are used is less than 50 years old [or, if 50 years of age or older, has been evaluated and determined by DHR within the preceding seven years to be not VLR-eligible].

~~B. The owner or operator of a small solar energy project with either a rated capacity greater than 500 kilowatts and less than or equal to five megawatts or a disturbance zone greater than two acres and less than or equal to 10 acres shall notify the department [by submitting and shall submit] a certification by the governing body of the locality or localities wherein the project will be located that the project complies with all applicable land use ordinances. [In addition, the owner or operator of such small solar energy project shall certify in writing to the department that he has (i) performed a desktop survey of known VLR-listed and VLR-eligible historic resources within the project's disturbance zone and within one half mile of the disturbance zone boundary by means of an archives search of DHR's cultural resource inventory; (ii) performed a desktop survey of T&E species within the project's disturbance zone by obtaining a wildlife report and map generated from DGIF's Virginia Fish and Wildlife Information Service web-based application (9VAC15-60-120 C-3) or from a data and mapping system including the most recent data available from DGIF's subscriber-based Wildlife Environmental Review Map Service; and (iii) reported in writing the results of the archives search of known historic resources and desktop survey of T&E species to the governing body of the locality or localities wherein the project will be located.]~~

Part IV Enforcement

9VAC15-60-140. Enforcement.

The department may enforce the provisions of this chapter and any permits by rule authorized under this chapter in accordance with §§ 10.1-1197.9, 10.1-1197.10, and 10.1-

1197.11 of the Code of Virginia. In so doing, the department may:

1. Issue directives in accordance with the law;

2. Issue special orders in accordance with the law;

3. Issue emergency special orders in accordance with the law;

4. Seek injunction, mandamus, or other appropriate remedy as authorized by the law;

5. Seek civil penalties under the law; or

6. Seek remedies under the law, or under other laws including the common law.

DOCUMENTS INCORPORATED BY REFERENCE
(9VAC15-60)

[[The Natural Communities of Virginia, Classification of Ecological Community Groups, Second Approximation \(Version 2.4\) 2011, Virginia Department of Conservation and Recreation, Division of Natural Heritage, Richmond, Virginia.](#)

[Virginia's Comprehensive Wildlife Conservation Strategy, 2005, Virginia Department of Game and Inland Fisheries, Richmond, Virginia.](#)

[Chapter 1: Introduction.](#)

[Chapter 2: Methods.](#)

[Chapter 3: Statewide Overview.](#)

[Chapter 4: Virginia's Mid-Atlantic Coastal Plain.](#)

[Chapter 5: Virginia's Southern Appalachian Piedmont.](#)

[Chapter 6: Virginia's Blue Ridge Mountains.](#)

[Chapter 7: Virginia's Northern Ridge and Valley.](#)

[Chapter 8: Virginia's Northern Cumberland Mountains.](#)

[Chapter 9: Virginia's Southern Cumberland Mountains.](#)

[Chapter 10: Conclusions.](#)

[Glossary.](#)

[Appendix A: The Species of Greatest Conservation Need.](#)

[Appendix B: Species of Greatest Conservation Need with No Known Ecoregional Associations.](#)

[Appendix C: Terrestrial Species with No Landcover Associations.](#)

[Appendix D: Potential Habitat Mapping for Terrestrial & Aquatic Tier I Species.](#)

[Appendix E: List of Tier I Species and Reviewers.](#)

[Appendix F: Complete list of Stress/Source Combinations Identified by the Taxonomic Advisory Committees.](#)

[Appendix G: Habitat Grouping Used by TACs in Assessment of Threats, Conservation Actions, and Research/Monitoring Needs.](#)

[Appendix H: Threats to Virginia's Species of Greatest Conservation Need.](#)

[Appendix I: Conservation Actions Identified by the Taxonomic Advisory Committees.](#)

[Appendix J: Research and Monitoring Needs Identified by the Taxonomic Advisory Committees.](#)

[Appendix K: Landcover Classes.](#)

[Appendix L: Summaries of Community Meetings Facilitated by VCU's Center for Public Policy.](#)

[Appendix M: Recommendations for Education and Outreach Actions.](#)

[Appendix N: DEQ Impaired Waters Map.](#)

[Appendix O: Reference Maps.](#)

[Appendix P: Public Comments. \]](#)

V.A.R. Doc. No. R10-2506; Filed May 24, 2012, 1:55 p.m.

TITLE 13. HOUSING

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

Final Regulation

REGISTRAR'S NOTICE: The Department of Housing and Community Development is claiming an exemption from 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 where no agency discretion is involved. The Department of Housing and Community Development will receive, consider, and respond to petitions from any interested person at any time with respect to reconsideration or revision.

Title of Regulation: 13VAC5-112. Enterprise Zone Grant Program Regulation (amending 13VAC5-112-280).

Statutory Authority: § 59.1-541 of the Code of Virginia.

Effective Date: July 18, 2012.

Agency Contact: Stephen W. Calhoun, Regulatory Coordinator, Department of Housing and Community Development, Main Street Center, 600 East Main Street, Suite 300, Richmond, VA 23219, telephone (804) 371-7000,

FAX (804) 371-7090, TTY (804) 371-7089, or email steve.calhoun@dhcd.virginia.gov.

Summary:

This action updates the regulation to comply with requirements of the Virginia 2012 Acts of Assembly. The amendments clarify that a business firm receiving the major business facility job tax credit is not eligible also to receive Virginia Enterprise Zone job creation grants for any job used to qualify for the major business facility job tax credit.

13VAC5-112-280. Eligibility.

A. A business firm shall be eligible to receive job creation grants for five consecutive years beginning with the first year of grant eligibility for permanent full-time positions created above the threshold number. Additional permanent full-time positions created during the remainder of years in the grant period are eligible for additional grant funding over the previous year's level or such positions may be used instead to begin a subsequent grant period pursuant to subsection B of this section.

B. A business firm may be eligible for subsequent five consecutive calendar-year grant periods if it creates new grant-eligible positions above the threshold number for its subsequent base year.

1. If a second or subsequent five-year grant period is requested within two years of the previous grant period, the subsequent base year will be the last grant year. The calculation of this subsequent base year employment will be determined by the number of permanent full-time positions in the preceding base year, plus the number of threshold positions, plus the number of grant-eligible positions in the final year of the previous grant period.

2. If a business firm applies for subsequent five consecutive calendar-year grant periods beyond the two years immediately following the completion of the previous five-year grant period, the business firm shall use one of the two preceding calendar years as the subsequent base year, at the choice of the business firm.

C. A business firm is eligible to receive enterprise zone job creation grants for any and all years in which the business firm qualifies in the five consecutive calendar years period commencing with the first year of grant eligibility.

