



VIRGINIA

REGISTER OF REGULATIONS

VOL. 33 ISS. 6

PUBLISHED EVERY OTHER WEEK BY THE VIRGINIA CODE COMMISSION

NOVEMBER 14, 2016

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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 18 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. **29:5 VA.R. 1075-1192 November 5, 2012**, refers to Volume 29, Issue 5, pages 1075 through 1192 of the *Virginia Register* issued on November 5, 2012.

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

Members of the Virginia Code Commission: **John S. Edwards**, Chair; **James M. LeMunyon**, Vice Chair; **Gregory D. Habeeb**; **Ryan T. McDougle**; **Robert L. Calhoun**; **Carlos L. Hopkins**; **Leslie L. Lilley**; **E.M. Miller, Jr.**; **Thomas M. Moncure, Jr.**; **Christopher R. Nolen**; **Timothy Oksman**; **Charles S. Sharp**; **Mark J. Vucci**.

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

PUBLICATION SCHEDULE AND DEADLINES

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

November 2016 through November 2017

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
33:6	October 26, 2016	November 14, 2016
33:7	November 9, 2016	November 28, 2016
33:8	November 22, 2016 (Tuesday)	December 12, 2016
33:9	December 7, 2016	December 26, 2016
33:10	December 19, 2016 (Monday)	January 9, 2017
33:11	January 4, 2017	January 23, 2017
33:12	January 18, 2017	February 6, 2017
33:13	February 1, 2017	February 20, 2017
33:14	February 15, 2017	March 6, 2017
33:15	March 1, 2017	March 20, 2017
33:16	March 15, 2017	April 3, 2017
33:17	March 29, 2017	April 17, 2017
33:18	April 12, 2017	May 1, 2017
33:19	April 26, 2017	May 15, 2017
33:20	May 10, 2017	May 29, 2017
33:21	May 24, 2017	June 12, 2017
33:22	June 7, 2017	June 26, 2017
33:23	June 21, 2017	July 10, 2017
33:24	July 5, 2017	July 24, 2017
33:25	July 19, 2017	August 7, 2017
33:26	August 2, 2017	August 21, 2017
34:1	August 16, 2017	September 4, 2017
34:2	August 30, 2017	September 18, 2017
34:3	September 13, 2017	October 2, 2017
34:4	September 27, 2017	October 16, 2017
34:5	October 11, 2017	October 30, 2017
34:6	October 25, 2017	November 13, 2017
34:7	November 8, 2017	November 27, 2017

*Filing deadlines are Wednesdays unless otherwise specified.

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 amending **22VAC40-601, Supplemental Nutrition Assistance Program**. The purpose of the proposed action is to reduce the amount of countable income used in determining eligibility for supplemental nutrition assistance program (SNAP) benefits for applicants and recipients paying child support pursuant to a court or administrative order. The proposal is to change how child support payments are evaluated from the income deduction option to the income exclusion option. Changing the method in which child support payments are allowed could potentially result in higher SNAP benefit amounts for households that pay support. The goal is to create an incentive to keep child support payments current.

The agency does not intend to hold a public hearing on the proposed action after publication in the Virginia Register.

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

Public Comment Deadline: December 14, 2016.

Agency Contact: Celestine Jackson, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7376, FAX (804) 726-7356, TTY (800) 828-1120, or email celestine.jackson@dss.virginia.gov.

VA.R. Doc. No. R17-4595; Filed October 14, 2016, 1:11 p.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

Final Regulation

<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>

Title of Regulation: **4VAC20-252. Pertaining to the Taking of Striped Bass (amending 4VAC20-252-130).**

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

Effective Date: November 2, 2016.

Agency Contact: Alicia Nelson, Fisheries Management, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-8155, or email alicia.nelson@mrc.virginia.gov.

Summary:

The amendments streamline the striped bass buyer reporting requirements by modifying the required information and eliminating the call-in system.

4VAC20-252-130. Entry limits, permits, and reports.

A. There is established a special permit for engaging in either the Chesapeake area commercial fishery for striped bass or the coastal area commercial fishery for striped bass, and it shall be unlawful for any person to engage in either commercial fishery for striped bass without first having obtained the permit from the commission and meeting the following conditions:

1. The person shall be a licensed registered commercial fisherman.
2. The person shall have reported all prior fishing activity in accordance with 4VAC20-610 and shall not be under any sanction by the Marine Resources Commission for noncompliance with the regulation.

B. Permits for the commercial harvest of striped bass in the Chesapeake area or coastal area shall be issued to any registered commercial fishermen holding striped bass quota shares issued under the provisions of 4VAC20-252-150 and 4VAC20-252-160.

C. Permits shall be in the possession of the permittee while catching, harvesting, selling or possessing striped bass.

Failure to have the appropriate permit in possession shall be a violation of this chapter.

D. It shall be unlawful for any person, business, or corporation, except for licensed restaurants, to purchase from the harvester any quantity of striped bass greater than 10 pounds in total weight taken from Virginia's tidal waters for the purpose of resale without first obtaining a striped bass buyer's permit from the commission, except as described in subsection E of this section. Such permit shall be completed in full by the permittee and kept in possession of the permittee while selling or possessing striped bass. Failure to have the appropriate permit in possession shall be a violation of this chapter.

E. Restaurants shall not be required to obtain a striped bass buyer's permit from the commission but shall be required to certify and maintain a record of any striped bass purchased from any harvester for a period of not less than one year.

F. All permitted commercial harvesters of striped bass shall report to the commission in accordance with 4VAC20-610. In addition to the reporting requirements of 4VAC20-610, all permitted commercial harvesters of striped bass shall record and report daily striped bass harvest by specifying the number of tags used on striped bass harvested for each day in either the Chesapeake area or coastal area and reporting the daily total whole weight of striped bass harvested in either the Chesapeake area or coastal area. Daily striped bass tag use on harvested striped bass and daily total whole weight of harvested striped bass from either the Chesapeake area or coastal area, within any month, shall be recorded on forms provided by the commission and shall accompany the monthly catch report submitted no later than the fifth day of the following month.

G. Any permitted commercial harvester of striped bass who self markets his striped bass to a restaurant, individual, or out-of-state market shall be required to prepare a receipt describing each sale greater than 10 pounds in total weight. Each receipt shall be a record and report of the date of transaction, name and signature of buyer, address and phone number of buyer, number and total weight of striped bass sold, and name and signature of harvester. Copies of each receipt shall be forwarded to the commission in accordance with 4VAC20-610.

H. Any buyer permitted to purchase striped bass harvested from Virginia tidal waters shall provide written reports to the commission of daily purchases and harvest information on forms provided by the Marine Resources Commission. Such information shall include the date of the purchase, buyer's ~~and harvester's striped bass permit numbers~~ name, and harvester's

Commercial Fisherman Registration License number. In addition, for each different purchase of striped bass harvested from Virginia waters, the buyer shall record the ~~gear type, water area fished, city or county of landing,~~ weight of whole fish, and number and type of tags (Chesapeake area or coastal area) that applies to that harvest. These reports shall be completed in full and submitted monthly to the Marine Resources Commission no later than the fifth day of the following month. ~~In addition, during the month of December, each permitted buyer shall call the Marine Resources Commission interactive voice recording system on a daily basis to report his name and permit number, date, pounds of Chesapeake area striped bass purchased and pounds of coastal area striped bass purchased.~~

I. Failure of any person permitted to harvest, buy, or sell striped bass, to submit the required written report for any fishing day shall constitute a violation of this chapter.

VA.R. Doc. No. R17-4966; Filed November 2, 2016, 12:40 p.m.

Final Regulation

REGISTRAR'S NOTICE: 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.

Title of Regulation: 4VAC20-490. **Pertaining to Sharks (amending 4VAC20-490-41, 4VAC20-490-42).**

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

Effective Date: November 2, 2016.

Agency Contact: Alicia Nelson, Fisheries Management, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-8155, or email alicia.nelson@mrc.virginia.gov.

Summary:

The amendments clarify the offshore processing of smooth dogfish and increase the commercial smooth dogfish vessel possession limit for the 2016-2017 season.

4VAC20-490-41. Commercial catch limitations.

A. Beginning January 1 of any given year it shall be unlawful for any person to possess on board a vessel or to land in Virginia more than a combined total of 36 commercially permitted aggregated large coastal sharks and commercially permitted hammerhead sharks in one 24-hour period, unless the Marine Resources Commission has posted notice of any change to possession limits on its website at <http://mrc.virginia.gov/Regulations/VA-commercial-shark-possession-limits.shtm>. The person who owns or operates the vessel is responsible for compliance with the provisions of this subsection.

B. It shall be unlawful for any person to fillet a shark until that shark is offloaded at the dock or on shore, except smooth dogfish as provided in subsection C of this section. A licensed commercial fisherman may eviscerate and remove

the head of any shark, but the tail and all fins of any shark, except smooth dogfish as provided in subsection C of this section, shall remain naturally attached to the carcass through landing. The fins of any shark, except smooth dogfish, may be partially cut but some portion of the fin shall remain attached, until the shark is landed.

C. Virginia licensed commercial fishermen may completely process smooth dogfish at sea prior to landing when the harvest of smooth dogfish comprises at least 25% by weight of the total retained harvest, except that it shall be unlawful for anyone to land or possess on board any vessel any amount of processed smooth dogfish whereby the total weight of fins exceeds 12% of the total dressed weight of any smooth dogfish.

D. It shall be unlawful to possess, on board a vessel, or to land in Virginia any species of shark, after the National Oceanic and Atmospheric Administration (NOAA) Fisheries has closed the fishery for that species in federal waters.

E. There are no commercial trip limits or possession limits for smooth dogfish or sharks on the lists of commercially permitted pelagic species or commercially permitted nonblacknose species.

F. Except as described in this section, it shall be unlawful for any person to take, harvest, land, or possess in Virginia any blacktip, bull, great hammerhead, lemon, nurse, scalloped hammerhead, silky, smooth hammerhead, spinner, or tiger shark from May 15 through July 15. These sharks may be transported by vessel, in Virginia waters, during the closed season provided the sharks were caught in a legal manner consistent with federal regulations outside Virginia waters and:

1. The vessel does not engage in fishing in Virginia waters while possessing the species listed in this subsection; and
2. All fishing gear aboard the vessel is stowed and not available for immediate use.

G. It shall be unlawful for any person to retain, possess, or purchase any commercially prohibited shark or any research only shark, except as provided in subsection I of this section.

H. All sharks harvested from state waters or federal waters, for commercial purposes, shall only be sold to a federally permitted shark dealer.

I. The commissioner may grant exemptions from the seasonal closure, quota, possession limit, size limit, gear restrictions, and prohibited species restrictions. Exemptions shall be granted only for display or research purposes. Any person granted an exemption for the harvest of any shark for research or display shall report the species, weight, location caught, and gear used for each shark collected within 30 days. Any person granted a permit to possess any shark for research or display shall provide the commissioner on an annual basis information on the location and status of the shark throughout the life of the shark.

Regulations

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

A. For the 12-month period of May 1, 2016, through April 30, 2017, the spiny dogfish commercial landings quota shall be limited to 4,356,944 pounds.

B. It shall be unlawful for any person to take, harvest, or possess aboard any vessel or to 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, harvest, or possess aboard any vessel or to land in Virginia more than ~~5,000~~ 5,250 pounds of spiny dogfish per day for commercial purposes. However, if landings are less than 80% of the quota specified in subsection A of this section by February 15, 2017, it shall be unlawful to take, harvest, or possess aboard any vessel or to land in Virginia more than 6,000 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.

V.A.R. Doc. No. R17-4965; Filed November 2, 2016, 12:37 p.m.

Final Regulation

<p>REGISTRAR'S NOTICE: 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>

Title of Regulation: **4VAC20-620. Pertaining to Summer Flounder (amending 4VAC20-620-40).**

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

Effective Date: November 2, 2016.

Agency Contact: Alicia Nelson, Fisheries Management, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-8155, or email alicia.nelson@mrc.virginia.gov.

Summary:

The amendments set the vessel landing and possession limit for the fall 2016 season.

4VAC20-620-40. Commercial vessel possession and landing limitations.

A. It shall be unlawful for any person harvesting summer flounder outside of Virginia's waters to do any of the

following, except as described in subsections B, C, D, and E of this section:

1. Possess aboard any vessel in Virginia waters any amount of summer flounder in excess of 10% by weight of Atlantic croaker or the combined landings, on board a vessel, of black sea bass, scup, squid, scallops and Atlantic mackerel.
2. Possess aboard any vessel in Virginia waters any amount of summer flounder in excess of 1,500 pounds landed in combination with Atlantic croaker.
3. Fail to sell the vessel's entire harvest of all species at the point of landing.

B. Nothing in this chapter shall preclude a vessel from possessing any North Carolina vessel possession limit of summer flounder in Virginia; however, no vessel that possesses the North Carolina vessel possession limit of summer flounder shall offload any amount of that possession limit, except as described in subsection J of this section.

C. From the second Wednesday in March through June 6, it shall be unlawful for any person harvesting summer flounder outside of Virginia waters to do any of the following:

1. Possess aboard any vessel in Virginia waters any amount of summer flounder in excess of the combined total of the Virginia landing limit described in subdivisions 3 and 4 of this subsection and the amount of the legal North Carolina landing limit or trip limit.
2. Land summer flounder in Virginia for commercial purposes more than twice during each consecutive period, with the initial period beginning on the second Wednesday in March.
3. Land in Virginia more than a total of 7,500 pounds of summer flounder during the initial 30-day period beginning on the second Wednesday in March.
4. Land in Virginia more than a total of 5,000 pounds of summer flounder during the 60-day period beginning on April 8.
5. Land in Virginia any amount of summer flounder more than once in any consecutive five-day period.

D. From November 1 through December 31 of each year, ~~or until it has been projected and~~ if it has not been announced that 85% of the allowable landings have been taken, it shall be unlawful for any person harvesting summer flounder outside of Virginia waters to do any of the following:

1. Possess aboard any vessel in Virginia waters any amount of summer flounder in excess of the combined total of the Virginia landing limit described in ~~subdivisions 3 and 4~~ subdivision 2 of this subsection and the amount of the legal North Carolina landing limit or trip limit.
- ~~2. Land summer flounder in Virginia for commercial purposes more than twice during each consecutive 30-day period, with the first 30-day period beginning on November 1.~~

~~3. 2.~~ Land in Virginia more than a total of ~~10,000~~ 7,500 pounds of summer flounder ~~during the first 30-day period, with the first 30-day period beginning on November 1.~~

~~4.~~ Land in Virginia more than a total of ~~5,000~~ pounds of summer flounder ~~during the second 30-day period with the second 30-day period beginning on December 1.~~

~~5. 3.~~ Land in Virginia any amount of summer flounder more than once in any consecutive five-day period.

E. From January 1 through December 31 of each year, any boat or vessel issued a valid federal summer flounder moratorium permit and owned and operated by a legal Virginia Commercial Hook-and-Line Licensee that possesses a Restricted Summer Flounder Endorsement shall be restricted to a possession and landing limit of 200 pounds of summer flounder, except as described in 4VAC20-620-30 F.

F. Upon request by a marine police officer, the seafood buyer or processor shall offload and accurately determine the total weight of all summer flounder aboard any vessel landing summer flounder in Virginia.

G. Any possession limit described in this section shall be determined by the weight in pounds of summer flounder as customarily packed, boxed and weighed by the seafood buyer or processor. The weight of any summer flounder in pounds found in excess of any possession limit described in this section shall be prima facie evidence of violation of this chapter. Persons in possession of summer flounder aboard any vessel in excess of the possession limit shall be in violation of this chapter unless that vessel has requested and been granted safe harbor. Any buyer or processor offloading or accepting any quantity of summer flounder from any vessel in excess of the possession limit shall be in violation of this chapter, except as described by subsection J of this section. A buyer or processor may accept or buy summer flounder from a vessel that has secured safe harbor, provided that vessel has satisfied the requirements described in subsection J of this section.

H. If a person violates the possession limits described in this section, the entire amount of summer flounder in that person's possession shall be confiscated. Any confiscated summer flounder shall be considered as a removal from the appropriate commercial harvest or landings quota. Upon confiscation, the marine police officer shall inventory the confiscated summer flounder and, at a minimum, secure two bids for purchase of the confiscated summer flounder from approved and licensed seafood buyers. The confiscated fish will be sold to the highest bidder and all funds derived from such sale shall be deposited for the Commonwealth pending court resolution of the charge of violating the possession limits established by this chapter. All of the collected funds will be returned to the accused upon a finding of innocence or forfeited to the Commonwealth upon a finding of guilty.

I. It shall be unlawful for a licensed seafood buyer or federally permitted seafood buyer to fail to contact the Marine Resources Commission Operation Station prior to a vessel

offloading summer flounder harvested outside of Virginia. The buyer shall provide to the Marine Resources Commission the name of the vessel, its captain, an estimate of the amount in pounds of summer flounder on board that vessel, and the anticipated or approximate offloading time. Once offloading of any vessel is complete and the weight of the landed summer flounder has been determined, the buyer shall contact the Marine Resources Commission Operations Station and report the vessel name and corresponding weight of summer flounder landed. It shall be unlawful for any person to offload from a boat or vessel for commercial purposes any summer flounder during the period of 9 p.m. to 7 a.m.

J. Any boat or vessel that has entered Virginia waters for safe harbor shall only offload summer flounder when the state that licenses that vessel requests to transfer quota to Virginia, in the amount that corresponds to that vessel's possession limit, and the commissioner agrees to accept that transfer of quota.

K. After any commercial harvest or landing quota as described in 4VAC20-620-30 has been attained and announced as such, any boat or vessel possessing summer flounder on board may enter Virginia waters for safe harbor but shall contact the Marine Resources Commission Operation Center in advance of such entry into Virginia waters.

L. When it is projected and announced that 85% of the allowable landings have been taken, it shall be unlawful to land summer flounder in Virginia, except as described in subsection A of this section.

M. It shall be unlawful for any person harvesting summer flounder outside of Virginia waters to possess aboard any vessel, in Virginia, any amount of summer flounder, once it has been projected and announced that 100% of the quota described in 4VAC20-620-30 A has been taken.

VA.R. Doc. No. R17-4968; Filed November 2, 2016, 3:09 p.m.

Final Regulation

REGISTRAR'S NOTICE: 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.

Title of Regulation: **4VAC20-720. Pertaining to Restrictions on Oyster Harvest (amending 4VAC20-720-15).**

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

Effective Date: November 2, 2016.

Agency Contact: Alicia Nelson, Fisheries Management, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-8155, or email alicia.nelson@mrc.virginia.gov.

Regulations

Summary:

The amendments clarify transfer eligibility of the oyster resource user fee.

4VAC20-720-15. Control date, license moratorium, transferability, and agents.

A. The commission hereby establishes July 1, 2014, as the control date for management of all public oyster fisheries in Virginia. Participation by any individual in any public oyster fishery after the control date may not be considered in the calculation or distribution of oyster fishing rights should entry limitations be established. Any individual entering the public oyster fishery after the control date will forfeit any right to future participation in the public oyster fishery should further entry limitations be established by the commission.

B. Beginning February 23, 2016, only individuals who have paid the oyster resource user fee described in clause (ii) of subsection A of § 28.2-541 of the Code of Virginia in previous years may pay that fee for the current year. Those individuals who are eligible to pay the oyster resource user fee described in clause (ii) of subsection A of § 28.2-541 of the Code of Virginia shall do so by April 30, 2017, in 2017 and by January 1 in subsequent years in order to maintain their eligibility.

C. Should the number of people eligible to pay the oyster resource user fee described in clause (ii) of subsection A of § 28.2-541 of the Code of Virginia in any given year fall below 600, a random drawing shall be held to award eligibility to pay that oyster resource user fee to individuals who were not previously eligible until the number of persons eligible to pay the fee reaches 600. Any Commercial Fisherman Registration Licensee may apply for the random drawing.

D. Any person eligible to pay the oyster resource user fee described in clause (ii) of subsection A of § 28.2-541 of the Code of Virginia, or such person's legal representative, may transfer the eligibility to pay such user fee, ~~provided to:~~

1. ~~The A transferee who~~ is the transferor's spouse, sibling, parent, child, grandparent, or grandchild and who possesses a current Commercial Fisherman Registration License and intends to participate in the public oyster fishery.

2. ~~The A transferee other than a person described in subdivision 1 of this subsection if the~~ transferor shall have ~~has~~ documented by mandatory reporting and buyers reports 40 days or more of public oyster harvest during the previous calendar year. ~~All transfers shall be documented on a form provided by Marine Resources Commission.~~

3. ~~In the case of death or incapacitation, the licensee may transfer such eligibility to an individual who meets the requirements found in subdivision 1 or 2 of this subsection.~~

All transfers under this subsection shall be documented on a form provided by the Marine Resources Commission.

E. Exceptions to subsection B of this section shall only apply to those individuals who previously paid the oyster resource user fee described in clause (ii) of subsection A of § 28.2-541 of the Code of Virginia and shall be based on documented medical hardships or active military leave that prevented the fisherman from fully satisfying the requirements of subsection B of this section.

F. No person shall serve as an agent for any public oyster gear licensee.

V.A.R. Doc. No. R17-4937; Filed November 2, 2016, 11:38 a.m.



TITLE 12. HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Emergency Regulation

Title of Regulation: **12VAC30-135. Demonstration Waiver Services (amending 12VAC30-135-400, 12VAC30-135-420, 12VAC30-135-430).**

Statutory Authority: § 32.1-325 of the Code of Virginia; § 1115 of the Social Security Act.

Effective Dates: October 28, 2016, through December 29, 2016.

Agency Contact: Victoria Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-6043, FAX (804) 786-1680, TTY (800) 343-0634, or email victoria.simmons@dmas.virginia.gov.

Preamble:

Section 2.2-4011 A of the Code of Virginia states that agencies may adopt regulations in emergency situations after the agency submits a written request stating the nature of the emergency and the Governor approves the emergency action. The Department of Medical Assistance Services (DMAS) submitted a request to the Governor stating in writing the nature of this emergency, and on October 28, 2016, the Governor specifically authorized this action to amend the previous emergency action for the Governor's Access Plan (GAP) Demonstration Waiver for Individuals with Serious Mental Illness, which was published in [31:10 VA.R. 864 January 12, 2015](#), and [31:23 VA.R. 2128 July 13, 2015](#), to be promulgated as an emergency action.

Item 306 XXX 1 b of Chapter 780 of the 2016 Acts of Assembly directed DMAS to amend the GAP Demonstration Waiver by increasing the household income level to 80% of the federal poverty level. The amendments conform the emergency regulation to this requirement.

Part III

Governor's Access Plan Demonstration Waiver for
Individuals with Serious Mental Illness**12VAC30-135-400. Establishment of program.**

A. The Commonwealth through the Department of Medical Assistance Services (DMAS), the single state Medicaid agency, establishes a § 1115 demonstration waiver, the Virginia Governor's Access Plan (GAP) for the Seriously Mentally Ill (SMI). With federal approval, Virginia will offer a limited yet targeted benefit package of services that builds on a successful model of using existing partnerships to provide and integrate basic medical and behavioral health care services for individuals who have a serious mental illness (SMI) and have incomes less than ~~60% or equal to 80%~~ of the federal poverty ~~limit (plus a 5.0% household income disregard)~~ level using the modified adjusted gross income eligibility methodology.

B. Enabling persons with SMI to access both behavioral health and primary health services will enhance the treatment they can receive, allow their care to be coordinated among providers, and potentially significantly decrease the severity of their condition. The three goals of this program are:

1. Improve access to health care for a segment of the uninsured population in Virginia that has significant behavioral and medical needs;
2. Improve health and behavioral health outcomes of demonstration participants; and
3. Serve as a bridge to closing the coverage gap for uninsured Virginians.

12VAC30-135-420. Administration; authority; waived provisions.

A. DMAS shall cover a targeted set of services as set forth in 12VAC30-135-450 for currently uninsured individuals who have diagnoses of serious mental illnesses with incomes ~~below 60% less than or equal to 80%~~ of the federal poverty ~~line level (FPL) (plus a 5.0% household income disregard)~~ using the modified adjusted gross income (MAGI) eligibility methodology. All individuals enrolled in this Medicaid demonstration project with incomes between 61% and 100% of the FPL as of May 15, 2015, who continue to meet other program eligibility rules shall maintain enrollment in the demonstration until their next eligibility renewal period or July 1, 2016, whichever comes first.

B. Consistent with § 1115 of the Social Security Act (42 USC § 1315), the department covers certain limited services specified in 12VAC30-135-450 for certain targeted individuals specified in 12VAC30-135-430.

C. The Secretary of the U.S. Department of Health and Human Resources has waived compliance for the department with the following for the purpose of this demonstration waiver program:

1. Consistent with § 1902(a)(10)(B) of the Act, the amount, duration, and scope of services covered in the State Plan

for Medical Assistance shall be waived. The department shall cover a specified set of benefits for the individuals who are determined to be eligible for this program.

2. Consistent with § 1902(a)(23)(A) of the Act, the participating individuals' freedom of choice of providers of services shall be waived for peer supports and GAP case management.

3. Consistent with § 1902(a)(23) of the Act, the services shall be provided by a different delivery system than otherwise used for full State Plan services for peer supports and GAP case management.

4. Consistent with § 1902(a)(4) of the Act, insofar as it incorporates 42 CFR 431.53 permitting the Commonwealth to waive providing nonemergency transportation to and from participating providers for eligible, participating individuals.

5. Consistent with § 1902(a)(35) of the Act, permitting the Commonwealth to waiver offering eligible, participating individuals retroactive eligibility for this demonstration program.

D. This demonstration program shall operate statewide.

E. This demonstration program shall operate for at least two years beginning January 2015 through January 2017 or until the Commonwealth implements an alternative plan to provide health care coverage to all individuals having incomes ~~up to 60% less than or equal to 80%~~ of the FPL using the MAGI eligibility methodology.

F. This demonstration program shall not affect or modify, or both, components of the Commonwealth's existing medical assistance or children's health insurance programs.

12VAC30-135-430. Individual eligibility; limitations.

A. The GAP eligibility determination process shall have two parts: (i) a determination of whether or not the individual meets the GAP SMI criteria and (ii) a determination of whether or not the individual meets the GAP financial and nonfinancial eligibility criteria.

1. A person may apply through Cover Virginia for GAP by phone or through a provider-assisted web portal.
2. If an individual is found not to meet GAP eligibility rules, either the GAP financial/nonfinancial criteria or the GAP SMI criteria, then the individual shall be sent an adverse determination letter with appeal rights. Such individuals shall be assessed and referred for eligibility through Medicaid, FAMIS MOMS, and the federal marketplace for private health insurance.

B. Individuals shall have a screening conducted by a DMAS-approved GAP screening entity for the determination of eligibility for GAP SMI services.

C. In order to be eligible for this program, individuals shall be assessed to determine whether their diagnosed condition is a serious mental illness. The serious mental illness shall be diagnosed according to criteria defined in the DSM-IV-TR or

Regulations

DSM-5. LMHPs, including LMHP-supervisees, LMHP-residents, and LMHP-residents in psychology, shall conduct the clinical screening required to determine the individual's diagnosis if one has not already been made. At least one of the following diagnoses shall be documented for the individual to be approved for GAP SMI services:

1. Schizophrenia spectrum disorders and other psychotic disorders with the exception of substance/medication induced psychotic disorders;
2. Major depressive disorder;
3. Bipolar and related disorders with the exception of cyclothymic disorder;
4. Post-traumatic stress disorder; or
5. Obsessive compulsive disorder, panic disorder, agoraphobia, anorexia nervosa, or bulimia nervosa.

D. In order to be eligible for this program, individuals shall meet at least one of the following criteria to reflect the duration of illness:

1. The individual is expected to require treatment and supportive services for the next 12 months;
2. The individual has undergone psychiatric treatment more intensive than outpatient care, such as crisis response services, alternative home care, partial hospitalization, or inpatient hospitalization for a psychiatric condition, more than once in his lifetime; or
3. The individual has experienced an episode of continuous, supportive residential care, other than hospitalization, for a period long enough to have significantly disrupted the normal living situation. A significant disruption of a normal living situation means the individual has been unable to maintain his housing or had difficulty maintaining his housing due to being in a supportive residential facility or program that was not a hospital. This includes group home placement as an adolescent and assisted living facilities but does not include living situations through the Department of Social Services.

E. In order to be eligible for this program, individuals shall demonstrate a significant level of impairment on a continuing or intermittent basis. There shall be evidence of severe and recurrent impairment resulting from mental illness. The impairment shall result in functional limitation in major life activities. Due to the mental illness, the person shall meet at least two of the following:

1. The person is either unemployed or employed in a sheltered setting or a supportive work situation, has markedly limited or reduced employment skills, or has a poor employment history;
2. The person requires public and family financial assistance to remain in his community;
3. The person has difficulty establishing or maintaining a personal social support system;

4. The person requires assistance in basic living skills such as personal hygiene, food preparation, or money management; or

5. The person exhibits inappropriate behavior that often results in intervention by the mental health or judicial system.

F. The individual shall require assistance to consistently access and to utilize needed medical or behavioral, or both, health services and supports due to the mental illness.

G. In addition, the individuals shall:

1. Be adults ages 21 through 64 years of age;
2. Be United States citizens or lawfully residing immigrants;
3. Be residents of the Commonwealth;
4. Be uninsured;
5. Be ineligible for any state or federal full benefits health insurance program including, but not necessarily limited to Medicaid, Children's Health Insurance Program (CHIP/FAMIS), Medicare, or TriCare Federal Military benefits;

6. Have household incomes ~~below 60%~~ less than or equal to 80% of the federal poverty level (FPL) ~~plus a 5.0% household income disregard using the modified adjusted gross income (MAGI) eligibility methodology~~, which shall be verified via pay stubs or other readily available and reliable electronic sources. All individuals enrolled in this Medicaid demonstration project with incomes between 61% and 100% of the FPL ~~(plus a 5.0% household income disregard)~~ using the MAGI eligibility methodology as of May 15, 2015, who continue to meet other program eligibility rules shall maintain enrollment in the demonstration until their next eligibility renewal period or July 1, 2016, whichever comes first. Pursuant to DMAS federal authority under the §1115 waiver, should expenditures for the GAP demonstration waiver compromise the program's budget neutrality, DMAS may amend the waiver to maintain budget neutrality by reducing income eligibility levels to below ~~60%~~ 80% of the FPL; and

7. Not be current residents of a long-term care facility, mental health facility, or penal institution.

H. Individuals who are enrolled in this GAP demonstration waiver program who require hospitalization shall not be disenrolled from the GAP demonstration waiver program during their hospitalization.

I. If a GAP-eligible individual secures Medicare or Medicaid/FAMIS MOMS coverage, his GAP program eligibility shall be terminated consistent with the effective date of the Medicare or Medicaid coverage. Individuals who gain other sources of health insurance shall not be disenrolled from the GAP demonstration waiver program during their 12

months of eligibility; however, in such instances, the GAP program shall be the payer of last resort.

J. DMAS or its contractor shall verify income data via existing electronic data sources, such as Virginia Employment Commission and TALX. Citizenship and identity shall be verified through the monthly file exchange between DMAS and the Social Security Administration. The individual's age, residency, and insurance status shall be verified through self-attestation. Applicants shall be permitted 90 days to resolve any citizenship discrepancies resulting from Social Security Administration matching process, in any of the information provided, and in the DMAS or the contractor verification process findings.

VA.R. Doc. No. R15-4171; Filed October 28, 2016, 4:52 p.m.

TITLE 19. PUBLIC SAFETY

DEPARTMENT OF STATE POLICE

Final Regulation

REGISTRAR'S NOTICE: The Department of State Police is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 B 6 of the Code of Virginia, which exempts agency action relating to customary military, naval, or police functions.

Title of Regulation: 19VAC30-70. Motor Vehicle Safety Inspection Rules and Regulations (amending 19VAC30-70-10).

Statutory Authority: § 46.2-1165 of the Code of Virginia.

Effective Date: November 15, 2016.