D. Job creation grants shall be available beginning with calendar year 2005.

E. Any qualified business firm receiving ~~an enterprise job creation grant under this section is a major business facility job tax credit pursuant to § 58.1-439 of the Code of Virginia shall not be eligible for a major business facility job tax credit pursuant to § 58.1-439 of the Code of Virginia to receive an enterprise zone job creation grant under this section for any job used to qualify for the major business facility job tax credit.~~

F. The following positions are not grant eligible:

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1. Those in retail, personal service or food and beverage service.
2. Those paying less than 175% of the federal minimum wage or that are not provided with health benefits.
3. Notwithstanding subdivision 2 of this subsection, in a high unemployment area those paying less than the reduced wage rate threshold or that are not provided with health benefits.
4. Seasonal, temporary or contract positions.

VA.R. Doc. No. R12-3203; Filed May 21, 2012; 4:43 p.m.

◆ ◆

TITLE 20. PUBLIC UTILITIES AND TELECOMMUNICATIONS

STATE CORPORATION COMMISSION

Proposed Regulation

<p>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.</p>
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Title of Regulation: 20VAC5-309. Rules for Enforcement of the Underground Utility Damage Prevention Act (amending 20VAC5-309-15, 20VAC5-309-90, 20VAC5-309-110, 20VAC5-309-120; adding 20VAC5-309-165, 20VAC5-309-190, 20VAC5-309-200).

Statutory Authority: §§ 12.1-13 and 56-265.30 of the Code of Virginia.

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

Public Comment Deadline: July 9, 2012.

Agency Contact: Shane Ayers, Senior Damage Prevention Specialist, Utility and Railroad Safety Division, State Corporation Commission, P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9561, FAX (804) 371-9734, or email shane.ayers@scc.virginia.gov.

Summary:

The proposed amendments to Chapter 309 are:

20VAC5-309-15. Definitions. This amendment moves the definition of "Clear Evidence" from [20VAC5-309-120](#) to [20VAC5-309-15](#) and adds a definition for "GPS" which is used in proposed rule [20VAC5-309-190](#).

20VAC5-309-90. Emergency excavation or demolition. This amendment prevents potential abuse of emergency notices for nonemergency excavations and demolitions.

20VAC5-309-110. General marking requirements. This amendment defines the marking requirements clearly in the rule independent of an external document (the Virginia Underground Utility Marking Standards Booklet) to allow updating the best practices in this booklet, when necessary, without the need to change the reference in the rules.

20VAC5-309-120. Notification of clear evidence. This amendment prevents potential abuse of three hour notices when an excavator has not observed clear evidence of an unmarked utility line and simply wishes to have the site remarked without waiting the period required by the Underground Utility Damage Prevention Act.

20VAC5-309-165. Operator's responsibilities for abandoned utility lines. This new section clearly defines an operator's responsibility to timely respond to an excavator's request regarding the status of an unmarked utility line (i.e., active or abandoned).

20VAC5-309-190. Delineating specific location of a proposed excavation or demolition. This new section further delineates means by which a person serving notice of proposed excavation or demolition to the notification center can describe their work area.

20VAC5-309-200. Reporting damage by calling 911. This new section better defines the requirements of § [56-265.24 E](#) of the Code of Virginia, enhances public safety in the event of a pipeline incident, and brings Virginia's requirements more in line with the federal Pipeline Safety Act of 2011.

AT RICHMOND, MAY 29, 2012

COMMONWEALTH OF VIRGINIA, ex rel.
STATE CORPORATION COMMISSION

CASE NO. URS-2012-00183

Ex Parte: In the matter concerning Rules
Implementing the State Corporation
Commission's authority to enforce the
Underground Utility Damage Prevention Act

ORDER FOR NOTICE AND COMMENT

Section 56-265.30 of the Code of Virginia ("Code") authorizes the State Corporation Commission ("Commission") to enforce the provisions of Chapter 10.3 of Title 56 of the Code,¹ also known as the Underground Utility Damage Prevention Act ("Act"). Section 56-265.30 of the Code also authorizes the Commission to promulgate any rules or regulations necessary to implement the Commission's authority to enforce the Act.

The Commission's Division of Utility and Railroad Safety ("Division") proposes that the Commission adopt several additional rules, specified in Attachment A to this Order for Notice and Comment, for the enforcement of the Act. These additional rules are the result of an extensive collaborative process involving the Division, the Advisory Committee (established in accordance with § 56-265.31 of the Code), and

industry stakeholders. In addition, the Division has proposed several revisions to existing rules to better define the marking standards for underground utility lines. Finally, a new rule is proposed to better align Virginia and federal statutory requirements in the event that damage to an underground utility line results in the escape of any flammable, toxic, hazardous or corrosive gas or liquid.²

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds that the public should be afforded an opportunity to file written comments concerning the Proposed Rules and to request a hearing before the Commission on any substantive objection that cannot be presented effectively in writing. We further find that a copy of the Proposed Rules should be sent to the Registrar of Regulations for publication in the Virginia Register.

Accordingly, IT IS ORDERED THAT:

- (1) This matter is docketed and assigned Case No. URS-2012-00183.
- (2) The Commission's Division of Information Resources shall forward a copy of this Order for Notice and Comment, including a copy of the Proposed Rules, to the Registrar of Regulations for publication in the Virginia Register.
- (3) A downloadable version of this Order for Notice and Comment and the Proposed Rules shall be available for access by the public on the Commission's website: <http://www.scc.virginia.gov/case>. A copy of this Order for Notice and Comment and the Proposed Rules shall be available for public inspection at the Commission's Document Control Center, Tyler Building, First Floor, 1300 East Main Street, Richmond, Virginia 23219, Monday through Friday from 8:15 a.m. to 5 p.m., excluding holidays.
- (4) On or before June 8, 2012, the Commission's Division of Information Resources shall publish the following notice as classified advertising in newspapers of general circulation throughout the Commonwealth of Virginia:

NOTICE TO THE PUBLIC OF PROPOSED
RULES THAT THE STATE CORPORATION
COMMISSION IS CONSIDERING FOR THE
ENFORCEMENT OF THE UNDERGROUND UTILITY
DAMAGE PREVENTION ACT
CASE NO. URS-2012-00183

Section 56-265.30 of the Code of Virginia ("Code") authorizes the State Corporation Commission ("Commission") to enforce the provisions of Chapter 10.3 of Title 56 of the Code, also known as the Underground Utility Damage Prevention Act ("Act"). Section 56-265.30 of the Code also authorizes the Commission to promulgate any rules or regulations necessary to implement the Commission's authority to enforce the Act.

The Commission's Division of Utility and Railroad Safety ("Division") proposes that the Commission adopt several new rules as additional requirements for the enforcement of the Act. These new rules are the result of an extensive collaborative process involving the Division, the Advisory Committee (established in accordance with § 56-265.31 of the Code), and industry stakeholders. In addition, the Division has proposed several revisions to existing rules to better define the marking standards for underground utility lines. Finally, a new rule is proposed to better align Virginia and federal statutory requirements in the event that damage to an underground utility line results in the escape of any flammable, toxic, hazardous or corrosive gas or liquid. The proposed revisions to existing rules, together with all proposed additional rules, are collectively referred to herein as the "Proposed Rules."

The Commission has issued an Order for Notice and Comment providing, among other things, that notice be given to the public and that interested persons be given an opportunity to file written comments on, propose modifications or supplements to, or request a hearing on the Proposed Rules.