Agency Contact: Lt. Colonel Tracy Russillo, Agency Regulatory Coordinator, Department of State Police, P.O. Box 27472, Richmond, VA 23261-7472, telephone (804) 674-4606, FAX (804) 674-2936, or email tracy.russillo@vsp.virginia.gov.

Summary:

The amendments include (i) clarifying the use of inspection lanes and (ii) allowing inspection stations to maintain a copy of the regulations at the inspection site in either electronic or paper form.

Part II

Inspection Requirements

19VAC30-70-10. Official inspection station requirements.

A. Official inspection stations, except private appointments, shall be open at least eight hours of each normal business day, and shall be able to perform inspections 12 months throughout the year, except during illness of limited duration or normal vacation.

1. Normal business hours, Monday through Friday, are defined as an eight-hour period of time between 8 a.m. and 6 p.m.

2. Stations are not prohibited from performing inspections at times other than during normal business hours.

3. A station that advertises inspections beyond normal business hours shall be able to perform such inspections.

4. If a station desires to maintain business hours that are different from those defined in this section, written permission must be obtained from the safety officer and a sign setting forth the inspection hours must be posted conspicuously at the station where it can be observed by a person desiring to have a vehicle inspected.

B. At least one full-time safety inspector to perform inspections and one inspection lane meeting the minimum requirements shall be available for inspection at all times during the normal business day. All inspections must be made only at the locations and in the inspection lane approved by the Department of State Police. All stations shall have other lanes, bays, or areas in which repairs can be made so the inspection lane can remain available.

The designated inspection areas, including any location where customers are permitted to enter when submitting vehicles for inspection, must be kept clean, and free from excessive dirt, grease, and loose materials. If requested, customers presenting vehicles for inspection shall be allowed to observe the inspection process from a safe location designated by the station.

C. Inspection station facilities must be properly maintained and must present a businesslike appearance to the general public. Property adjacent to the inspection station that is owned or controlled by the station must be free of debris, litter, used parts and junk vehicles. Vehicles properly contained within fenced storage areas shall be deemed to comply with this requirement.

D. Inspections shall be performed on a first-come, first-served basis. "First-come, first-served" means a procedure whereby customers seeking an inspection shall be attended to in the order that they arrive to the station. Motorists shall not be required to make an appointment to obtain an inspection, except ~~that those~~ appointments required by subdivision A 12 of § 46.2-1158.01 of the Code of Virginia shall be made. ~~Businesses~~ Stations that take in ~~motorists'~~ vehicles for inspection at the beginning of the work day shall not be required to stop ~~the work already taken in inspecting those vehicles~~ to provide an inspection for a drive-in ~~motorist request~~, provided inspections are actually currently being performed at the time and will continue ~~through~~ throughout the day. Stations must maintain a procedure to validate when vehicles were brought to the station for inspection. Inspections shall begin concurrently with repair lanes during the station's normal business hours, without delay. Stations may suggest to motorists a timeframe of no greater than three hours during which it may be anticipated that an inspection

Regulations

may be provided. Stations shall cooperate fully with Department of State Police personnel regarding any issues detailed in this section, as with all other investigations.

Stations shall make every effort to keep the designated inspection lanes available. Stations with more than one repair bay shall not perform work in the designated inspection lanes when customers are waiting for an inspection. This will not apply to minor adjustments that require minimal time to perform. Stations shall not let vehicles occupy the designated inspection lanes while awaiting parts or customer authorization to complete the inspection pursuant to 19VAC30-70-60.

A station may inquire about accepting safety inspections by appointment. If the requirements are met, then the official inspection station may, in addition to having one lane for the first-come, first-served customers, also have a second inspection lane designated for customers who have made appointments for a designated time slot. An additional certified safety inspector shall be available to perform those inspections that are made by an appointment. If interested, stations should first contact their supervising trooper for specific requirements and guidelines.

E. Safety inspectors, managers who supervise inspection activities, and business owners, through participation in the Official Motor Vehicle Inspection Program, are representatives of the Department of State Police and should conduct themselves in a manner to avoid controversy in dealing with customers presenting vehicles for inspection. The use of profanity or verbal abuse directed at customers presenting their vehicles for inspection will be grounds for suspension from participation in the inspection program and will be considered a Class IV offense as set forth in 19VAC30-70-6.

Controversy that cannot be calmly resolved by the safety inspector, managers, and owners should be referred to the supervising trooper for handling.

F. The "Certificate of Appointment" must be framed under glass or clear plastic and posted in the customer waiting area where it can be observed and read by a person submitting a vehicle for inspection.

Inspection stations must have garage liability insurance in the amount of at least \$500,000 with an approved surplus lines carrier or insurance company licensed to write such insurance in this Commonwealth. This requirement shall not apply to inspection stations that only inspect their company-owned, government-owned, or leased vehicles.

G. The required "Official Inspection Procedure" sheet and the "Direct Inquiries" sheet furnished to each station must both be framed under glass or clear plastic and posted conspicuously in the customer waiting area where they can be observed and read by a person submitting a vehicle for inspection.

H. The poster designating the station as an official inspection station shall be posted in a prominent location, outside or visible outside the station, to alert passersby that inspection services are available. Private inspection stations shall not display an outside poster.

I. Each official inspection station shall display a list with the ~~name(s)~~ names and license expiration ~~date~~ dates of all employees licensed to inspect at that station, adjacent to the certificate of appointment. The Official Motor Vehicle Safety Inspection Manual will be kept at or near the point of inspection for ready reference. The manual may be kept in written or electronic form.

J. Important -- Any change in name, ownership or location of any official inspection station cancels the appointment of that station, and the Department of State Police must be notified immediately. The department shall be notified when an official inspection station discontinues operation.

K. All inspection supplies, inspection binders and manual, unused stickers, duplicates of certificates issued, bulletins and other forms are the property of the Department of State Police and must be safeguarded against loss.

L. Inspection supplies issued to an inspection station can be used only by that station and are not to be loaned or reissued to any other station with the exception of inserts.

1. Stations must maintain a sufficient supply of approval stickers, trailer and motorcycle approval stickers, rejection stickers and inserts. When reordering supplies, station ~~owners/managers~~ owners or managers shall request sufficient supplies to sustain their business for at least six months. However, it is realized that a few stations will not be able to comply with the six-month requirement since there is a maximum of 100 books per order limit. Also, when ordering supplies, the following information should be considered so that the station does not order an excessive amount of supplies: each book of approval stickers contains 25 stickers, the rejection book contains 50 stickers, the month inserts are packaged in strips of 50 each, and trailer and motorcycle decals are five per strip. In December of each year, a supply of year inserts will be shipped to each station based on ~~their~~ the station's previous year's usage. In November, each station shall check its stock of month inserts and order what is needed for the months of January through June. In May, the same should be done for the months of July through December.

2. Inspection stations that exhaust their supply of approval stickers, trailer and motorcycle approval stickers, rejection stickers, and inserts shall immediately stop performing new inspections and contact their supervising trooper or the nearest Safety Division Area Office.

M. All losses of stickers must be reported immediately to the supervising inspection trooper or the nearest Safety Division Area Office.

N. Every precaution against the loss of stickers must be taken. If the loss occurs through carelessness or neglect, a suspension of the station may result.

O. Manuals, bulletins, other regulations and lists of approved equipment must be available at all times for reference and may be kept in written or electronic form. ~~Revisions to the Motor Vehicle Safety Inspection Manual will be sent to each station electronically through the MVIP system. Revisions to the inspection manual must be inserted in the manual at the proper location promptly after being received by the inspection station. Bulletins of temporary interest and pages of bulletins containing the synopsis of manual revisions will be retained in the front of each station's inspection manual for 24 months. Each safety inspector shall review the material contained in each inspection bulletin and manual revision within 15 days of its receipt. The safety inspector shall certify that the revisions have been reviewed by signing his name and placing the date reviewed by the signature on the bottom or reverse side of the bulletin or manual revision cover sheet.~~ Station management shall be responsible to see that each safety inspector is familiar with all bulletins and manual revisions and shall be required to furnish evidence to the department that all bulletins and manual revisions have been reviewed by each licensed inspector.

~~A copy of the diagram drawn by the investigating trooper, showing the approved inspection lane or lanes, will be inserted in a plastic page protector and inserted as the last page of the official inspection manual at each official inspection station. The name of the station and the date will be inserted in the top right corner maintained for review and kept available with the station's inspection supplies.~~

P. Private appointment may be made of company stations or government stations that own and operate a minimum of 20 vehicles and they may inspect only company-owned or government-owned vehicles respectively. When authorized by the department, they may inspect vehicles of a wholly-owned subsidiary or leased vehicles.

1. A private station may perform inspections during each month of the year or may elect to inspect only during certain designated months.

2. A private station not electing to inspect vehicles every month of the year that finds it necessary to inspect a vehicle during a month other than those selected for inspection may issue a sticker to the vehicle from the nearest past inspection month.

Q. All official inspection station owners, managers, and certified safety inspectors shall comply with the Virginia inspection laws and the inspection rules and regulations and will adhere to all instructions given by the supervising trooper or the Safety Division. Reports of violations will be investigated and, if found to be valid, may result in the suspension of the station, suspension of the inspector, possible court action, or other appropriate action, or any

combination of these actions. Repeated violations or serious violations may result in a revocation of the station appointment by the superintendent.

R. The arrest of any person associated with the inspection program for a criminal offense of a nature that would tend to immediately reflect upon the integrity and reputation of the Department of State Police may be grounds for an immediate suspension and the conviction for such an offense may result in a revocation of the station's appointment.

S. When a station has been suspended or revoked, it must release to an employee of the Department of State Police all inspection supplies, posters, and papers including the certificate of appointment. Failure to do so is a violation of § 46.2-1172 of the Code of Virginia.

T. The authority of the superintendent to suspend the designation or appointment of an official inspection station as provided in § 46.2-1163 of the Code of Virginia, or to suspend the certification of an inspector designated to perform inspections at an official inspection station, and, in keeping with the provisions of § 46.2-1166 of the Code of Virginia, is hereby delegated to any of the following supervisory ranks of the Department of State Police: Lieutenant Colonel, Major, Captain, Lieutenant, First Sergeant and Sergeant.

U. Each station must purchase and keep in proper operating condition the following equipment: computer, printer, internet connection, paper hole punch, black ball point pen or pens or black marker or markers, sticker scraper with replacement razor blades, tire tread depth gauge, amp meter, headlight and auxiliary lamp adjustment tools, 12" ruler, 25' measuring tape, torque wrench or torque sticks, brake pads/shoes/disc/drum measuring device, dial indicator, micrometer, pry bars, roller jack (at least 4-ton), and an approved type optical headlight aiming device. Each station that requests an additional inspection lane that is not in close proximity to the originally approved inspection lane must purchase an additional approved headlight machine for each lane that meets the minimum requirements. Stations are required to have one of the following headlight aiming devices effective January 1, 2013: the Hopkins Vision1, Hopkins Vision 100, American Aimers Vision 100, American Aimers Vision 2 Pro, or the Symtech (former L.E.T.) HBA-5, PLA-11, and PLA-12. This shall not apply to "trailer-only" inspection stations.

VA.R. Doc. No. R17-4923; Filed October 26, 2016, 7:03 a.m.

Final Regulation

REGISTRAR'S NOTICE: The Department of State Police is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 B 6 of the Code of Virginia, which exempts agency action relating to customary military, naval, or police functions.

Regulations

Title of Regulation: **19VAC30-110. Regulations Governing the Creation of a Criminal Firearms Clearinghouse (repealing 19VAC30-110-10 through 19VAC30-110-70).**

Statutory Authority: §§ 9.1-102 and 52-25.1 of the Code of Virginia.

Effective Date: November 15, 2016.

Agency Contact: Kirk Marlowe, Bureau of Administrative and Support Services, Department of State Police, P.O. Box 27472, Richmond, VA 23261-7472, telephone (804) 674-4606, FAX (804) 674-2936, or email kirk.marlowe@vsp.virginia.gov.

Summary:

Chapter 214 of the 2016 Acts of Assembly replaced the requirement that law-enforcement agencies report information regarding confiscated firearms to the Department of State Police with a requirement that such information be reported to a firearms tracing system maintained by the U.S. Department of Justice. In accordance with Chapter 214, this regulatory action repeals 19VAC30-110, which contains the regulatory requirements regarding reporting to the Department of State Police. A new chapter, 19VAC30-115 is being adopted in a separate action to implement reporting to the U.S. Department of Justice.

VA.R. Doc. No. R17-4913; Filed October 26, 2016, 7:04 a.m.

Final Regulation

REGISTRAR'S NOTICE: The Department of State Police is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 B 6 of the Code of Virginia, which exempts agency action relating to customary military, naval, or police functions.

Title of Regulation: **19VAC30-115. Reporting and Tracing Firearms Confiscated or Recovered by Law-Enforcement Agencies (adding 19VAC30-115-10).**

Statutory Authority: § 52-25.1 of the Code of Virginia.

Effective Date: November 15, 2016.

Agency Contact: Kirk Marlowe, Bureau of Administrative and Support Services, Department of State Police, P.O. Box 27472, Richmond, VA 23261-7472, telephone (804) 674-4606, FAX (804) 674-2936, or email kirk.marlowe@vsp.virginia.gov.

Summary:

Chapter 214 of the 2016 Acts of Assembly replaced the requirement that law-enforcement agencies report information regarding confiscated firearms to the Department of State Police with a requirement that such information be reported to a firearms tracing system maintained by the U.S. Department of Justice. In accordance with Chapter 214, this regulatory action promulgates 19VAC30-115 to implement reporting to the U.S. Department of Justice. In a separate regulatory action, the department is repealing 19VAC30-110, which

contains the regulatory requirements regarding reporting to the Department of State Police.

CHAPTER 115
REPORTING AND TRACING FIREARMS
CONFISCATED OR RECOVERED BY LAW-
ENFORCEMENT AGENCIES

19VAC30-115-10. Reporting.

A. A law-enforcement agency of the Commonwealth or of a political subdivision of the Commonwealth shall report information regarding firearms seized, forfeited, found, or otherwise coming into the law-enforcement agency's possession that are believed to have been used in the commission of a crime to the National Tracing Center of the Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

B. A law-enforcement agency shall request, concurrent with reporting the information pursuant to subsection A of this section, a trace of the reported firearm from the National Tracing Center.

C. A law-enforcement agency shall make the report and request the trace required by subsections A and B of this section forthwith upon taking possession of the firearm. If making the report and request could jeopardize an ongoing criminal investigation, the law-enforcement agency shall make the report and request prior to the conclusion of the investigation.

D. To comply with subsections A and B of this section, a law-enforcement agency may report information or request a trace by:

1. Using eTrace, which is the paperless firearms trace submission system of the National Tracing Center (<https://www.atf.gov/firearms/national-tracing-center>); or
2. Completing and submitting a National Tracing Center Trace Request form (ATF E-form 3312.1).

NOTICE: The following form used in administering the regulation was filed by the agency. The form is not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name of the form to access it. The form is also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

FORMS (19VAC30-115)

[National Tracing Center Trace Request, ATF E-Form 3312.1, OMB No. 1140-0043 \(rev. 8/2016\)](#)

VA.R. Doc. No. R17-4914; Filed October 26, 2016, 7:04 a.m.



TITLE 21. SECURITIES AND RETAIL FRANCHISING

STATE CORPORATION COMMISSION

Proposed Regulation

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

Titles of Regulations: 21VAC5-20. **Broker-Dealers, Broker-Dealer Agents and Agents of the Issuer (amending 21VAC5-20-280).**

21VAC5-45. Federal Covered Securities (adding 21VAC5-45-30).

Statutory Authority: §§ 12.1-13 and 13.1-523 of the Code of Virginia.

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

Public Comment Deadline: December 1, 2016.

Agency Contact: Timothy O'Brien, Manager, Securities Division, State Corporation Commission, Tyler Building, 9th Floor, P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9415, FAX (804) 371-9911, or email timothy.o'brien@scc.virginia.gov.

Summary:

The proposed amendments (i) provide for a notice filing for a securities issuer that is using federal Regulation A for offerings up to \$50 million in a 12-month period, which allows monitoring of the offerings; (ii) require the filing of a short form with basic information about the issuer and the offering; and (iii) establish a filing fee of \$500 and a renewal fee of \$250. The proposed amendments also clarify that high quality foreign issuers are not subject to the prohibited business conduct rule in subdivision D 6 of 21VAC5-20-280.

AT RICHMOND, OCTOBER 14, 2016

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. SEC-2016-00051

Ex Parte: In the matter of
Adopting a Revision to the Rules
Governing the Virginia Securities Act

ORDER TO TAKE NOTICE

Section 12.1-13 of the Code of Virginia ("Code") provides that the State Corporation Commission ("Commission") shall have the power to promulgate rules and regulations in the enforcement and administration of all laws within its

jurisdiction. Section 13.1-523 of the Virginia Securities Act ("Act"), § 13.1-501 et seq. of the Code, provides that the Commission may issue any rules and regulations necessary or appropriate for the administration and enforcement of the Act.

The rules and regulations issued by the Commission pursuant to the Act are set forth in Title 21 of the Virginia Administrative Code. A copy also may be found at the Commission's website, www.scc.virginia.gov/case.

Proposed Revision to Chapter 45 of 21 VAC 5-45 - Notice Filing for Issuers Using Federal Regulation A-Tier 2 Exemption Offerings:

The proposed amendment to Chapter 45 by adding Section 30 (21 VAC 5-45-30) provides for a notice filing for securities issuers that are using federal Regulation A ("Regulation A") for offerings up to \$50 million in a 12-month period. This amendment will allow Virginia to monitor these offerings. The proposed notice filing exemption follows a uniform exemption developed by the states' trade association, the North American Securities Administrators Association, Inc. ("NASAA"), to use for these notice filings. NASAA developed the model rule in large part due to a rule recently implemented in the state of Washington.

The proposed rule requires the filing of a short form with basic information about the issuer and the offering. Because Regulation A permits the offering to continue past the initial period of 12 months in some cases, an issuer would be required to renew the notice filing in order to continue to offer and sell their securities in Virginia. The proposed filing fees are \$500 for an initial filing and a \$250 renewal fee.

Proposed Revision to Chapter 20 of 21 VAC 5-20-280 - the Prohibited Business Conduct Rules Governing Broker-dealers, as it Applies to Foreign Issuers:

The Division of Securities and Retail Franchising (the "Division") was made aware by the Securities and Financial Markets Association ("SIFMA") and the Financial Services Institute ("FSI"), both of which are securities trade associations, that one of the prohibited business conduct rules that was intended to cover broker-dealer activities in the offer and sale of penny stock was creating questions regarding the issuance of securities by certain world class foreign issuers.

The Commission never intended that these high quality foreign issuers be subject to Subsection D 6 of 21 VAC 5-20-280; therefore, the Division is requesting that the Commission consider a revision to the subsection to make it clear that such companies do not fall under this requirement.

The Division recommends that the Commission consider adoption of the proposed revisions. The Division also recommends that a hearing be held only if requested by those interested parties who specifically indicate that a hearing is necessary and the reasons therefore.

Interested parties may request a copy of the proposed revisions from the Division by telephone, regular mail or e-mail request, and a copy of the proposed revisions also can be

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found at the Division's website: www.scc.virginia.gov/srf. Any comments to the proposed rules must be received by December 1, 2016.

Accordingly, IT IS THEREFORE ORDERED THAT:

(1) The proposed revisions are appended hereto and made a part of the record herein.

(2) On or before December 1, 2016, comments or requests for hearing on the proposed revisions must be submitted in writing to Joel H. Peck, Clerk of the Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218. Requests for hearing shall state why a hearing is necessary and why the issues cannot adequately be addressed in written comments. All correspondence shall reference Case No. SEC-2016-00051. Interested persons desiring to submit comments electronically may do so by following the instructions available at the Commission's website: <http://www.scc.virginia.gov/case>.

(3) The proposed revisions shall be posted on the Commission's website at <http://www.scc.virginia.gov/case> and on the Division's website at <http://www.scc.virginia.gov/srf>. Interested persons also may request a copy of the proposed revisions from the Division by telephone, regular mail, or e-mail.

AN ATTESTED COPY HEREOF, together with a copy of the proposed revisions, shall be sent to the Registrar of Regulations for publication in the Virginia Register of Regulations.

AN ATTESTED COPY HEREOF shall be sent to the Director of the Division of Securities and Retail Franchising, who shall forthwith provide notice of this Order via U.S. mail or e-mail a copy of this Order to any interested persons as he may designate.

21VAC5-20-280. Prohibited business conduct.

A. Every broker-dealer is required to observe high standards of commercial honor and just and equitable principles of trade in the conduct of its business. The acts and practices described below in this subsection are considered contrary to such standards and may constitute grounds for denial, suspension, or revocation of registration or such other action authorized by the Act. No broker-dealer who is registered or required to be registered shall:

1. Engage in a pattern of unreasonable and unjustifiable delays in the delivery of securities purchased by any of its customers or in the payment upon request of free credit balances reflecting completed transactions of any of its customers, or take any action that directly or indirectly interferes with a customer's ability to transfer his account; provided that the account is not subject to any lien for moneys owed by the customer or other bona fide claim, including, but not limited to, seeking a judicial order or decree that would bar or restrict the submission, delivery or acceptance of a written request from a customer to transfer his account;

2. Induce trading in a customer's account which is excessive in size or frequency in view of the financial resources and character of the account;

3. Recommend to a customer the purchase, sale or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the customer. The reasonable basis to recommend any such transaction to a customer shall be based upon the risks associated with a particular security, and the information obtained through the diligence and inquiry of the broker-dealer to ascertain the customer's investment profile. A customer's investment profile includes, but is not limited to, the customer's investment objectives, financial situation, risk tolerance and needs, tax status, age, other investments, investment experience, investment time horizon, liquidity needs, and any other relevant information known by the broker-dealer or of which the broker-dealer is otherwise made aware in connection with such recommendation;

4. Execute a transaction on behalf of a customer without authority to do so or, when securities are held in a customer's account, fail to execute a sell transaction involving those securities as instructed by a customer, without reasonable cause;

5. Exercise any discretionary power in effecting a transaction for a customer's account without first obtaining written discretionary authority from the customer, unless the discretionary power relates solely to the time or price for the execution of orders;

6. Execute any transaction in a margin account without securing from the customer a properly executed written margin agreement promptly after the initial transaction in the account, or fail, prior to or at the opening of a margin account, to disclose to a noninstitutional customer the operation of a margin account and the risks associated with trading on margin at least as comprehensively as required by FINRA Rule 2264;

7. Fail to segregate customers' free securities or securities held in safekeeping;

8. Hypothecate a customer's securities without having a lien thereon unless the broker-dealer secures from the customer a properly executed written consent promptly after the initial transaction, except as permitted by Rules of the SEC;

9. Enter into a transaction with or for a customer at a price not reasonably related to the current market price of a security or receiving an unreasonable commission or profit;

10. Fail to furnish to a customer purchasing securities in an offering, no later than the date of confirmation of the transaction, either a final prospectus or a preliminary prospectus and an additional document, which together include all information set forth in the final prospectus,

either by (i) hard copy prospectus delivery or (ii) electronic prospectus delivery;

11. Introduce customer transactions on a "fully disclosed" basis to another broker-dealer that is not exempt under § 13.1-514 B 6 of the Act;

12. a. Charge unreasonable and inequitable fees for services performed, including miscellaneous services such as collection of moneys due for principal, dividends or interest, exchange or transfer of securities, appraisals, safekeeping, or custody of securities and other services related to its securities business;

b. Charge a fee based on the activity, value or contents (or lack thereof) of a customer account unless written disclosure pertaining to the fee, which shall include information about the amount of the fee, how imposition of the fee can be avoided and any consequence of late payment or nonpayment of the fee, was provided no later than the date the account was established or, with respect to an existing account, at least 60 days prior to the effective date of the fee;

13. Offer to buy from or sell to any person any security at a stated price unless the broker-dealer is prepared to purchase or sell at the price and under such conditions as are stated at the time of the offer to buy or sell;

14. Represent that a security is being offered to a customer "at a market" or a price relevant to the market price unless the broker-dealer knows or has reasonable grounds to believe that a market for the security exists other than that made, created or controlled by the broker-dealer, or by any person for whom he is acting or with whom he is associated in the distribution, or any person controlled by, controlling or under common control with the broker-dealer;

15. Effect any transaction in, or induce the purchase or sale of, any security by means of any manipulative, deceptive or fraudulent device, practice, plan, program, design or contrivance, which may include but not be limited to:

a. Effecting any transaction in a security which involves no change in the beneficial ownership thereof;

b. Entering an order or orders for the purchase or sale of any security with the knowledge that an order or orders of substantially the same size, at substantially the same time and substantially the same price, for the sale of any security, has been or will be entered by or for the same or different parties for the purpose of creating a false or misleading appearance of active trading in the security or a false or misleading appearance with respect to the market for the security; however, nothing in this subdivision shall prohibit a broker-dealer from entering bona fide agency cross transactions for its customers; or

c. Effecting, alone or with one or more other persons, a series of transactions in any security creating actual or apparent active trading in the security or raising or

depressing the price of the security, for the purpose of inducing the purchase or sale of the security by others;

16. Guarantee a customer against loss in any securities account of the customer carried by the broker-dealer or in any securities transaction effected by the broker-dealer with or for the customer;

17. Publish or circulate, or cause to be published or circulated, any notice, circular, advertisement, newspaper article, investment service, or communication of any kind which purports to report any transaction as a purchase or sale of any security unless the broker-dealer believes that the transaction was a bona fide purchase or sale of the security; or which purports to quote the bid price or asked price for any security, unless the broker-dealer believes that the quotation represents a bona fide bid for, or offer of, the security;

18. Use any advertising or sales presentation in such a fashion as to be deceptive or misleading. An example of such practice would be a distribution of any nonfactual data, material or presentation based on conjecture, unfounded or unrealistic claims or assertions in any brochure, flyer, or display by words, pictures, graphs or otherwise designed to supplement, detract from, supersede or defeat the purpose or effect of any prospectus or disclosure;

19. Fail to make reasonably available upon request to any person expressing an interest in a solicited transaction in a security, not listed on a registered securities exchange or quoted on an automated quotation system operated by a national securities association approved by regulation of the commission, a balance sheet of the issuer as of a date within 18 months of the offer or sale of the issuer's securities and a profit and loss statement for either the fiscal year preceding that date or the most recent year of operations, the names of the issuer's proprietor, partners or officers, the nature of the enterprises of the issuer and any available information reasonably necessary for evaluating the desirability or lack of desirability of investing in the securities of an issuer. All transactions in securities described in this subdivision shall comply with the provisions of § 13.1-507 of the Act;

20. Fail to disclose that the broker-dealer is controlled by, controlling, affiliated with or under common control with the issuer of any security before entering into any contract with or for a customer for the purchase or sale of the security, the existence of control to the customer, and if disclosure is not made in writing, it shall be supplemented by the giving or sending of written disclosure at or before the completion of the transaction;

21. Fail to make a bona fide public offering of all of the securities allotted to a broker-dealer for distribution, whether acquired as an underwriter, a selling group member, or from a member participating in the distribution as an underwriter or selling group member;

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22. Fail or refuse to furnish a customer, upon reasonable request, information to which the customer is entitled, or to respond to a formal written request or complaint;
23. Fail to clearly and separately disclose to its customer, prior to any security transaction, providing investment advice for compensation or any materially related transaction that the customer's funds or securities will be in the custody of an investment advisor or contracted custodian, in a manner that does not provide Securities Investor Protection Corporation protection, or equivalent third-party coverage over the customer's assets;
24. Market broker-dealer services that are associated with financial institutions in a manner that is misleading or confusing to customers as to the nature of securities products or risks;
25. In transactions subject to breakpoints, fail to:
- Utilize advantageous breakpoints without reasonable basis for their exclusion;
 - Determine information that should be recorded on the books and records of a member or its clearing firm, which is necessary to determine the availability and appropriateness of breakpoint opportunities; or
 - Inquire whether the customer has positions or transactions away from the member that should be considered in connection with the pending transaction and apprise the customer of the breakpoint opportunities;
26. Use a certification or professional designation in connection with the offer, sale, or purchase of securities that indicates or implies that the user has special certification or training in advising or servicing senior citizens or retirees in such a way as to mislead any person.
- The use of such certification or professional designation includes, but is not limited to, the following:
 - Use of a certification or designation by a person who has not actually earned or is otherwise ineligible to use such certification or designation;
 - Use of a nonexistent or self-conferred certification or professional designation;
 - Use of a certification or professional designation that indicates or implies a level of occupational qualifications obtained through education, training, or experience that the person using the certification or professional designation does not have; or
 - Use of a certification or professional designation that was obtained from a designating or certifying organization that:
 - Is primarily engaged in the business of instruction in sales or marketing;
 - Does not have reasonable standards or procedures for assuring the competency of its designees or certificants;
 - Does not have reasonable standards or procedures for monitoring and disciplining its designees or certificants for improper or unethical conduct; or
 - Does not have reasonable continuing education requirements for its designees or certificants in order to maintain the designation or certificate.
 - There is a rebuttable presumption that a designating or certifying organization is not disqualified solely for purposes of subdivision 26 a (4) of this subsection, when the organization has been accredited by:
 - The American National Standards Institute;
 - The Institute for Credentialing Excellence (formerly the National Commission for Certifying Agencies); or
 - An organization that is on the ~~United States~~ U.S. Department of Education's list entitled "Accrediting Agencies Recognized for Title IV Purposes" and the designation or credential issued therefrom does not primarily apply to sales or marketing.
 - In determining whether a combination of words (or an acronym standing for a combination of words) constitutes a certification or professional designation indicating or implying that a person has special certification or training in advising or servicing senior citizens or retirees, factors to be considered shall include:
 - Use of one or more words such as "senior," "retirement," "elder," or like words, combined with one or more words such as "certified," "chartered," "adviser," "specialist," "consultant," "planner," or like words, in the name of the certification or professional designation; and
 - The manner in which those words are combined.
 - For purposes of this section, a certification or professional designation does not include a job title within an organization that is licensed or registered by a state or federal financial services regulatory agency when that job title:
 - Indicates seniority within the organization; or
 - Specifies an individual's area of specialization within the organization.
- For purposes of this subdivision d, "financial services regulatory agency" includes, but is not limited to, an agency that regulates broker-dealers, investment advisers, or investment companies as defined under § 3 (a)(1) of the Investment Company Act of 1940 (15 USC § 80a-3(a)(1)).
- Nothing in this regulation shall limit the commission's authority to enforce existing provisions of law;
27. Represent that securities will be listed or that application for listing will be made on a securities exchange or the National Association of Securities Dealers Automated Quotations (NASDAQ) system or other quotation system without reasonable basis in fact for the representation;

28. Falsify or alter so as to make false or misleading any record or document or any information provided to the commission;

29. Negotiate, facilitate, or otherwise execute a transaction on behalf of an investor involving securities issued by a third party pursuant to a claim for exemption under subsection B of § 13.1-514 of the Act unless the broker-dealer intends to report the securities owned and the value of such securities on at least a quarterly basis to the investor;

30. Offer or sell securities pursuant to a claim for exemption under subsection B of § 13.1-514 of the Act without having first verified the information relating to the securities offered or sold, which shall include, but not be limited to, ascertaining the risks associated with investing in the respective security;

31. Allow any person to represent or utilize its name as a trading platform without conspicuously disclosing the name of the registered broker-dealer in effecting or attempting to effect purchases and sales of securities; or

32. Engage in any conduct that constitutes a dishonest or unethical practice including, but not limited to, forgery, embezzlement, nondisclosure, incomplete disclosure or material omissions or untrue statements of material facts, manipulative or deceptive practices, or fraudulent course of business.