Copies of the Commission's Order for Notice and Comment and the Proposed Rules are available for public inspection at the Commission's Document Control Center, Tyler Building, First Floor, 1300 East Main Street, Richmond, Virginia 23219, Monday through Friday from 8:15 a.m. to 5 p.m., excluding holidays. Interested persons may also download unofficial copies from the Commission's website: <http://www.scc.virginia.gov/case>.

On or before July 9, 2012, any interested person may file written comments on, propose modifications or supplements to, or request a hearing on the Proposed Rules by filing such comments, proposals, or hearing requests with Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118. Any interested person desiring to submit comments electronically may do so by following the instructions on the Commission's website: <http://www.scc.virginia.gov/case>. All correspondence shall refer to Case No. URS-2012-00183.

STATE CORPORATION COMMISSION

- (5) On or before July 9, 2012, any interested person or entity may comment on, propose modifications or

supplements to, or request a hearing on the Proposed Rules by filing such comments, proposals, or hearing requests with Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118. Interested persons desiring to submit comments electronically may do so by following the instructions on the Commission's website: <http://www.scc.virginia.gov/case>. Requests for hearing must include: (i) a precise statement of the filing party's interest in the proceeding; (ii) a statement of the specific action sought to the extent then known; (iii) a statement of the legal basis for such action; and (iv) a precise statement why a hearing should be conducted in the matter. All correspondence shall refer to Case No. URS-2012-00183.

(6) The Division may file a Report with the Clerk of the Commission on or before July 19, 2012, concerning comments submitted to the Commission addressing the Proposed Rules.

(7) This matter is continued pending further order of the Commission.

AN ATTESTED COPY hereof shall be delivered by the Clerk of the Commission to the Commission's Office of General Counsel and Divisions of Utility and Railroad Safety and Information Resources.

¹ Va. Code §§ 56-264.14 et seq.

² The proposed revisions to existing rules, together with all proposed additional rules, are collectively referred to herein as the "Proposed Rules."

20VAC5-309-15. Definitions.

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

"Act" means the Underground Utility Damage Prevention Act (Chapter 10.3 (§ 56-265.14 et seq.) of Title 56 of the Code of Virginia).

"Clear evidence" as used in § 56-265.24 C of the Code of Virginia shall include, but is not limited to, visual evidence of an unmarked utility line, knowledge of the presence of a utility line, or faded marks from previous marking of a utility line.

"Division" means the State Corporation Commission's Division of Utility and Railroad Safety.

"GPS" means global positioning system.

"Installation records of a utility line" means maps, drawings, diagram, sketches, or any other depictions or descriptions of an underground utility line that reflect the location at the time of installation in a reasonably accurate manner.

"Locate" or "marking" means an operator's or its contract locator's markings of an underground utility line.

"Serious impact on public health" means any condition involving a water or sewer utility line that creates, or may create, a danger to the health and well being of the public.

Part III

Emergency Excavation or Demolition

20VAC5-309-90. Emergency excavation or demolition.

A. No person shall serve an emergency notice on the notification center unless the work to be performed is in response to an "emergency," as the term is defined in § 56-265.15 of the Code of Virginia.

B. When excavation or demolition is required during an emergency as defined in § 56-265.15 of the Code of Virginia, all reasonable precautions shall be taken to protect underground utility lines that may be located at the site of the excavation. These precautions shall include, but are not limited to, the following:

1. Dispatched personnel or crews responding to the emergency shall notify the notification center and request an emergency locate of the underground utility lines at the earliest reasonable opportunity;
2. After arriving at the site, the person responding to the emergency shall determine the need for immediate action;
3. If immediate action is required, all reasonable precautions shall be taken to protect the underground utility lines. These actions shall include, but are not limited to, the following:
 - a. Conduct a thorough site assessment to determine the location of underground utility lines;
 - b. Locate the underground utility lines with acceptable equipment, if possible;
 - c. Hand dig around the underground utility lines;
 - d. Directly notify the utility line operators, if necessary; and
 - e. If prudent, the excavator shall wait for marking of the excavation area by operators having utility lines in the excavation area.

20VAC5-309-110. General marking requirements.

A. All markings shall be suitable for their intended purpose for a period of 15 working days beginning at 7 a.m. on the next working day following notice by the excavator to the notification center.

B. Markings shall be made at sufficient intervals to clearly indicate the approximate horizontal location and direction of the underground utility line. However, the distance between any two marks indicating the same utility line shall not exceed 20 feet. Site conditions or directional changes of the underground utility line shall be considered to determine the need for shorter distance between marks.

C. Markings of underground utility lines shall be by means of stakes, paint, flags, or combination thereof. The terrain, site conditions, and the type and extent of the proposed excavation shall be considered to determine the most suitable means to mark underground utility lines.

D. Paint marks shall be approximately 8 to 10 inches in length and one to two inches in width except when "spot" marking is necessary.

E. A minimum of three separate marks shall be made for each underground utility line marking.

F. Valve box covers that are at grade and visible shall be marked with the appropriate color in accordance with the Act.

G. If in the process of marking an underground utility line, a customer-owned underground utility line of the same type is discovered, the operator or its contract locator shall make a reasonable effort to contact the excavator or the customer to advise of the presence of the line.

H. Where the proposed excavation crosses an underground utility line, markings shall be at intervals that clearly define the route of the underground line.

I. All markings shall extend if practical, a reasonable distance beyond the boundaries of the specific location of the proposed work as detailed on the ticket.

J. If the use of line marking is considered damaging to property (driveways, landscaping, historic locations to the extent boundaries are known), "spot" marking or other suitable marking methods shall be used.

K. Markings shall be valid for an excavation site for 15 working days beginning at 7 a.m. on the next working day following notice to the notification center by the excavator or until one of the following events occurs:

1. The markings become faded, illegible or destroyed; or
2. If the markings were placed in response to an emergency and the emergency condition has ceased to exist.

L. Where permitted by the operator's records, all utility lines of the same type in the same trench owned by the same operator shall be marked individually or by a single mark. If a single mark is used, the number of the utility lines shall be indicated at every other mark.

M. Operators or their contract locators shall use all information necessary to mark their facilities accurately.

N. Markings of an underground pipeline greater than 12 inches in nominal outside dimension shall include the size in inches at every other mark.

O. ~~Duct structures and conduit systems shall be marked in accordance with the horizontal marking symbols for such structures and conduit systems as shown in item nine of the Virginia Underground Utility Marking Best Practices as provided in the Virginia Underground Utility Marking Standards (March 2004) published by the division (http://www.state.va.us/sec/division/urs/mutility/va_uums.pdf)~~ with line markings indicating the approximate outer dimensions of the duct structure or conduit system and a solid closed circle over the approximate center of the duct structure or conduit system.

P. In areas where marks would be destroyed, ~~offset markings shall be made using horizontal marking symbols as~~

~~shown in item 15 of the Virginia Underground Utility Marking Best Practices as provided in the Virginia Underground Utility Marking Standards (March 2004) published by the division (http://www.state.va.us/sec/division/urs/mutility/va_uums.pdf)~~ such as high traffic areas, gravel areas, dirt areas, or where surface conditions are such that the placement of marks directly over the utility line is not possible, offset markings shall be used. The offset marks shall be placed on a permanent surface, which is not likely to be destroyed. Offset marks shall include a line marking placed parallel to the underground utility line and an arrow, pointing in the direction of the utility line, with the distance in feet and inches to the location of the utility line shown on the right side of the arrow and size, material type, and the operator's letter designation information on the left side of the arrow. When possible, offset marks shall be used in conjunction with locate marks placed in accordance with the Act.

Q. The assigned letter designations for each operator to be used in conjunction with markings of underground utility lines shall be the same as those assigned by the notification center certified for a geographic area, subject to the review of the same and approval of such designations in writing by the advisory committee. Such approved designations by the advisory committee shall be deemed final unless appealed to the commission within 30 days of the advisory committee's written evidence of approval. Operators wishing to appeal the letter designations assigned in accordance with this section may file an appropriate formal pleading with the commission seeking review of the assigned letter designation within 30 days of the issuance of the written approval of the advisory committee.

R. The symbols for marking of underground utility lines in compliance with § 56-265.19 F (ii) of the Act shall be the same as those ~~shown in the Virginia Underground Utility Marking Standards (March 2004) published by the division (http://www.state.va.us/sec/division/urs/mutility/va_uums.pdf)~~ placed in response to a notice of proposed excavation or demolition.

Part V Supplemental Rules, Etc.

20VAC5-309-120. Clear Notification of clear evidence.

"Clear evidence" as used in § 56-265.24 C of the Code of Virginia shall include, but is not limited to, visual evidence of an unmarked utility line, knowledge of the presence of a utility line, or faded marks from previous marking of a utility line No person shall serve a notice on the notification center regarding clear evidence of the presence of an unmarked utility line pursuant to § 56-265.24 C of the Code of Virginia unless (i) the excavator has previously notified the notification center of the proposed excavation pursuant to § 56-265.17 A of the Code of Virginia, (ii) the excavator has complied with the requirements of 20VAC5-309-180, and (iii) the excavator has observed clear evidence of the presence

Regulations

of an unmarked utility line in the area of the proposed excavation.

20VAC5-309-165. Operator's responsibilities for abandoned utility lines.

A. Upon receipt of an additional notice to the notification center pursuant to § 56-265.24 C of the Code of Virginia, if the operator determines that an abandoned utility line exists, the operator shall provide the status of the utility line to the excavator within 27 hours, excluding Saturdays, Sundays, and legal holidays, from the time the excavator makes the additional notice to the notification center. The excavator and operator may negotiate a mutually agreeable time period in excess of 27 hours for the operator to provide such information to the excavator if site conditions prohibit the operator from making such a determination or extraordinary circumstances exist, as defined in § 56-265.15 of the Code of Virginia. If the site conditions prohibit the operator from making such a determination or extraordinary circumstances exist, the operator shall directly notify the person who proposes to excavate or demolish and shall, in addition, notify that person of the date and time when the status of the utility line will be determined. The deferral to determine the status of the utility line shall be no longer than 96 hours from 7 a.m. on the next working day following the excavator's additional notice to the notification center.

B. The operator shall record and maintain the location information of the abandoned utility line as determined by the operator. Such records need not include abandoned underground electric, telecommunications, cable television, water, and sewer lines connected to a single family dwelling unit.

20VAC5-309-190. Delineating specific location of a proposed excavation or demolition.

A. Any person, as defined in § 56-265.15 of the Code of Virginia, providing notice of a proposed excavation or demolition shall clearly describe the limits of the proposed excavation or demolition with sufficient detail to enable the operators to ascertain the location of the proposed excavation. The specific location of the proposed excavation or demolition may include, but is not limited to:

1. GPS coordinates taken at a single point where work is planned or GPS coordinates taken to delineate a line, multi-segment line, or polygon. When providing a single point, line, or multi-segment line, the person providing notice shall include an area measured in feet from the coordinates that describe the work area. If a polygon is used, the proposed work area shall be inside the polygon. GPS nomenclatures used for providing coordinates to the notification center shall be approved by the advisory committee.

2. White lining to delineate the area where excavation will take place. For single point excavation, the area shall be marked using dots, dashes, or white flags to show the operators the area of excavation. If utility markings are

desired outside a white lined area, the excavator shall provide clear instructions, to include the distance in feet outside the white lined area, to the notification center. For continuous excavations, such as trenching and boring, the excavator shall mark the center line of excavation by the use of dots or dashes. The excavation width, in feet, shall be indicated on either side of the center line in legible figures or noted in the marking instructions given to the notification center.

3. White lining performed by electronic means using aerial imagery. White lining performed by electronic means shall follow the same requirements as listed in subdivision 2 of this subsection.

4. A reference to the two nearest intersecting streets, if available, or driving directions.

B. In the event that a proposed excavation or demolition is planned at a single address, the area of proposed excavation or demolition may be described by dividing the parcel or property into four quadrants as facing the property using the center of the structure as the center point of the four quadrants. If no structure exists on the property, the center of the parcel or property will be used as the center point of the four quadrants. These four quadrants shall be referred to as Front Left, Front Right, Rear Left, and Rear Right. If the proposed area consists only of Front Left and Front Right quadrants, the term "Front" shall be sufficient. If the proposed area of excavation consists only of Rear Left and Rear Right quadrants, the term "Rear" shall be sufficient. If the proposed area of excavation consists only of Front Left and Rear Left quadrants, the term "Left Side" shall be sufficient. If the proposed area of excavation consists only of Front Right and Rear Right quadrants, the term "Right Side" shall be sufficient. If the proposed area of excavation includes three out of the four quadrants, the entire property may be used for the proposed excavation or demolition.

20VAC5-309-200. Reporting damage by calling 911.

In the event that damage to an underground utility line results in the escape of any flammable, toxic, hazardous, or corrosive gas or liquid, the excavator shall, in addition to complying with §§ 56-265.24 D and E of the Code of Virginia, promptly report the damage to the appropriate authorities by calling the 911 emergency telephone number.

VA.R. Doc. No. R12-3230; Filed May 29, 2012, 4:32 p.m.

GOVERNOR

EXECUTIVE ORDER NUMBER 45 (2012)

Implementation of House Bill 9 and Senate Bill 1 Relating to Identification Requirements for Voters at the Polling Place on Election Day

Importance of the Issue

Protecting the integrity and reliability of the electoral process in Virginia is a critical state interest. The state must ensure that the rule of "one person, one vote" applies for all citizens. For the citizens of the Commonwealth of Virginia to have faith in their government, they must have faith in their elections. This means that government must ensure open, honest, and secure elections. As such, Virginia has an interest in deterring and detecting voter fraud. Documented cases of voter fraud have occurred both in Virginia and in other parts of the United States. Virginia's history of some close elections demonstrates that voter fraud could negatively affect an election decided by a very small number of votes.