B. Every agent is required to observe high standards of commercial honor and just and equitable principles of trade in the conduct of his business. The acts and practices described below in this subsection are considered contrary to such standards and may constitute grounds for denial, suspension, or revocation of registration or such other action authorized by the Act. No agent who is registered or required to be registered shall:

1. Engage in the practice of lending or borrowing money or securities from a customer, or acting as a custodian for money, securities or an executed stock power of a customer;

2. Effect any securities transaction not recorded on the regular books or records of the broker-dealer which the agent represents, unless the transaction is authorized in writing by the broker-dealer prior to execution of the transaction;

3. Establish or maintain an account containing fictitious information in order to execute a transaction which would otherwise be unlawful or prohibited;

4. Share directly or indirectly in profits or losses in the account of any customer without the written authorization of the customer and the broker-dealer which the agent represents;

5. Divide or otherwise split the agent's commissions, profits or other compensation from the purchase or sale of securities in this ~~state~~ Commonwealth with any person not

also registered as an agent for the same broker-dealer, or for a broker-dealer under direct or indirect common control;

6. Engage in conduct specified in subdivision A 2, 3, 4, 5, 6, 10, 15, 16, 17, 18, 23, 24, 25, 26, 28, 30, 31, or 32 of this section;

7. Fail to comply with the continuing education requirements under 21VAC5-20-150 C; or

8. Hold oneself out as representing any person other than the broker-dealer with whom the agent is registered and, in the case of an agent whose normal place of business is not on the premises of the broker-dealer, failing to conspicuously disclose the name of the broker-dealer for whom the agent is registered when representing the dealer in effecting or attempting to effect the purchases or sales of securities.

C. No person shall publish, give publicity to, or circulate any notice, circular, advertisement, newspaper article, letter, investment service or communication which, though not purporting to offer a security for sale, describes the security, for a consideration received or to be received, directly or indirectly, from an issuer, underwriter, or dealer, without fully disclosing the receipt, whether past or prospective, of such consideration and the amount thereof.

D. The purpose of this subsection is to identify practices in the securities business that are generally associated with schemes to manipulate and to identify prohibited business conduct of broker-dealers or sales agents who are registered or required to be registered.

1. Entering into a transaction with a customer in any security at an unreasonable price or at a price not reasonably related to the current market price of the security or receiving an unreasonable commission or profit.

2. Contradicting or negating the importance of any information contained in a prospectus or other offering materials with intent to deceive or mislead or using any advertising or sales presentation in a deceptive or misleading manner.

3. In connection with the offer, sale, or purchase of a security, falsely leading a customer to believe that the broker-dealer or agent is in possession of material, nonpublic information that would affect the value of the security.

4. In connection with the solicitation of a sale or purchase of a security, engaging in a pattern or practice of making contradictory recommendations to different investors of similar investment objective for some to sell and others to purchase the same security, at or about the same time, when not justified by the particular circumstances of each investor.

5. Failing to make a bona fide public offering of all the securities allotted to a broker-dealer for distribution by, among other things, (i) transferring securities to a

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customer, another broker-dealer, or a fictitious account with the understanding that those securities will be returned to the broker-dealer or its nominees or (ii) parking or withholding securities.

~~6. Although nothing in this subsection precludes a. In addition to the application of the general anti-fraud provisions against anyone for practices similar in nature to the practices discussed below in this subdivision 6, the following subdivisions a (1) through f (6) specifically apply only in connection with the solicitation of a purchase or sale of over the counter (OTC) unlisted non-NASDAQ equity securities except those exempt from registration under 21VAC5-40-50:~~

~~a. (1) Failing to advise the customer, both at the time of solicitation and on the confirmation, of any and all compensation related to a specific securities transaction to be paid to the agent including commissions, sales charges, or concessions.~~

~~b. (2) In connection with a principal transaction, failing to disclose, both at the time of solicitation and on the confirmation, a short inventory position in the firm's account of more than 3.0% of the issued and outstanding shares of that class of securities of the issuer; however, subdivision 6 of this subsection shall apply only if the firm is a market maker at the time of the solicitation.~~

~~c. (3). Conducting sales contests in a particular security.~~

~~d. (4) After a solicited purchase by a customer, failing or refusing, in connection with a principal transaction, to promptly execute sell orders.~~

~~e. (5) Soliciting a secondary market transaction when there has not been a bona fide distribution in the primary market.~~

~~f. (6) Engaging in a pattern of compensating an agent in different amounts for effecting sales and purchases in the same security.~~

~~b. Although subdivisions D 6 a (1) through (6) of this section do not apply to OTC unlisted non-NASDAQ equity securities exempt from registration under 21VAC5-40-50, nothing in this subsection precludes application of the general anti-fraud provisions against anyone for practices similar in nature to the practices discussed in subdivisions D 6 a (1) through (6) of this section in connection with such securities.~~

7. Effecting any transaction in, or inducing the purchase or sale of, any security by means of any manipulative, deceptive, or other fraudulent device or contrivance including but not limited to the use of boiler room tactics or use of fictitious or nominee accounts.

8. Failing to comply with any prospectus delivery requirements promulgated under federal law or the Act.

9. In connection with the solicitation of a sale or purchase of an OTC unlisted non-NASDAQ security, failing to promptly provide the most current prospectus or the most

recently filed periodic report filed under § 13 of the Securities Exchange Act when requested to do so by a customer.

10. Marking any order tickets or confirmations as unsolicited when in fact the transaction was solicited.

11. For any month in which activity has occurred in a customer's account, but in no event less than every three months, failing to provide each customer with a statement of account with respect to all OTC non-NASDAQ equity securities in the account, containing a value for each such security based on the closing market bid on a date certain; however, this subdivision shall apply only if the firm has been a market maker in the security at any time during the month in which the monthly or quarterly statement is issued.

12. Failing to comply with any applicable provision of the FINRA Rules or any applicable fair practice, privacy, or ethical standard promulgated by the SEC or by a self-regulatory organization approved by the SEC.

13. In connection with the solicitation of a purchase or sale of a designated security:

a. Failing to disclose to the customer the bid and ask price, at which the broker-dealer effects transactions with individual, retail customers, of the designated security as well as its spread in both percentage and dollar amounts at the time of solicitation and on the trade confirmation documents; or

b. Failing to include with the confirmation, the notice disclosure contained under 21VAC5-20-285, except the following shall be exempt from this requirement:

(1) Transactions in which the price of the designated security is \$5.00 or more, exclusive of costs or charges; however, if the designated security is a unit composed of one or more securities, the unit price divided by the number of components of the unit other than warrants, options, rights, or similar securities must be \$5.00 or more, and any component of the unit that is a warrant, option, right, or similar securities, or a convertible security must have an exercise price or conversion price of \$5.00 or more.

(2) Transactions that are not recommended by the broker-dealer or agent.

(3) Transactions by a broker-dealer (i) whose commissions, commission equivalents, and mark-ups from transactions in designated securities during each of the preceding three months, and during 11 or more of the preceding 12 months, did not exceed 5.0% of its total commissions, commission-equivalents, and mark-ups from transactions in securities during those months; and (ii) who has not executed principal transactions in connection with the solicitation to purchase the designated security that is the subject of the transaction in the preceding 12 months.

(4) Any transaction or transactions that, upon prior written request or upon its own motion, the commission conditionally or unconditionally exempts as not encompassed within the purposes of this section.

c. For purposes of this section, the term "designated security" means any equity security other than a security:

(1) Registered, or approved for registration upon notice of issuance, on a national securities exchange and makes transaction reports available pursuant to 17 CFR 11Aa3-1 under the Securities Exchange Act of 1934;

(2) Authorized, or approved for authorization upon notice of issuance, for quotation in the NASDAQ system;

(3) Issued by an investment company registered under the Investment Company Act of 1940;

(4) That is a put option or call option issued by The Options Clearing Corporation; or

(5) Whose issuer has net tangible assets in excess of \$4 million as demonstrated by financial statements dated within no less than 15 months that the broker-dealer has reviewed and has a reasonable basis to believe are true and complete in relation to the date of the transaction with the person, and

(a) In the event the issuer is other than a foreign private issuer, are the most recent financial statements for the issuer that have been audited and reported on by an independent public accountant in accordance with the provisions of 17 CFR 210.2-02 under the Securities Exchange Act of 1934; or

(b) In the event the issuer is a foreign private issuer, are the most recent financial statements for the issuer that have been filed with the SEC; furnished to the SEC pursuant to 17 CFR 240.12g3-2(b) under the Securities Exchange Act of 1934; or prepared in accordance with generally accepted accounting principles in the country of incorporation, audited in compliance with the requirements of that jurisdiction, and reported on by an accountant duly registered and in good standing in accordance with the regulations of that jurisdiction.

21VAC5-45-30. Federal Regulation A Tier 2 offerings.

A. An issuer planning to offer and sell securities in this Commonwealth in an offering exempt under Tier 2 of federal Regulation A (17 CFR 230.251 through 17 CFR 230.263) and § 18(b)(3) or 18(b)(4) of the Securities Act of 1933 (15 USC § 77a) shall submit the following at least 21 calendar days prior to the initial sale in this Commonwealth:

1. A completed Regulation A – Tier 2 notice filing form or copies of all documents filed with the U.S. Securities and Exchange Commission;
2. A consent to service of process on Form U-2 if not filing on the Regulation A – Tier 2 notice filing form; and
3. A filing fee of \$500 payable the Treasurer of Virginia.

B. The initial notice filing is effective for 12 months from the date of the filing with this Commonwealth. For each additional 12-month period in which the same offering is continued, an issuer conducting a Tier 2 offering under federal Regulation A may renew its notice filing by filing the following on or before the expiration of the notice filing:

1. The Regulation A – Tier 2 notice filing form marked "renewal" or a cover letter or other document requesting renewal; and
2. A renewal fee in the amount of \$250 payable to the Treasurer of Virginia.

C. An issuer may increase the amount of securities offered in this Commonwealth by submitting a Regulation A – Tier 2 notice filing form marked "amendment" or other document describing the transaction.

NOTICE: The following forms used in administering the regulation were filed by the agency. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name of a form with a hyperlink to access it. The forms are also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

FORMS (21VAC5-45)

- [Form D, Notice of Exempt Offering of Securities, U.S. Securities and Exchange Commission, SEC1972 \(rev. 2/12\)-](#)
- [Uniform Consent to Service of Process, Form U-2 \(7/1981\)](#)
- [Uniform Notice of Regulation A - Tier 2 Offering \(undated, filed 10/2016\)](#)

VA.R. Doc. No. R17-4869; Filed October 17, 2016, 3:22 p.m.

TITLE 23. TAXATION

DEPARTMENT OF TAXATION

Fast-Track Regulation

Titles of Regulations: 23VAC10-20. General Provisions Applicable to All Taxes Administered by the Department of Taxation (amending 23VAC10-20-180).

23VAC10-110. Individual Income Tax (repealing 23VAC10-110-70).

23VAC10-115. Fiduciary Income Tax (amending 23VAC10-115-110).

23VAC10-120. Corporation Income Tax (repealing 23VAC10-120-30).

Statutory Authority: § 58.1-203 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: January 17, 2017.

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Effective Date: February 1, 2017.

Agency Contact: Matthew Huntley, Senior Policy Analyst, Department of Taxation, P.O. Box 27185, Richmond, VA 23219, telephone (804) 786-2010, or email matthew.huntley@tax.virginia.gov.

Basis: Section 58.1-203 of the Code of Virginia provides that the Tax Commissioner shall have the power to issue regulations relating to the interpretation and enforcement of the laws of this Commonwealth governing taxes administered by the Department of Taxation. The authority for the current regulatory action is discretionary.

Purpose: This regulatory action amends the General Provisions Applicable to All Taxes Administered by the Department of Taxation regulations to strike provisions that are no longer accurate and to consolidate certain provisions that are currently repeated within the Virginia Administrative Code. This action has no impact on the public health, safety, and welfare.

The affected provisions deal with the due dates for filing amended tax returns, as well as the definition of a final determination for purposes of determining when a taxpayer is required to file an amended return based on a change in any federal tax. Section 58.1-1823 A of the Code of Virginia provides deadlines regarding when a taxpayer may file an amended return. Among such deadlines is a rule that a taxpayer has one year from the final determination of any change or correction in the liability for the taxpayer for any federal tax upon which the state tax is based to file an amended return. In addition to this rule, § 58.1-311 of the Code of Virginia specifically requires individuals, estates, trusts, and corporations to file an amended Virginia income tax return reporting any change or correction in federal taxable income made by the Internal Revenue Service within one year after the final determination of such change or correction.

The regulation sections affected by this action were promulgated prior to the enactment of legislation that modified the statutory language. Repealing these provisions updates the regulations so that they are consistent with the statute. In addition, the affected regulation sections contain a definition of what constitutes a "final determination" for purposes of determining the deadline for filing an amended return. Because the same definition applies to multiple tax types, this action consolidates the definition in one regulation.

This regulatory action does not reflect any change in current tax policy and has no impact on the administration of any taxes.

Rationale for Using Fast-Track Rulemaking Process: The fast-track rulemaking process is intended for proposed regulations that are expected to be noncontroversial. As this regulatory action repeals regulatory provisions that are duplicative of underlying statutory provisions and consolidates the location of a regulatory definition, this action is not expected to be controversial.

Substance: This regulatory action amends the General Provisions Applicable to All Taxes Administered by the Department of Taxation regulations to strike provisions that are no longer accurate and to consolidate certain provisions that are currently repeated within the Virginia Administrative Code.

The affected provisions deal with the due dates for filing amended tax returns, as well as the definition of a final determination for purposes of determining when a taxpayer is required to file an amended return based on a change in any federal tax. Section 58.1-1823 A of the Code of Virginia provides that any person filing a tax return or paying an assessment for any tax administered by the department may file an amended return within the later of:

- Three years from the last day prescribed by law for the timely filing of the return;
- One year from the final determination of any change or correction in the liability of the taxpayer for any federal tax upon which the state tax is based, provided that the refund does not exceed the amount of the decrease in Virginia tax attributable to such federal change or correction;
- Two years from the filing of an amended Virginia return resulting in the payment of additional tax, provided that the amended return raises issues relating solely to such prior amended return and that the refund does not exceed the amount of the payment with such prior amended return;
- Two years from the payment of an assessment, provided that the amended return raises issues relating solely to such assessment and that the refund does not exceed the amount of such payment; or
- One year from the final determination of any change or correction in the income tax of the taxpayer for any other state, provided that the refund does not exceed the amount of the decrease in Virginia tax attributable to such change or correction.

During the 1992, 1996, 1998, 2006, and 2010 Sessions, the General Assembly made several modifications to § 58.1-1823 A of the Code of Virginia. See 1992 House Bill 227 (1992 Acts of Assembly, Chapter 678), 1996 House Bill 583 (1996 Acts of Assembly, Chapter 654), 1996 Senate Bill 182 (1996 Acts of Assembly, Chapter 637), 1998 House Bill 629 (1998 Acts of Assembly, Chapter 374), 1998 Senate Bill 543 (1998 Acts of Assembly, Chapter 358), 2006 Senate Bill 583 (2006 Acts of Assembly, Chapter 234), and 2010 House Bill 384 (2010 Acts of Assembly, Chapter 228). Because 23VAC10-20-180, 23VAC10-110-70, 23VAC10-115-110, and 23VAC10-120-30 were promulgated prior to the enactment of such legislation, the provisions in these regulation sections regarding the deadlines for filing an amended return are incomplete and inaccurate. In addition, these provisions are unnecessary because they are duplicative of the information that is provided in § 58.1-1823 of the Code of Virginia.

Therefore, this regulatory action strikes the provisions of 23VAC10-20-180, 23VAC10-110-70, 23VAC10-115-110, and 23VAC10-120-30 regarding deadlines for filing an amended return.

Under § 58.1-311 of the Code of Virginia, if any individual, estate, trust, or corporate taxpayer's federal taxable income reported on its federal income tax return is changed or corrected by the Internal Revenue Service, such taxpayer is required to file an amended Virginia income tax return reporting such change or correction within one year after the final determination of such change or correction. During the 2006 Session, the General Assembly enacted Senate Bill 583, which extended the reporting deadline from 90 days to one year. See 2006 Acts of Assembly, Chapter 234. Because 23VAC10-110-70, 23VAC10-115-110, and 23VAC10-120-30 were promulgated prior to the enactment of such legislation, the provisions in these regulation sections regarding reporting changes or corrections of federal taxable income are inaccurate. In addition, these provisions are unnecessary because they are duplicative of the information that is provided in § 58.1-311 of the Code of Virginia. Therefore, this regulatory action strikes the provisions of 23VAC10-110-70, 23VAC10-115-110, and 23VAC10-120-30 regarding reporting changes or corrections of federal taxable income.