Any effort in increasing the integrity and reliability of the electoral process must be non-discriminatory and take into account any potential burdens imposed on eligible voters in Virginia, especially on groups of voters that have, historically, faced difficulties in voting. These voters include the elderly, poor, racial minority groups, non-native English speakers, and the disabled. All eligible voters regardless of income, race, age, and other factors should be able to have equal access to the electoral process and should be made aware of any changes that may impact their ability to vote.

Enactment of House Bill 9 and Senate Bill 1

Virginia's current laws already require voters to bring one of a number of identification cards or documents to the polling place on Election Day in order to cast a vote. If such identification is not produced, then the voter may cast the ballot after signing an affirmation of identity form, subject to felony penalties for false statements.

Today I have signed House Bill 9 and Senate Bill 1, bills that aim to increase the integrity and reliability of the voting process in Virginia. Senate Bill 1 was signed last to ensure any differences between it and House Bill 9 take legal effect. Those voters who arrive at the polling place without a valid form of identification shall be permitted to vote a provisional ballot which shall be counted so long as the voter provides a copy of one of the numerous and expanded types of acceptable forms of identification to their local electoral board within three days after the election. The identification can be provided by fax, e-mail, mail, commercial delivery, or in person. These bills also seek to increase access to the electoral process by adding to the current list of forms of identification allowed at the polls on Election Day including college IDs, utility bills, bank statements, and paychecks. With the enactment of House Bill 9 and Senate Bill 1, Virginia has taken steps towards protecting against voter

fraud and increasing the public's confidence in the election system.

In implementing this legislation, my administration and local election officials will take all appropriate steps to implement this legislation without adding inconvenience, confusion, or hardship to the Commonwealth's voters. Accordingly, by virtue of the authority vested in me as Governor under Article V of the Constitution of Virginia and under the laws of the Commonwealth, including but not limited to §§ 2.2-103 and 2.2-104 of the Code of Virginia, and subject to my continuing and ultimate authority and responsibility to act in such matters, I hereby direct the State Board of Elections and request that local election officials take several ameliorative steps described in this Executive Order.

Specifically, this Executive Order directs the State Board of Elections to take necessary steps to ensure that all eligible Virginia voters are made aware of the provisions of these new laws and are given the necessary information in order to provide an appropriate form of identification when voting. This Executive Order requests that local election officials cooperate in these efforts. This Executive Order also directs the State Board of Elections to provide all registered voters with a new voter registration card, one of the acceptable forms of identification for use at the polling place. Finally, this Executive Order requests that the State Board of Elections and local election officials report certain data to me following the November 6, 2012, and November 5, 2013, General Elections.

Availability and Issuance of Voter Registration Cards

The State Board of Elections shall take all necessary measures to ensure that all Virginia's voters are provided, free of charge, an acceptable form of identification for use at the polling place. By October 1, 2012, the State Board of Elections shall mail a new voter registration card to all Virginia voters. The instructions provided in the voter registration card mailing shall include an explanation of Virginia's new voter identification requirements and the need to bring the individual's voter registration card or other acceptable form of identification to the polls on Election Day. The instructions shall also explain that failure to provide an acceptable form of identification at the polls on Election Day will require the voter to vote a provisional ballot and thereafter provide a copy of an approved identification by fax, e-mail, in-person submission, or timely mail or commercial delivery by noon on the Friday immediately following the election.

I also request that the general registrars mail, free of charge, new voter registration cards to all registered voters who request them.

Voter Outreach Campaign

I also direct the State Board of Elections to engage in a voter outreach campaign between now and the November General Election to educate voters about the changes to Virginia's voter identification requirements. This outreach campaign will educate the Commonwealth's voters on the following issues:

1. That identification is required at the polling place and that voters who do not bring identification to the polling place or who refuse to provide identification at the polling place will be required to vote a provisional ballot;
2. The list of identification documents that are accepted at the polling place, including the additional forms of identification now allowed as a result the enactment of House Bill 9 and Senate Bill 1;
3. That those voting provisional ballots at the polling place because they failed to provide identification will have until noon the Friday after the election to provide a copy of their identification;
4. To explain to voters the means by which they may deliver an acceptable form of identification to the registrar, including by mail, fax, electronic mail, and in-person delivery;
5. To explain to voters how they may obtain a voter registration card, if needed; and
6. Provide contact information of the State Board of Elections and local registrar offices for voters to receive answers to any additional questions.

I direct the State Board of Elections to utilize newspaper advertisements, the internet, social media, television and radio (including Public Service Announcements), direct mail, public notices in state and local buildings, voter registration offices, polling places and other means to communicate the information described above to Virginia voters.

I direct the State Board of Elections to coordinate with local election officials, interested third-party groups including, but not limited to, the League of Woman Voters, the NAACP, Virginia's political parties, and other organizations to help educate voters about Virginia's voter identification requirements.

I direct the State Board of Elections to ensure that its voter outreach efforts are directed at all regions of the Commonwealth and in all 134 localities.

I encourage local general registrars and electoral board members to conduct their own outreach efforts in coordination with the State Board Elections. General registrar and electoral board outreach at the local level should target local voters through local media, including radio and

television, and print, making efforts to educate voters through outreach to various local community groups.

I direct the State Board of Elections to regularly report to me on the status of the outreach efforts from the date of implementation, July 1, 2012, through the November 6, 2012, General Election.

State Board of Elections Regulations

I request the State Board of Elections to promulgate a regulation that will provide that general registrars and electoral boards have the discretion to telephonically contact individuals voting provisional ballots for reason of lack of identification and remind those provisional voters that they are permitted to provide a copy of identification to the electoral board by noon on the Friday after the election.

Tracking of Provisional Ballot Statistics

I direct the State Board of Elections to coordinate reporting of all provisional ballots cast in the November 6, 2012, and November 5, 2013, General Elections. I hereby request that General Registrars and electoral boards track provisional votes by type, including provisional votes cast for reasons of a lack of identification. This information shall also include how many voters provided the necessary type of identification after casting a provisional ballot. Such reporting shall be tracked at the precinct level and timely reported to the State Board of Elections following the November 6, 2012, and November 5, 2013, General Elections.

I direct the State Board of Elections to report to me the statistics on the numbers of provisional ballots cast by category and the number of provisional ballots counted by category in the 2012 and 2013 General Elections by January 1, 2013, and January 1, 2014, respectively.

Effective Date of the Executive Order

This Executive Order shall become effective upon its signing and shall remain in full force and effect until February 1, 2014, unless amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia this the eighteenth day of May, 2012.

/s/ Robert F. McDonnell
Governor

GENERAL NOTICES/ERRATA

STATE CORPORATION COMMISSION

Bureau of Insurance

May 10, 2012

Administrative Letter 2012-05

To: All Insurers and Other Interested Parties

Re: Legislation Enacted by the 2012 Virginia General Assembly

We have attached for your reference summaries of certain statutes enacted or amended and re-enacted during the 2012 Session of the Virginia General Assembly. The effective date of these statutes is July 1, 2012, except as otherwise indicated in this letter. Each organization to which this letter is being sent should review the summaries carefully and see that notice of these laws is directed to the proper persons, including appointed representatives, to ensure that appropriate action is taken to effect compliance with these new legal requirements. Copies of individual bills may be obtained at <http://lis.virginia.gov/lis.htm> or via the links we have provided in the summary headings. You may enter the bill number (not the chapter number) on the Virginia General Assembly Home Page, and you will be linked to the Legislative Information System. You may also link from the Legislative Information System to any existing section of the Code of Virginia. All statutory references made in the letter are to Title 38.2 (Insurance) of the Code of Virginia unless otherwise noted. All references to the Commission refer to the State Corporation Commission. The federal Patient Protection and Affordable Care Act is referred to as PPACA.

Please note that this document is a summary of legislation. It is neither a legal review and interpretation nor a full description of the legislative amendments affecting insurance-related laws during the 2012 Session. Each person or organization is responsible for review of relevant statutes.

/s/ Jacqueline K. Cunningham
Commissioner of Insurance

Chapter 3 ([House Bill 1106](#)) - Effective 2/7/2012

The bill amends § 54.1-2900 in the Professions & Occupations title to provide the Board of Medicine the authority to license behavior analysts and assistant behavior analysts and to promulgate emergency regulations within 280 days of the enactment of this legislation [refer to Chapter 876 of the 2011 Virginia Acts of Assembly ([House Bill 2467](#)) for more information concerning mandated coverage for autism spectrum disorder and associated treatments, including applied behavioral analysis].

Chapter 156 ([Senate Bill 120](#))

The bill amends § 38.2-4123 (Fraternal Benefit Societies) to make the requirements of the Risk-Based Capital Act

(§§ 38.2-5500 et seq.) applicable to fraternal benefits societies. Several amendments are also made to the Risk-Based Capital Act to make trend test requirements consistent among life & health insurers, property & casualty insurers, and health organizations.

Chapter 208 ([Senate Bill 266](#)) and Chapter 303 ([House Bill 735](#))

The bill amends Chapter 49 (Continuing Care Provider Registration and Disclosure) to require providers of community-based continuing care (CBCC) to be registered with the Commission as a continuing care provider and to file a statement with the Commission regarding its CBCC program.

Chapter 235 ([House Bill 523](#)) and Chapter 346 ([Senate Bill 369](#)) Effective 1/01/2013

The bill adds a section to Chapter 21 (Fire Insurance Policies) to require insurers issuing new or renewal policies of fire insurance, or fire insurance in combination with other insurance coverages, which exclude coverage for damage caused by earthquake, to provide a written notice that explicitly states that "earthquake coverage is excluded unless purchased by endorsement." This notice must state that information regarding such coverage is available from the insurer or the agent if earthquake coverage is otherwise available from the insurer.

Chapter 264 ([House Bill 127](#)) - Effective 10/01/2012

The bill amends § 8.2-305 (Insurance Policy Provisions) to require property and casualty insurers to include on each declarations page a list of all policy forms and endorsements, including the form numbers and edition dates, that are applicable to the policy. Insurers that use unique identifier numbers for each form and do not use edition dates are only required to place the unique number on the declarations page.

Chapter 273 ([House Bill 867](#)) and Chapter 277 ([Senate Bill 47](#))

The bill amends § 38.2-515 and adds a new section to the Unfair Trade Practices chapter (§§ 38.2-500 et seq.) to govern the use of certificates of insurance (COI) in the Commonwealth. The bill prohibits any person from issuing or delivering any COI that attempts to confer any rights upon a third party beyond what the referenced policy of insurance expressly provides. It also prohibits any person from knowingly demanding or requiring the issuance of a COI from an insurer, insurance producer or policyholder, or knowingly preparing or issuing a COI that contains any false or misleading information concerning the policy of insurance referenced in the COI.

General Notices/Errata

Chapter 293 ([House Bill 133](#))

The bill amends § 38.2-325 (Insurance Policy Provisions) to permit property and casualty insurers to post policy forms and endorsements that do not contain personally identifiable information on their public websites, in lieu of any other method of delivery.

Chapter 294 ([House Bill 209](#)) - Effective 1/01/2013

The bill amends and reenacts the Continuing Education (CE) article of the Insurance Agents chapter (Article 7 of Chapter 18, §§ 38.2-1866 et seq.) of this title relating to CE requirements for insurance agents. The bill provides a process by which an agent may correct errors and effect compliance with CE requirements; impacts credit hour requirements; eliminates certain monetary penalties; and changes the deadline for completing CE courses. The bill also eliminates certain requirements for a status report to agents and shortens the time for appeals to the Insurance Continuing Education Board.

Chapter 371 ([House Bill 1202](#)) and Chapter 561 ([Senate Bill 140](#))

The bill adds a section to the Fire Insurance Policies chapter (§§ 38.2-2100 et seq.) to require insurers writing fire policies, or fire policies in combination with other coverages, to provide coverage of at least \$250 for the cost of services provided by volunteer fire departments, which are not fully funded by real estate taxes or other property taxes.

Chapter 413 ([House Bill 313](#))

The bill amends and reenacts § 38.2-1815 (Insurance Agents) to add language requiring the Commission to review annually the results of the life and annuities licensing examinations and revise the content of the examinations to further the goal of achieving a pass rate in accordance with the 2011 NAIC State Licensing Handbook or any successor publication adopted by the NAIC. The Commission shall also report to the General Assembly on its findings and any related changes it has implemented regarding the life and annuities licensing examination.

Chapter 447 ([House Bill 871](#))

The bill amends and reenacts § 38.2-1800 (Insurance Agents) to change the definition of "limited burial insurance authority" from the authority to sell, solicit, or negotiate burial insurance society memberships to burial insurance society memberships or group insurance certificates where the memberships or certificates are used solely to fund preneed funeral contracts. The bill also removes the \$10,000 cap on burial insurance society memberships or group life insurance certificates that are used solely to fund preneed funeral contracts.

Chapter 476 ([Senate Bill 387](#)) and Chapter 507 ([House Bill 552](#))

The bill revises a number of sections in various titles, including §§ 38.2-3323 (Life Insurance Policies) and 38.2-3409 (Accident and Sickness Insurance Provisions) in this title, to replace the term "mental retardation" with the term "intellectual disability" when referring to a child's inability to maintain self-sustaining employment.

Chapter 539 ([House Bill 1139](#)) - Effective 1/01/2013

The bill amends the Reinsurance Article of the Reports, Reserves and Examinations chapter (Article 3.1 of Chapter 13, §§ 38.2-1316.1 et seq.) setting forth the requirements for certified reinsurers; assignment of ratings; reduction in collateral; qualified jurisdictions; management of concentration risk; and diversification of reinsurance programs. These requirements will become effective six months after the effective date of the legislation (1/01/2013).