23VAC10-110-70, 23VAC10-115-110, and 23VAC10-120-30 each define the term "final determination" by referencing the definition of such term that is provided in 23VAC10-20-180. The regulatory definition of the term "final determination" is important because it is not defined in the underlying statute, § 58.1-311 of the Code of Virginia. Because it is unnecessary to have four separate, but virtually identical, definitions of the same term in the regulations, this regulatory action strikes the provisions of 23VAC10-110-70, 23VAC10-115-110, and 23VAC10-120-30 that define "final determination." This regulatory action also amends 23VAC10-20-180 to include language stating that such definition applies for purposes of §§ 58.1-311 and 58.1-1823 of the Code of Virginia.

23VAC10-115-110 provides information regarding due dates for returns of estates and trusts and who is required to file returns of estates and trusts. These provisions are unnecessary because they are duplicative of the information that is provided in § 58.1-381 of the Code of Virginia. Therefore, this regulatory action strikes such provisions.

This regulatory action does not reflect any change in current tax policy and has no impact on the administration of any taxes.

Issues: The advantage to the public and the Commonwealth is the repeal regulatory provisions that are duplicative of underlying statutory provisions and the consolidation of the location of a regulatory definition. There are no disadvantages to the public or the Commonwealth associated with this regulatory action.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Department of Taxation proposes to repeal provisions that are no longer accurate due to statutory changes or duplicative of the statutory language and to consolidate certain provisions in the regulation.

Result of Analysis. The benefits likely exceed the costs for all proposed changes.

Estimated Economic Impact. This regulation contains general provisions applicable to Individual Income, Fiduciary Income, and Corporation Income Taxes. The proposed regulation will repeal deadlines for amended returns and for reporting of changes or corrections to the federal taxable income. Numerous statutory changes in the 1992, 1996, 1998, 2006, and 2010 Virginia General Assembly sessions amended §§ 58.1-311 and 58.1-1823 of the Code of Virginia and rendered the current regulatory language incomplete and inaccurate. In addition, these regulatory provisions are unnecessary because they are duplicative of the information provided in the statute. Similarly, the due dates for returns of estates and trusts are duplicative of § 58.1-381 of the Code of Virginia. Repealing these provisions would update the regulations so that they are consistent with the statute. In addition, the definition of "final determination" is identical for all taxes in this regulation and will be consolidated to apply to all of them. Since this regulatory action does not reflect any change in current tax policy or on the administration of any taxes, no economic effect is expected other than eliminating conflicting information between the Code of Virginia and the regulation that may cause confusion.

Businesses and Entities Affected. This regulation applies to individuals and businesses subject to Individual Income, Fiduciary Income, and Corporation Income Taxes. In the 2013 taxable year, 3,765,669 individual tax returns, 66,580 corporate income tax returns, and 67,637 fiduciary income tax returns were filed. In addition, according to the 2013 North American Industry Classification System, there were 1,154 certified public accountant (CPA) establishments, 628 non-CPA tax preparation establishments, and 1,187 non-CPA establishments offering accounting, bookkeeping, or billing services along with payroll services in Virginia.

Localities Particularly Affected. The proposed changes apply statewide.

Projected Impact on Employment. No impact on employment is expected.

Effects on the Use and Value of Private Property. No impact on the use and value of private property is expected.

Real Estate Development Costs. No impact on real estate development costs is expected.

Small Businesses:

Definition. Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its

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affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million."

Costs and Other Effects. The Department of Taxation estimates that there are about 143,612 small businesses with employees in Virginia. In addition, almost all tax preparation or payroll service providers are small businesses. The proposed amendments do not impose costs on these entities, but will benefit them by eliminating the inconsistencies between the statutes and the regulation.

Alternative Method that Minimizes Adverse Impact. No adverse impact on small businesses is expected.

Adverse Impacts:

Businesses. A small percentage of the entities this regulation applies to is believed to be non-small businesses. The proposed amendments do not impose any adverse impact on them.

Localities. The proposed amendments will not adversely affect localities.

Other Entities. The proposed amendments will not adversely affect other entities.

Agency's Response to Economic Impact Analysis: The Department of Taxation agrees with the Department of Planning and Budget's economic impact analysis.

Summary:

This regulatory action removes provisions that are no longer accurate due to several statutory changes and consolidates certain provisions that are currently repeated within the Virginia Administrative Code. The affected provisions deal with the due dates for filing amended tax returns and the definition of a final determination for purposes of determining when a taxpayer is required to file an amended return based on a change in any federal tax. This regulatory action does not reflect any change in current tax policy and will have no impact on the administration of any taxes.

23VAC10-20-180. Amended returns ~~claiming a refund.~~

A. Filing.

1. Amended returns claiming a refund of any tax administered by the ~~department~~ Department of Taxation are governed by § 58.1-1823 of the Code of Virginia. ~~Amended returns claiming a refund must be filed within three years from the last day prescribed by law for the timely filing of the original return or, if later, within 60 days from the final determination of any change or correction in the liability of the taxpayer for any federal tax upon which the Virginia tax is based.~~

2. The amended return shall supply all the information required in an original return and, in addition, the taxpayer must attach a statement explaining the changes made and the reasons for the changes. If the refund claim is due to a change in federal taxable income or estate, the taxpayer

must furnish a copy of the Revenue Agent's Report or other appropriate notice that the change has been accepted by the Internal Revenue Service.

a. When a dealer is applying for a refund of sales tax, the dealer shall attach a list of the purchasers from whom the tax was collected and to whom the refund and interest, if allowed, will be paid.

b. When a consumer is applying for a refund of sales or use tax assessed against a dealer or contractor, the consumer shall identify the dealer or contractor, explain the circumstances surrounding the payment by the consumer, and explain why the claim for refund could not, or would not, be made by the dealer or contractor.

~~3. The time limit specified above applies only to amended returns claiming a refund and does not apply to amended returns showing a tax due. The period for assessing taxes due may vary for each type of tax and may also depend on circumstances such as fraud or failure to file a return.~~

4. ~~3.~~ See § 58.1-9 of the Code of Virginia for provisions relating to filing a return by mail.

B. Final determination. For the purposes of ~~this regulation~~ §§ 58.1-311 and 58.1-1823 of the Code of Virginia, any one of the following shall be deemed a final determination of a change in liability for the federal tax:

1. Payment or refund of any federal income or estate tax, not the subject of any other final determination described in subdivision 2, 3, 4, or 5 of this subsection **B**. The payment of a federal income or estate tax is a final determination for Virginia purposes even though a refund suit may be pending or contemplated ~~which that~~ could result in another "final determination";

2. The receipt of an assessment or other notice that the amount of deficiency or overassessment stated on federal Form 870 or similar form has been agreed to by the IRS;

3. The expiration of the 90-day time period (150-day period in the case of notice addressed to a person outside the states of the union and the District of Columbia) within which a petition for redetermination may be filed with the U.S. United States Tax Court with respect to a statutory notice of deficiency issued by the Internal Revenue Service, if a petition is not filed with that court within such time;

4. A closing agreement entered into with the Internal Revenue Service under ~~Section~~ § 7121 of the Internal Revenue Code (26 USC § 1 et seq.). The "final determination" shall occur when the taxpayer receives notice of the signing by the Commissioner of Internal Revenue;

5. A decision by the ~~U.S. United States~~ Tax Court, ~~U.S. District Court~~ a United States district court, the U.S. Claims Court, ~~U.S. Court of Appeals~~ a United States court of appeals, or the United States Supreme Court that has

become final, or the date the court approves a voluntary agreement stipulating disposition of the case.

C. Assessment. The denial in whole or in part of ~~taxpayers a taxpayer's~~ claim for refund, or the department's failure to act within three months, is treated as an assessment for the purpose of permitting a taxpayer to pursue other administrative and judicial remedies, but only as to matters first raised by the amended return. Therefore an amended return should not be filed if the claim for refund involves issues that were previously considered in the course of an audit, application for correction, or protective claim.

23VAC10-110-70. Report of change of federal taxable income. (Repealed.)

~~A. Report. If the amount of any individual's federal taxable income is changed or corrected by the Internal Revenue Service or other competent authority or as the result of a renegotiation of a contract or subcontract with the United States, such individual must report the change or correction to the department within 90 days from the date of the final determination of such change, correction, or renegotiation. In reporting a change, correction or renegotiation, the individual shall either concede its accuracy or state why such is erroneous.~~

~~B. Amended return. When any individual files an amended federal income tax return for any taxable year, he must also file an amended Virginia return for such taxable year. The amended return must be filed within 90 days of the filing of the complementary federal amended return, except that any amended return claiming a refund for overpayment of tax must be filed within 60 days of the final determination of any changes in his federal tax liability. (See 23VAC10-20-180.)~~

~~C. Final determination. For purposes of this section a "final determination" of a change in federal tax liability shall have the same meaning as set forth in 23VAC10-20-180.~~

23VAC10-115-110. Returns of estates and trusts.

~~A. Filing requirements. 1. Every resident estate or trust which that either is required to file a federal income tax return for the taxable year or which that has any Virginia taxable income for the taxable year must file an income tax return. If the return is for a fractional part of a year, the due date shall be determined as if the return were for a full 12-month period, that is, it shall be due by the 15th day of the fourth month after the close of the taxable year.~~

~~2. B. Every nonresident estate or trust having Virginia taxable income for the taxable year determined under 23VAC10-115-50 must file an income tax return.~~

~~3. C. The return must be accompanied by a copy of any federal fiduciary tax return filed for such taxable year.~~

~~B. Due date.~~

~~1. The return is due on or before May 1 of each year for fiduciaries filing on a calendar year basis.~~

~~2. If the return is for a fiscal or fractional year, it is due on or before the 15th day of the fourth month after the close of the taxable year.~~

~~C. Who to file.~~

~~1. Deceased individual. The return for any deceased individual shall be made and filed by his executor, administrator, or other person charged with his property.~~

~~2. Fiduciary. The return for an estate or trust shall be made and filed by the fiduciary.~~

~~3. Two or more fiduciaries. If two or more fiduciaries are acting jointly, the return may be made by any one of them.~~

~~D. Report of change. If the amount of any fiduciary's federal taxable income is changed or corrected by the Internal Revenue Service or other competent authority or as the result of a renegotiation of a contract or subcontract with the United States, such fiduciary must report the change or correction to the department within 90 days from the date of the final determination of such change, correction, or renegotiation. In reporting a change, correction or renegotiation, the fiduciary shall either concede its accuracy or state why such is erroneous.~~

~~E. Amended return. When any fiduciary files an amended federal income tax return for any taxable year, it must also file an amended Virginia return for such taxable year. The amended return must be filed within 90 days of the filing of the complementary federal amended return, except that any amended return claiming a refund for overpayment of tax must be filed within 60 days of the final determination of any changes in its federal tax liability. (See 23VAC10-20-180.)~~

~~F. Final determination. For purposes of this section a "final determination" of a change in federal tax liability shall have the same meaning as set forth in 23VAC10-20-180 B.~~

23VAC10-120-30. Report of change of federal taxable income. (Repealed.)

~~A. Report. If the amount of any corporation's federal taxable income is changed or corrected by the Internal Revenue Service or other competent authority or as the result of a renegotiation of a contract or subcontract with the United States, such corporation must report the change or correction to the department within 90 days from the date of the final determination of such change, correction, or renegotiation. In reporting a change, correction or renegotiation, the corporation shall either concede its accuracy or state why such is erroneous.~~

~~B. Amended return. When any corporation files an amended federal income tax return for any taxable year, it must also file an amended Virginia return for such taxable year. The amended return must be filed within 90 days of the filing of the complementary federal amended return, except that any amended return claiming a refund for over payment of tax must be filed within 60 days of the final determination of any changes in its federal tax liability. (See 23VAC10-20-180.)~~

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~~C. Final determination. For purposes of this section a "final determination" of a change in federal tax liability shall have the same meaning as set forth in 23VAC10-20-180 B.~~

VA.R. Doc. No. R17-4737; Filed October 12, 2016; 2:24 p.m.

Fast-Track Regulation

Title of Regulation: **23VAC10-112. Declaration of Estimated Income Tax by Individuals (repealing 23VAC10-112-40, 23VAC10-112-41).**

Statutory Authority: § 58.1-203 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: January 17, 2017.

Effective Date: February 1, 2017.

Agency Contact: James Savage, Tax Policy Analyst, Department of Taxation, P.O. Box 27185, Richmond, VA 23261-7185, telephone (804) 371-2301, or email james.savage@tax.virginia.gov.

Basis: Section 58.1-203 of the Code of Virginia provides that the Tax Commissioner has the power to issue regulations relating to the interpretation and enforcement of the laws of the Commonwealth governing taxes administered by the Department of Taxation. The authority for the current regulatory action is discretionary.

Purpose: This regulatory action is needed to repeal 23VAC10-112-40 and 23VAC10-112-41, which provide no additional guidance to clear and unambiguous statutes. Repealing these sections does not reflect any change in existing tax policy and has no impact on the administration of the tax. As these sections of the regulation are unnecessary, this regulatory action has no effect on the health, safety and welfare of citizens. This regulatory action does not reflect a change in existing departmental policy.

Rationale for Using Fast-Track Rulemaking Process: The fast-track rulemaking process is intended for proposed regulations that are expected to be noncontroversial. As these sections of the regulation provide no additional guidance to clear and unambiguous statutes, this action is not expected to be controversial.

Substance: This action repeals two sections of the Declaration of Estimated Income Tax by Individuals (23VAC10-112) that provide no additional guidance to clear and unambiguous statutes. Repealing these sections does not reflect any change in existing tax policy and has no impact on the administration of tax.

23VAC10-112-40 sets forth the addition to tax applicable in the case of any underpayment of estimated tax by an individual. 23VAC10-112-41 sets forth the amount of the underpayment for the purposes of calculating the addition to tax. Because these sections merely restate Section 58.1-492 A of the Code of Virginia and provide no additional guidance, the repeal of these sections is not expected to be controversial.

Issues: This regulatory action will ease voluntary taxpayer compliance and the department's administration of the state tax laws by eliminating unnecessary regulation sections. As these regulation sections are unnecessary, their repeal will result in no disadvantage to the public or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Department of Taxation (Department) proposes to repeal sections 40 and 41 of the regulation that governs individuals in declaring and paying their estimated state income tax.

Result of Analysis. Benefits outweigh costs for all proposed changes.

Estimated Economic Impact. Current regulation contains two sections that govern the failure of individuals to pay estimated tax. The Department proposes to eliminate these sections because they are completely duplicative of unambiguous requirements in the Code of Virginia (COV). While there is likely some small benefit that accrues to taxpayers from having the rules that they must abide by in both regulation and the COV, that benefit is lost when laws change and the regulation becomes obsolete and confusing because it would be in conflict with the actual controlling legal requirement. Because of this, the benefits of eliminating regulation not needed to interpret the COV likely outweigh the costs of doing so.

Businesses and Entities Affected. This proposed regulatory change will affect all individuals who are subject to paying estimated taxes. Board staff reports that, for taxable year 2013, there were approximately 215,000 individuals who made estimated tax payments of Virginia individual income tax.

Localities Particularly Affected. No locality will be particularly affected by these proposed regulatory changes.

Projected Impact on Employment. These proposed regulatory changes are unlikely to affect employment in the Commonwealth.

Effects on the Use and Value of Private Property. These proposed changes will likely not affect the use or value of private property in the Commonwealth.

Real Estate Development Costs. These proposed regulatory changes are unlikely to affect real estate development costs in the Commonwealth.

Small Businesses:

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

Costs and Other Effects. No small businesses are likely to incur any additional costs on account of these clarifying changes.

Alternative Method that Minimizes Adverse Impact. No small businesses are likely to incur any additional costs on account of these clarifying changes.

Adverse Impacts:

Businesses. No businesses are likely to incur any additional costs on account of these clarifying changes.

Localities. Localities in the Commonwealth are unlikely to see any adverse impacts on account of these proposed regulatory changes.

Other Entities. No other entities are likely to be adversely affected by these proposed changes.

Agency's Response to Economic Impact Analysis: The Department of Taxation agrees with the Department of Planning and Budget's economic impact analysis.

Summary:

This regulatory action repeals 23VAC10-112-40 and 23VAC10-112-41, which are unnecessary as they restate § 58.1-492 A of the Code of Virginia and provide no additional requirements. The repeal of these sections does not reflect a change in existing tax policy and has no impact on the administration of the tax.

23VAC10-112-40. Failure by individual to pay estimated tax; additions to the tax. (Repealed.)

~~In the case of any underpayment of estimated tax by an individual, except as provided in 23VAC10-112-43, there shall be added to the individual income tax for the taxable year an amount determined at the rate established for interest, under § 58.1-15 of the Code of Virginia upon the amount of the underpayment (determined under 23VAC10-112-41), for the period of the underpayment (determined under 23VAC10-112-42). The amount of such addition to the tax shall be reported and paid at the time of filing the individual income tax return for the taxable year.~~

23VAC10-112-41. Failure by individual to pay estimated tax; amount of underpayment. (Repealed.)

~~For purpose of 23VAC10-112-40, the amount of the underpayment shall be the excess of:~~

- ~~1. The amount of the installment which would be required to be paid if the estimated tax were equal to 90% (66 2/3% in the case of a self-employed farmer or fisherman referred to in 23VAC10-112-23 B) of the tax shown on the individual income tax return for the taxable year, or if no return was filed, 90% (66 2/3% in the case of self-employed farmers or fishermen referred to in 23VAC10-112-23 B) of the tax for such year, over~~
- ~~2. The amount, if any, of the installment paid on or before the last date prescribed for such payment.~~

VA.R. Doc. No. R17-4721; Filed October 12, 2016, 2:50 p.m.

Fast-Track Regulation

Title of Regulation: **23VAC10-350. Forest Products Tax Regulations (repealing 23VAC10-350-10 through 23VAC10-350-40).**

Statutory Authority: § 58.1-203 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: January 17, 2017.

Effective Date: February 1, 2017.

Agency Contact: Joe Mayer, Lead Policy Analyst, Department of Taxation, P.O. Box 27185, Richmond, VA 23261-7185, telephone (804) 371-2299, FAX (804) 371-2355, or email joseph.mayer@tax.virginia.gov.

Basis: Section 58.1-203 of the Code of Virginia authorizes the Tax Commissioner to issue regulations relating to the interpretation and enforcement of the laws governing taxes administered by the Department of Taxation. Section 3.2-1612 of the Code of Virginia authorizes the Tax Commissioner to administer the forest products tax.

Purpose: As a result of a periodic review of the Forest Products Tax Regulation initiated by the Department of Taxation on April 28, 2016, and completed June 20, 2016, the Department of Taxation has determined that the regulation should be repealed because the statutes imposing the forest products tax were substantially amended effective July 1, 2015, and the regulation provides no guidance on the new statutes. Additionally, the new law was drafted with the participation of the forest products industry and no guidance beyond the plain meaning of the forest products tax statutes is necessary at this time. Therefore, the regulation is not necessary to protect the public health, safety, or welfare. A regulation that is not necessary to interpret the law or to protect the public health, safety, or welfare violates the general principles set forth in Governor Terence R. McAuliffe's Executive Order 17 signed June 30, 2014.

Repeal of the regulation does not reflect any change in current tax policy. Repeal of the regulation will have no impact on the administration of the forest products tax.

Rationale for Using Fast-Track Rulemaking Process: The department is using the fast-track rulemaking process because the repeal of the Forest Products Tax Regulation is expected to be noncontroversial because the statutes imposing the forest products tax were substantially amended effective July 1, 2015, and the regulation provides no guidance on the new statutes. No comments were received during the periodic review of the regulation.

Substance: This action will repeal the Forest Products Tax Regulations. Effective July 1, 2015, the forest products tax is imposed on the first manufacturer using, consuming, or processing forest products unless the tax has been previously paid by the severer of the forest products. The forest products tax also is imposed on the first manufacturer storing forest products for sale or shipment out of state unless the tax has

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been previously paid by the severer of the forest products. If there is no manufacturer, or the manufacturer is not registered for the tax, then the tax is levied on the severer of the forest products. The forest products tax revenues are dedicated to the protection and development of forest resources and the reforestation of timberlands.

Because the statutes imposing the forest products tax were recently rewritten, and the regulation provides no guidance on the new statutes, repeal of the regulation does not reflect any change in current tax policy. Repeal of the regulation will have no impact on the administration of the forest products tax.

Issues: As the new statutes imposing the forest products tax are clear and unambiguous, and the regulation provides no guidance on the new statutes, the regulation is unnecessary. Accordingly, its repeal poses no disadvantages to the public or the Commonwealth.

Small Business Impact Review Report of Findings: This fast-track regulatory action serves as the report of the findings of the regulatory review pursuant to § 2.2-4007.1 of the Code of Virginia.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Department of Taxation (Department) proposes to repeal the Forest Products Tax Regulations.

Result of Analysis. The benefits likely exceed the costs for all proposed changes.

Estimated Economic Impact. Chapter 170 of the 2015 Acts of Assembly substantially amended the statutes that impose and delineate the forest products tax. The regulation does not provide guidance beyond the statutes and no longer accurately reflects the current statutes. When statutes and regulations are in conflict, the statutes apply. Thus the repeal of this regulation would not affect legal requirements. Nonetheless the proposed repeal would be beneficial in that readers of the regulation would not be misled concerning legal rules and requirements.

Businesses and Entities Affected. The forest products tax is imposed on the first manufacturer using, consuming, or processing forest products unless the tax has been previously paid by the severer¹ of the forest products. The forest products tax also is imposed on the first manufacturer storing forest products for sale or shipment out of state unless the tax has been previously paid by the severer of the forest products. If there is no manufacturer or the manufacturer is not registered for the tax, then the tax is levied on the severer of the forest products. In fiscal year 2015, 205 taxpayers filed forest products tax returns.

Localities Particularly Affected. The proposed repeal of the regulation does not disproportionately affect localities.

Projected Impact on Employment. The proposed repeal of the regulation does not affect employment.

Effects on the Use and Value of Private Property. The proposed repeal of the regulation does not affect the use and value of private property.

Real Estate Development Costs. The proposed repeal of the regulation does not affect real estate development costs.

Small Businesses:

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

Costs and Other Effects. The repeal of the regulation does not significantly affect costs for small businesses.

Alternative Method that Minimizes Adverse Impact. The proposed repeal of the regulation does not adversely affect small businesses.

Adverse Impacts:

Businesses. The proposed repeal of the regulation does not adversely affect businesses.

Localities. The proposed repeal of the regulation does not adversely affect localities.

Other Entities. The proposed repeal of the regulation does not adversely affect other entities.

¹ "Severer" is defined as any person in this Commonwealth who fells, cuts, or otherwise separates timber or any other such forest product from the soil.

Agency's Response to Economic Impact Analysis: The Department of Taxation agrees with the Department of Planning and Budget's economic impact analysis.

Summary:

The regulatory action repeals the regulation because the regulation provides no guidance beyond the plain meaning of the statutes imposing the forest products tax, which were substantially amended effective July 1, 2015. Repeal of the regulation does not reflect any change in current tax policy and has no impact on the administration of the forest products tax.

VA.R. Doc. No. R17-4840; Filed October 17, 2016, 3:13 p.m.

GOVERNOR

EXECUTIVE ORDER NUMBER 60 (UPDATED
OCTOBER 17, 2016)

**Declaration of a State of Emergency for the
Commonwealth of Virginia Due to Hurricane
Matthew and in Support of States Affected by
Hurricane Matthew**

Importance of the Issue

On October 6, 2016, I declared a state of emergency to exist for the Commonwealth of Virginia to support relief efforts to all states affected by Hurricane Matthew. Today, October 17th, I have revised the state of emergency in the Commonwealth based on the impacts from Hurricane Matthew, which produced damaging winds, periods of heavy rainfall, power outages, and flooding across the Commonwealth of Virginia. I therefore direct that appropriate assistance be rendered by agencies of state government to respond to the needs of citizens, affected states, and the potential public safety issues in the Commonwealth presented by oversized and overweight vehicles on the Commonwealth's highways.

The health and general welfare of the citizens require that state action be taken to help alleviate the conditions caused by this situation. The effects of this incident constitute a disaster wherein human life, and public and private property are imperiled, as described in § 44-146.16 of the Code of Virginia.

Therefore, by virtue of the authority vested in me by § 44-146.17 of the Code of Virginia, as Governor and as Director of Emergency Management, and by virtue of the authority vested in me by Article V, Section 7 of the Constitution of Virginia and by § 44-75.1 of the Code of Virginia, as Governor and Commander-in-Chief of the armed forces of the Commonwealth, and subject always to my continuing and ultimate authority and responsibility to act in such matters, I hereby confirm, ratify, and memorialize in writing my verbal orders issued on October 6, 2016, whereby I proclaimed that a state of emergency exists, and directed that appropriate assistance be rendered by agencies of both state and local governments to prepare for and respond to potential impacts of Hurricane Matthew, alleviate any conditions resulting from the incident, implement recovery and mitigation operations and activities so as to return impacted areas to pre-event conditions in so far as possible, and alleviate any impediments to the transport of relief supplies or utility restoration support. Pursuant to § 44-75.1(A)(3) and (A)(4) of the Code of Virginia, I also directed the Virginia National Guard and the Virginia Defense Force be called forth to state active duty to assist in providing such aid. This included Virginia National Guard assistance to the Virginia Department of State Police to direct traffic, prevent looting, and perform such other law enforcement functions as the Superintendent of State Police, in consultation with the State

Coordinator of Emergency Management, the Adjutant General, and the Secretary of Public Safety and Homeland Security, may find necessary.

In order to marshal all public resources and appropriate preparedness, response, and recovery measures to meet this threat and recover from its effects, and in accordance with my authority contained in § 44-146.17 of the Code of Virginia, I ordered the following protective and restoration measures:

A. Implementation by state agencies of the Commonwealth of Virginia Emergency Operations Plan (COVEOP), as amended, along with other appropriate state agency plans.

B. Activation of the Virginia Emergency Operations Center (VEOC) and the Virginia Emergency Support Team (VEST) to coordinate the provision of assistance to local governments. I am directing that the VEOC and VEST coordinate state actions in support of affected localities, other mission assignments to agencies designated in the COVEOP, and others that may be identified by the State Coordinator of Emergency Management, in consultation with the Secretary of Public Safety and Homeland Security, which are needed to provide for the preservation of life, protection of property, and implementation of recovery activities.

C. The authorization to assume control over the Commonwealth's state-operated telecommunications systems, as required by the State Coordinator of Emergency Management, in coordination with the Virginia Information Technologies Agency, and with the consultation of the Secretary of Public Safety and Homeland Security, making all systems assets available for use in providing adequate communications, intelligence, and warning capabilities for the incident, pursuant to § 44-146.18 of the Code of Virginia.

D. The evacuation of areas threatened or stricken by effects of Hurricane Matthew, as appropriate. Following a declaration of a local emergency pursuant to § 44-146.21 of the Code of Virginia, if a local governing body determines that evacuation is deemed necessary for the preservation of life or other emergency mitigation, response, or recovery effort, pursuant to § 44-146.17(1) of the Code of Virginia, I direct the evacuation of all or part of the populace therein from such areas and upon such timetable as the local governing body, in coordination with the VEOC, acting on behalf of the State Coordinator of Emergency Management, shall determine. Notwithstanding the foregoing, I reserve the right to direct and compel evacuation from the same and different areas and determine a different timetable both where local governing bodies have made such a determination and where local governing bodies have not made such a determination. Also, in those localities that have declared a local emergency pursuant to § 44-146.21 of the Code of Virginia, if the local governing body determines that controlling movement of persons is deemed necessary for the preservation of life, public safety, or other emergency mitigation, response, or

recovery effort, pursuant to § 44-146.17(1) of the Code of Virginia, I authorize the control of ingress and egress at an emergency area, including the movement of persons within the area and the occupancy of premises therein upon such timetable as the local governing body, in coordination with the State Coordinator of Emergency Management and the VEOC, shall determine. Violations of any order to citizens to evacuate shall constitute a violation of this Executive Order and are punishable as a Class 1 misdemeanor.

E. The activation, implementation, and coordination of appropriate mutual aid agreements and compacts, including the Emergency Management Assistance Compact (EMAC), and the authorization of the State Coordinator of Emergency Management to enter into any other supplemental agreements, pursuant to § 44-146.17(5) and § 44-146.28:1 of the Code of Virginia, to provide for the evacuation and reception of injured and other persons and the exchange of medical, fire, police, National Guard personnel and equipment, public utility, reconnaissance, welfare, transportation, and communications personnel, equipment, and supplies. The State Coordinator of Emergency Management is hereby designated as Virginia's authorized representative within the meaning of the Emergency Management Assistance Compact, § 44-146.28:1 of the Code of Virginia.

F. The authorization of the Departments of State Police, Transportation, and Motor Vehicles to grant temporary overweight, over width, registration, or license exemptions to all carriers transporting essential relief supplies, livestock or poultry feed, or other critical supplies for livestock or poultry, heating oil, motor fuels, or propane, or providing restoration of utilities (electricity, gas, phone, water, wastewater, and cable) in and through any area of the Commonwealth in order to support the disaster response and recovery, regardless of their point of origin or destination. Weight exemptions are not valid on interstate highways or on posted structures for restricted weight unless there is an associated Federal emergency declaration.

All over width loads, up to a maximum of 12 feet, and over height loads up to a maximum of 14 feet must follow Virginia Department of Motor Vehicles (DMV) hauling permit and safety guidelines.

In addition to described oversize transportation privileges, carriers are also exempt from vehicle registration with the Department of Motor Vehicles. This includes vehicles en route and returning to their home base. The above-cited agencies shall communicate this information to all staff responsible for permit issuance and truck legalization enforcement.

This Emergency Declaration implements limited relief from the provisions of Title 49 Code of Federal Regulations §§ 390-399. Accordingly, the State Coordinator of Emergency Management recognizes the exemption for hours

of service by any carrier when transporting essential relief supplies, passengers, property, livestock, poultry, equipment, food, feed for livestock or poultry, fuel, construction materials, and other critical supplies to or from any portion of the Commonwealth for purpose of providing direct relief or assistance as a result of this disaster, pursuant to § 52-8.4 of the Code of Virginia and 49 CFR Section 390.23 and Section 395.3.

The foregoing oversize transportation privileges, as well as the regulatory exemption provided by § 52-8.4(A) of the Code of Virginia, and implemented in 19 VAC 30-20-40(B) of the "Motor Carrier Safety Regulations," shall remain in effect for 30 days from the onset of the disaster, or until relief is no longer necessary, as determined by the Secretary of Public Safety and Homeland Security in consultation with the Secretary of Transportation, whichever is earlier. The discontinuance of provisions authorized in this paragraph (F) may be implemented and disseminated by the publication of administrative notice to all affected and interested parties. I hereby delegate to the Secretary of Public Safety and Homeland Security, after consultation with other affected Cabinet Secretaries, the authority to implement this order as set forth in § 2.2-104 of the Code of Virginia.

G. The authorization of the Marine Resources Commissioner to act on behalf of the Commission in issuing permits pursuant to Chapter 12 of Title 28.2 of the Code of Virginia when, in the judgment of the Commissioner, it is necessary to address immediate health and safety needs and the Commissioner would be unable to convene a meeting of the full Commission in a timely manner. In an effort to address the impacts attributable to Hurricane Matthew on the health, safety and general welfare of the citizens of the Commonwealth, and in an attempt to expedite the return of impacted areas and structures to pre-event conditions insofar as possible, no permits for encroachments on State-owned submerged lands, tidal wetlands and coastal primary sand dunes or beaches shall be required to replace previously permitted structures and for beach nourishment activities along public beaches.