Chapter 584 ([Senate Bill 532](#))

The bill amends and reenacts provisions of the Assessment for Administration of Insurance Laws chapter (§§ 38.2-400 et seq.) to revise the provisions for collecting the assessment on insurers for the maintenance of the Bureau of Insurance. New language provides for a penalty of \$50 for each day the annual maintenance assessment report is filed past its due date.

Chapter 589 ([Senate Bill 591](#))

The bill amends § 38.2-3420 (Accident and Sickness Insurance Provisions) to increase the number of Virginia residents who may be covered employees of a bank-sponsored multiple employer welfare arrangement (MEWA) from 50 to 500, and adds a new subdivision to require that the bank-sponsored MEWA be subject to solvency examination authority and reserve adequacy requirements in its domiciliary contiguous state.

Chapter 634 ([House Bill 1273](#)) and Chapter 641 ([Senate Bill 450](#))

The bill adds a new section to the General Provisions Article in the Accident and Sickness Insurance Provisions chapter (Article 1 of Chapter 34 §§ 38.2-3400 et seq.) and also amends §§ 38.2-4214 (Health Services Plans) and 38.2-4319 (Health Maintenance Organizations) to make the new provision applicable to health services plans and HMOs. The bill requires a policy, contract, or plan, or certificate or evidence of coverage, which includes coverage for cancer chemotherapy drugs administered orally and intravenously or by injection, to provide that the criteria for establishing cost sharing applicable to orally administered cancer chemotherapy drugs and cancer chemotherapy drugs administered intravenously or by injection is consistently applied within the same plan.

Chapter 673 (Senate Bill 646)

The bill amends § 38.2-102 (General Provisions) to revise part of the definition of life insurance to include additional benefits incidental to a loss in the event of death, dismemberment or loss by accident or accidental means.

Chapter 734 (House Bill 872) and Chapter 735 (Senate Bill 520) – Effective 1/01/2013

The bill adds a new article to the Insurance Agents chapter (§§ 38.2-1800 et seq.), which provides for the licensing and regulation of public adjusters by the State Corporation Commission. Public adjusting is defined as investigating, negotiating, adjusting or providing advice to an insured in relation to first party claims arising under insurance contracts that insure real or personal property of an insured for the purpose of effecting the settlement of a claim on behalf of the insured. In addition to standards of conduct, the provisions address the fees that public adjusters may charge as well as the provisions which must be contained in a public adjuster's written contract with the insured.

June 1, 2012

Administrative Letter 2012-06

To: All Property and Casualty Insurers and Other Interested Parties

Re: Legislation Enacted by the 2012 Virginia General Assembly – Clarification of House Bill 523 (and companion Senate Bill 369), House Bill 127, and House Bill 1202 (and companion Senate Bill 140)

The Bureau is issuing this administrative letter as further explanation of House Bill 523 (and companion Senate Bill 369), House Bill 127 and House Bill 1202, (and companion Senate Bill 140) as summarized in Administrative Letter 2012-05. Please see the bolded language below for additional clarification.

Chapter 235 (House Bill 523) and Chapter 346 (Senate Bill 369) – Effective January 1, 2013

These bills add a section to Chapter 21 (Fire Insurance Policies) to require insurers issuing new or renewal policies of fire insurance, or fire insurance in combination with other insurance coverages, which exclude coverage for damage caused by earthquake, to provide a written notice that explicitly states that "earthquake coverage is excluded unless purchased by endorsement." This notice must state that information regarding such coverage is available from the insurer or the agent if earthquake coverage is otherwise available from the insurer.

The policies to which the law applies include all fire policies and fire policies in combination with other coverages, including but not limited to mobile home policies, dwelling

fire policies, homeowners policies, renters policies, commercial fire policies, commercial package policies providing fire coverage, and master policies providing mortgage force-placed fire coverage that are issued in Virginia. This provision does not apply to surplus lines policies nor does it apply to mutual assessment fire policies.

Insurers may use notices that unambiguously set forth the information required by the law even if the language of the notice is not in the precise language that is quoted in the new section.

Chapter 264 (House Bill 127) – Effective October 1, 2012

This bill amends § 38.2-305 (Insurance Policy Provisions) to require property and casualty insurers to include on each declarations page a list of all policy forms and endorsements, including the form numbers and edition dates, that are applicable to the policy. Insurers that use unique identifier numbers for each form and do not use edition dates are only required to place the unique number on the declarations page.

One example of a unique identifier would be a number with a suffix that changes with each revision (for example, 54231.1 for the first edition and 54231.2 for the second edition).

The bill does not require insurers to list the name of the form nor does it require insurers to list notices or other pieces of correspondence that they send to their policyholders.

Chapter 371 (House Bill 1202) and Chapter 561 (Senate Bill 140)

These bills add a section to the Fire Insurance Policies chapter (§§ 38.2-2100 et seq.) to require insurers writing fire policies, or fire policies in combination with other coverages, to provide coverage of at least \$250 for the cost of services provided by volunteer fire departments, which are not fully funded by real estate taxes or other property taxes.

The policies to which the law applies include all fire policies and fire policies in combination with other coverages, including but not limited to mobile home policies, dwelling fire policies, homeowners policies, renters policies, commercial fire policies, commercial package policies providing fire coverage, and master policies providing mortgage force-placed fire coverage that are issued in Virginia. This provision does not apply to surplus lines policies nor does it apply to mutual assessment fire policies.

This provision applies to policies issued or renewed on or after July 1, 2012.

Any questions regarding this administrative letter may be referred to: Rebecca Nichols, Principal Insurance Examiner, Bureau of Insurance, State Corporation Commission, rebecca.nichols@scc.virginia.gov, telephone (804) 371-9331.

/s/ Jacqueline K. Cunningham
Commissioner of Insurance

General Notices/Errata

DEPARTMENT OF ENVIRONMENTAL QUALITY

Total Maximum Daily Load Study for James River, Stonewall Creek, Walkers Ford Creek, Wreck Island Creek, Phelps Branch, North Creek, and Bent Creek in Appomattox County and Buffalo River, Long Branch, Mill Creek, Buffalo River, Rutledge Creek, and Turner Creek in Amherst County

The Virginia Department of Environmental Quality (DEQ) will host a public meeting on a water quality study for the Amherst County streams on Monday, June 25, 2012. The meeting will start at 6 p.m. in the Central Virginia Community College Amherst Center located at 200 Richmond Highway, Suite 103, Amherst VA 24521. The purpose of the meeting is to provide information and discuss the study with interested local community members and local government.

DEQ will host a public meeting on a water quality study for the Appomattox County streams on Thursday, June 28, 2012. The meeting will start at 6 p.m. in the J. Robert Jamerson Memorial Library in Appomattox County located at 157 Main Street, Appomattox VA 24522. The purpose of the meeting is to provide information and discuss the study with interested local community members and local government.

James River (VAC-H05R_JMS01A00 and VAC-H08R_JMS01A00) was identified in Virginia's Water Quality Assessment Integrated Report as impaired for not supporting the primary contact use. The impairment is based on water quality monitoring data reports of sufficient exceedances of Virginia's water quality standard for bacteria.

Stonewall Creek (VAC-H05R_STW01A08) was identified in Virginia's Water Quality Assessment Integrated Report as impaired for not supporting the primary contact use. The impairment is based on water quality monitoring data reports of sufficient exceedances of Virginia's water quality standard for bacteria.

Walkers Ford Creek (VAC-H-5R_WKF01A10) was identified in Virginia's Water Quality Assessment Integrated Report as impaired for not supporting the primary contact use. The impairment is based on water quality monitoring data reports of sufficient exceedances of Virginia's water quality standard for bacteria.

Wreck Island Creek (VAC-H06R_WIC01A00) was identified in Virginia's Water Quality Assessment Integrated Report as impaired for not supporting the primary contact use. The impairment is based on water quality monitoring data reports of sufficient exceedances of Virginia's water quality standard for bacteria.

Phelps Branch (VAC-H06R_PLP01A08) was identified in Virginia's Water Quality Assessment Integrated Report as impaired for not supporting the aquatic life use. The

impairment is based on benthic macroinvertebrate bioassessments.

North Creek (VAC-H06R_NOT01A10) was identified in Virginia's Water Quality Assessment Integrated Report as impaired for not supporting the primary contact use. The impairment is based on water quality monitoring data reports of sufficient exceedances of Virginia's water quality standard for bacteria.

Bent Creek (VAC-H07R_BTC01A00) was identified in Virginia's Water Quality Assessment Integrated Report as impaired for not supporting the primary contact use. The impairment is based on water quality monitoring data reports of sufficient exceedances of Virginia's water quality standard for bacteria.

Buffalo River (VAC-H11R_BUF01A00, VAC-H11R_BUF02A00, and VAC-H11R_BUF03A00) was identified in Virginia's Water Quality Assessment Integrated Report as impaired for not supporting the Primary contact use. The impairment is based on water quality monitoring data reports of sufficient exceedances of Virginia's water quality standard for bacteria.

Long Branch (VAC-H11R_LOB02A04) was identified in Virginia's Water Quality Assessment Integrated Report as impaired for not supporting the aquatic life use. The impairment is based on benthic macroinvertebrate bioassessments.

Mill Creek (VAC-H11R_MIN01A08) was identified in Virginia's Water Quality Assessment Integrated Report as impaired for not supporting the primary contact use. The impairment is based on water quality monitoring data reports of sufficient exceedances of Virginia's water quality standard for bacteria.

Buffalo River (VAC-H11R_BUF04A08) was identified in Virginia's Water Quality Assessment Integrated Report as impaired for not supporting the aquatic life use. The impairment is based on benthic macroinvertebrate bioassessments.

Rutledge Creek (VAC-H12R_RTD01A00) was identified in Virginia's Water Quality Assessment Integrated Report as impaired for not supporting the primary contact use. The impairment is based on water quality monitoring data reports of sufficient exceedances of Virginia's water quality standard for bacteria.

Rutledge Creek (VAC-H12R_RTD01A00) was identified in Virginia's Water Quality Assessment Integrated Report as impaired for not supporting the Aquatic Life Use. The impairment is based on benthic macroinvertebrate bioassessments.

Turner Creek (VAC-H12R_THR01A08) was identified in Virginia's Water Quality Assessment Integrated Report as impaired for not supporting the primary contact use. The

impairment is based on water quality monitoring data reports of sufficient exceedances of Virginia's water quality standard for bacteria.

Section 303(d) of the Clean Water Act and § 62.1-44.19:7 C of the Code of Virginia require DEQ to develop total maximum daily loads (TMDLs) for pollutants responsible for each impaired water contained in Virginia's 303(d) TMDL Priority List and Report and subsequent Water Quality Assessment Reports.

During the study, DEQ will develop a TMDL for the impaired water. A TMDL is the total amount of a pollutant a water body can contain and still meet water quality standards. To restore water quality, pollutant levels have to be reduced to the TMDL amount.

The public comment period on materials presented at the Amherst County meeting will extend from June 25, 2012, to July 25, 2012. For additional information or to submit comments, contact Paula Nash in the Virginia Department of Environmental Quality, Blue Ridge Regional Office, 7705 Timberlake Road, Lynchburg, VA 24502, by telephone (434) 582-6216, or by email paula.nash@deq.virginia.gov.

The public comment period on materials presented at the Appomattox County meeting will extend from June 25, 2012, to July 30, 2012. For additional information or to submit comments, contact Paula Nash in the Virginia Department of Environmental Quality, Blue Ridge Regional Office, 7705 Timberlake Road, Lynchburg, VA 24502, by telephone (434) 582-6216, or by email paula.nash@deq.virginia.gov.

Additional information is also available on the DEQ website at <http://www.deq.virginia.gov/Programs/Water/WaterQualityInformationTMDLs/TMDL/TMDLDevelopment/DocumentationforSelectTMDLs.aspx>.

STATE LOTTERY DEPARTMENT

Director's Order

The following Director's Order of the State Lottery Department was filed with the Virginia Registrar of Regulations on May 23, 2012. The order may be viewed at the State Lottery Department, 900 East Main Street, Richmond, VA or at the office of the Registrar of Regulations, 910 Capitol Street, 2nd Floor, Richmond, VA.

Director's Order Number Fifty-Six (12)

Virginia Lottery's "Summer Grill-Off Contest" Final Rules for Game Operation (effective May 22, 2012)

STATE WATER CONTROL BOARD

Proposed Consent Order for New Market Poultry, L.L.C.

An enforcement action has been proposed for New Market Poultry, L.L.C. for violations in Shenandoah County. A proposed consent order describes a settlement to resolve unauthorized discharge violations from the New Market Poultry facility. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Steven W. Hetrick will accept comments by email at steven.hetrick@deq.virginia.gov, FAX (540) 574-7878 or postal mail at Department of Environmental Quality, Valley Regional Office, P.O. Box 3000, 4411 Early Road, Harrisonburg, VA 22801, from June 18, 2012, to July 18, 2012.

VIRGINIA CODE COMMISSION

Notice to State Agencies

Contact Information: *Mailing Address:* Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219; *Telephone:* Voice (804) 786-3591; FAX (804) 692-0625; *Email:* varegs@dls.virginia.gov.

Meeting Notices: Section 2.2-3707 C of the Code of Virginia requires state agencies to post meeting notices on their websites and on the Commonwealth Calendar at <http://www.virginia.gov/cmsportal3/cgi-bin/calendar.cgi>.

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/cumultab.htm>.

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.

ERRATA

DEPARTMENT OF MINES, MINERALS AND ENERGY

Title of Regulation: **4VAC25-145. Regulations on the Eligibility of Certain Mining Operators to Perform Reclamation Projects.**

Publication: 28:20 V.A.R. 1573-1575 June 4, 2012.

Correction to Final Regulation:

Page 1573, Title of Regulation, delete "through" and replace with ", 4VAC25-145-20, and"

Page 1575, remove 4VAC25-145-30 in its entirety.

V.A.R. Doc. No. R12-2927; Filed May 30, 2012, 2:00 p.m.