1. The pre-existing structure must have been previously authorized and in a serviceable condition prior to the onset of the hurricane.
2. The replacement structure must be reconstructed in the same location and in identical or smaller dimensions as the previously permitted structure.
3. Beach nourishment activities on State-owned submerged lands must be accomplished with sand from a previously identified or permitted source of sand suitable for beach nourishment.
4. Reconstruction and beach nourishment activities must be initiated prior to December 31, 2016, and completed prior to June 30, 2017.

5. Any property owner(s) seeking to replace a previously permitted structure or nourish public beaches pursuant to this Executive Order must submit to the Virginia Marine Resources Commission a letter attesting to the foregoing and containing suitable drawings for beach nourishment activities or of the proposed replacement structure(s) for comparison purposes.

6. No person may proceed with replacement of a previously permitted structure or beach nourishment activity under the provisions of this Executive Order without written approval from the Commissioner of the Virginia Marine Resources Commission or the Local Wetlands Board Chairman for activities involving wetlands or coastal primary sand dunes in localities where the Wetlands Zoning and the Coastal Primary Sand Dune Ordinances have been adopted.

H. The authorization of a maximum of \$4,425,000 in state sum sufficient funds for state and local governments mission assignments authorized and coordinated through the Virginia Department of Emergency Management that are allowable as defined by The Stafford Act.

This funding is also available for state response and recovery operations and incident documentation. Out of this state disaster sum sufficient, \$500,000, or more if available, is authorized for the Department of Military Affairs for the state's portion of the eligible disaster-related costs incurred for salaries, travel, and meals during mission assignments authorized and coordinated through the Virginia Department of Emergency Management.

I. The authorization of a maximum of \$250,000 for matching funds for the Individuals and Household Program, authorized by The Stafford Act (when presidentially authorized), to be paid from state funds.

J. The implementation by public agencies under my supervision and control of their emergency assignments as directed in the COVEOP without regard to normal procedures pertaining to performance of public work, entering into contracts, incurring of obligations or other logistical and support measures of the Emergency Services and Disaster Laws, as provided in § 44-146.28(b) of the Code of Virginia. § 44-146.24 of the Code of Virginia also applies to the disaster activities of state agencies.

K. Designation of members and personnel of volunteer, auxiliary, and reserve groups including search and rescue (SAR), Virginia Associations of Volunteer Rescue Squads (VAVRS), Civil Air Patrol (CAP), member organizations of the Voluntary Organizations Active in Disaster (VOAD), Radio Amateur Civil Emergency Services (RACES), volunteer firefighters, Citizen Corps Programs such as Medical Reserve Corps (MRCs), Community Emergency Response Teams (CERTs), and others identified and tasked by the State Coordinator of Emergency Management for specific disaster-related mission assignments as

representatives of the Commonwealth engaged in emergency services activities within the meaning of the immunity provisions of § 44-146.23(a) and (f) of the Code of Virginia, in the performance of their specific disaster-related mission assignments.

L. The authorization of appropriate oversight boards, commissions, and agencies to ease building code restrictions and to permit emergency demolition, hazardous waste disposal, debris removal, emergency landfill siting, and operations and other activities necessary to address immediate health and safety needs without regard to time-consuming procedures or formalities and without regard to application or permit fees or royalties.

M. The activation of the statutory provisions in § 59.1-525 et seq. of the Code of Virginia related to price gouging. Price gouging at any time is unacceptable. Price gouging is even more reprehensible during a time of disaster after issuance of a state of emergency. I have directed all applicable executive branch agencies to take immediate action to address any verified reports of price gouging of necessary goods or services. I make the same request of the Office of the Attorney General and appropriate local officials. I further request that all appropriate executive branch agencies exercise their discretion to the extent allowed by law to address any pending deadlines or expirations affected by or attributable to this disaster event.

N. The following conditions apply to the deployment of the Virginia National Guard and the Virginia Defense Force:

1. The Adjutant General of Virginia, after consultation with the State Coordinator of Emergency Management, shall make available on state active duty such units and members of the Virginia National Guard and Virginia Defense Force and such equipment as may be necessary or desirable to assist in preparations for this incident and in alleviating the human suffering and damage to property.

2. Pursuant to § 52-6 of the Code of Virginia, I authorize the Superintendent of the Department of State Police to appoint any and all such Virginia Army and Air National Guard personnel called to state active duty as additional police officers as deemed necessary. These police officers shall have the same powers and perform the same duties as the State Police officers appointed by the Superintendent. However, they shall nevertheless remain members of the Virginia National Guard, subject to military command as members of the State Militia. Any bonds and/or insurance required by § 52-7 of the Code of Virginia shall be provided for them at the expense of the Commonwealth.

3. In all instances, members of the Virginia National Guard and Virginia Defense Force shall remain subject to military command as prescribed by § 44-78.1 of the Code of Virginia and are not subject to the civilian authorities of county or municipal governments. This shall not be deemed

to prohibit working in close cooperation with members of the Virginia Departments of State Police or Emergency Management or local law enforcement or emergency management authorities or receiving guidance from them in the performance of their duties.

4. Should service under this Executive Order result in the injury or death of any member of the Virginia National Guard, the following will be provided to the member and the member's dependents or survivors:

a. Workers' Compensation benefits provided to members of the National Guard by the Virginia Workers' Compensation Act, subject to the requirements and limitations thereof; and, in addition,

b. The same benefits, or their equivalent, for injury, disability, and/or death, as would be provided by the federal government if the member were serving on federal active duty at the time of the injury or death. Any such federal-type benefits due to a member and his or her dependents or survivors during any calendar month shall be reduced by any payments due under the Virginia Workers' Compensation Act during the same month. If and when the time period for payment of Workers' Compensation benefits has elapsed, the member and his or her dependents or survivors shall thereafter receive full federal-type benefits for as long as they would have received such benefits if the member had been serving on federal active duty at the time of injury or death. Any federal-type benefits due shall be computed on the basis of military pay grade E-5 or the member's military grade at the time of injury or death, whichever produces the greater benefit amount. Pursuant to § 44-14 of the Code of Virginia, and subject to the availability of future appropriations which may be lawfully applied to this purpose, I now approve of future expenditures out of appropriations to the Department of Military Affairs for such federal-type benefits as being manifestly for the benefit of the military service.

5. The following conditions apply to service by the Virginia Defense Force:

a. Virginia Defense Force personnel shall receive pay at a rate equivalent to a National Guard soldier of like rank, not to exceed 25 years of service.

b. Lodging and meals shall be provided by the Adjutant General or reimbursed at standard state per diem rates;

c. All privately owned equipment, including, but not limited to, vehicles, boats, and aircraft, will be reimbursed for the expense of fuel. Damage or loss of said equipment will be reimbursed, minus reimbursement from personal insurance, if said equipment was authorized for use by the Adjutant General in accordance with § 44-54.12 of the Code of Virginia;

d. In the event of death or injury, benefits shall be provided in accordance with the Virginia Workers' Compensation Act, subject to the requirements and limitations thereof.

Upon my approval, the costs incurred by state agencies and other agents in performing mission assignments through the VEOC of the Commonwealth as defined herein and in § 44-146.28 of the Code of Virginia, other than costs defined in the paragraphs above pertaining to the Virginia National Guard and pertaining to the Virginia Defense Force, in performing these missions shall be paid from state funds.

Effective Date of this Executive Order

This Executive Order shall be effective October 6, 2016, and shall remain in full force and effect until November 6, 2016, unless sooner amended or rescinded by further executive order. Termination of the Executive Order is not intended to terminate any federal-type benefits granted or to be granted due to injury or death as a result of service under this Executive Order.

Given under my hand and under the Seal of the Commonwealth of Virginia, this 17th day of October, 2016.

/s/ Terence R. McAuliffe
Governor

GENERAL NOTICES/ERRATA

AIR POLLUTION CONTROL BOARD State Implementation Plan Revision - Commercial/Industrial/Solid Waste Incinerators (Revision F16)

Notice of action: The Department of Environmental Quality (DEQ) is announcing an opportunity for public comment on a proposed revision to the Commonwealth of Virginia's § 111(d)/129 plan for commercial/industrial solid waste incinerators (CISWIs). A § 111(d)/129 plan is developed by the Commonwealth in order to fulfill its responsibilities under the federal Clean Air Act to implement and enforce emissions guidelines for solid waste incineration units. The Commonwealth intends to submit the plan to the U.S. Environmental Protection Agency (EPA) in accordance with the requirements of the federal Clean Air Act.

Regulations affected: The regulations of the board affected by this action are as follows: 9VAC5-20-21, Documents incorporated by reference, of 9VAC5-20 (General Provisions); and Article 45, Emission Standards for Commercial/Industrial Solid Waste Incinerators (Rule 4-45), (9VAC5-40-6250 et seq.) of 9VAC5-40 Existing Stationary Sources (Revision F16).

Purpose of notice: DEQ is seeking comment on the overall plan, and on the issue of whether any regulations or inventory information included in the plan should be submitted to EPA as part of the plan.

Public comment period: November 14, 2016 to December 15, 2016.

Public hearing: A public hearing will be held in the eighth floor conference room, Department of Environmental Quality, 629 East Main Street, Richmond, Virginia, at 10:00 a.m. on December 14, 2016, to accept comments concerning the proposed plan. Using the procedures explained below, DEQ will also accept written comments through December 15, 2016.

Public comment stage: The public comment period and hearing are being conducted to satisfy the public participation requirements of federal regulations of 40 CFR 60.23(c) and (d). The regulations included in this plan have been adopted by the State Air Pollution Control Board in accordance with the Code of Virginia and with public participation as required by the Code of Virginia, the federal Clean Air Act, and the Code of Federal Regulations. Because the regulations have been adopted, DEQ is accepting comment only on the issues cited above and not on the content of the regulations.

Description of proposal: EPA amended the designated pollutant emission guidelines for CISWIs on June 23, 2016 (81 FR 40956). In order to implement the guidelines, it was necessary for Virginia to amend the state regulation (Rule 4-45) containing the federal provisions, and to update the most current version of 40 CFR Part 60 listed in 9VAC5-20-21,

Documents incorporated by reference. In addition to affected regulations, the proposed plan revision contains an updated inventory of affected facilities.

Federal information: This notice is being given to satisfy the public participation requirements of federal regulations and not any provision of state law. The proposal will be submitted as a § 111(d)/129 plan revision under §§ 111(d) and 129 of the federal Clean Air Act in accordance with 40 CFR 60.23(c) and (d). It is planned to submit all provisions of the proposal as a Commonwealth of Virginia § 111(d)/129 plan with the exception of state-only enforceable provisions, which are specifically identified in the plan.

How to comment: DEQ accepts written comments by email, fax, and postal mail. In order to be considered, comments must include the full name, address, and telephone number of the person commenting and must be received by DEQ by the last day of the comment period. Both oral and written comments are accepted at the public hearing. DEQ prefers that comments be provided in writing, along with any supporting documents or exhibits. All materials received are part of the public record.

To review plan documents: The proposal is available on the DEQ Air Public Notices for Plans website at <http://www.deq.virginia.gov/Programs/Air/PublicNotices/airplansandprograms.aspx>.

The documents may also be obtained by contacting the DEQ representative named below. The public may review the documents between 8:30 a.m. and 4:30 p.m. of each business day until the close of the public comment period at the Department of Environmental Quality, Main Street Office, 8th Floor, 629 East Main Street, Richmond, VA, telephone (804) 698-4070.

Contact Information: Karen G. Sabasteanski, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4426, FAX (804) 698-4510, or email karen.sabasteanski@deq.virginia.gov.

STATE CORPORATION COMMISSION

Order for Notice and Comment

JOINT PETITION OF VIRGINIA
ELECTRIC AND POWER COMPANY
d/b/a DOMINION VIRGINIA POWER,
APPALACHIAN POWER COMPANY,
KENTUCKY UTILITIES COMPANY
d/b/a OLD DOMINION POWER
COMPANY,
A&N ELECTRIC COOPERATIVE,
BARC ELECTRIC COOPERATIVE,
CENTRAL VIRGINIA ELECTRIC
COOPERATIVE,
COMMUNITY ELECTRIC

General Notices/Errata

COOPERATIVE,
CRAIG-BOTETOURT ELECTRIC
COOPERATIVE,
MECKLENBURG ELECTRIC
COOPERATIVE,
NORTHERN NECK ELECTRIC
COOPERATIVE,
NORTHERN VIRGINIA ELECTRIC
COOPERATIVE,
PRINCE GEORGE ELECTRIC
COOPERATIVE,
RAPPAHANNOCK ELECTRIC
COOPERATIVE,
SHENANDOAH VALLEY ELECTRIC
COOPERATIVE,
SOUTHSIDE ELECTRIC
COOPERATIVE, and
VIRGINIA, MARYLAND &
DELAWARE ASSOCIATION OF
ELECTRIC COOPERATIVES

CASE NO.
PUE-2016-
00110

For Rulemaking for the Limited Purpose
of Modifying the Serious Medical
Condition Certification Form pursuant to
Rule 20 VAC 5-330-20

ORDER FOR NOTICE AND COMMENT

On September 23, 2016, Virginia Electric and Power Company d/b/a Dominion Virginia Power, Appalachian Power Company, Kentucky Utilities Company d/b/a Old Dominion Power Company, A&N Electric Cooperative, BARC Electric Cooperative, Central Virginia Electric Cooperative, Community Electric Cooperative, Craig-Botetourt Electric Cooperative, Mecklenburg Electric Cooperative, Northern Neck Electric Cooperative, Northern Virginia Electric Cooperative, Prince George Electric Cooperative, Rappahannock Electric Cooperative, Shenandoah Valley Electric Cooperative, Southside Electric Cooperative, and Virginia, Maryland & Delaware Association of Electric Cooperatives (collectively, "Petitioners"), filed a Joint Petition for Rulemaking ("Joint Petition") with the State Corporation Commission ("Commission").¹ The Petitioners request that the Commission initiate a rulemaking for the limited purpose of modifying the Serious Medical Condition Certification Form ("Form SMCC"), which was included in the adoption of 20 VAC 5-330-30 B of the Commission's regulations titled "Limitations on Disconnection of Electric and Water Service"² ("Rules") in 2011.³

Form SMCC enables the Petitioners to be aware of residential customers who have a serious medical condition(s) or who reside with a family member with a serious medical condition(s), as defined by Rule 20 VAC 5-330-20, particularly with regard to emergencies and the termination or disconnection of electric service for such customers. Form SMCC requires certification by a licensed physician that the

medical condition meets the definition of a "serious medical condition" in Rule 20 VAC 5-330-20. The Petitioners utilize the Form SMCC provided on the Commission's website but request in the Joint Petition that the Commission approve certain non-substantive modifications to Form SMCC to "make the form more user-friendly for utility customers and their physician(s) and provide more useful information to a utility carrying out its service to the public including customers with serious medical conditions."⁴ Specifically, the Petitioners propose the following modifications: (1) add a separate description box specific to the "Required Treatment for Condition" section of Form SMCC; (2) add a checklist to the description box for equipment prescribed for the serious medical condition, and change that description box to state "Equipment prescribed and/or equipment required for treatment of condition (If any): (Check all that apply)"; and (3) delete the "Additional Comments" box on the bottom of Form SMCC.⁵ The Petitioners assert that the proposed modifications to Form SMCC ("Proposed Form SMCC") are "consistent with and continue[] to meet the requirements of the [Rules]."⁶

NOW UPON CONSIDERATION of the Joint Petition, the Commission is of the opinion and finds that the Joint Petition should be docketed; that the Petitioners should give notice to the public of the Joint Petition's proposed modifications to Form SMCC; and that interested persons should have an opportunity to comment and/or request a hearing on the Joint Petition's proposed modifications to Form SMCC. We further find that it is not necessary to initiate a rulemaking for the limited purpose of modifying Form SMCC since the Petitioners have not proposed changes to the underlying regulations, but we will direct that a copy of this Order and the Proposed Form SMCC, attached to this Order as Attachment A, 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. PUE-2016-00110.
- (2) The Commission's Division of Information Resources shall forward a copy of this Order for Notice and Comment, including a copy of Proposed Form SMCC, to the Registrar of Regulations for publication in the Virginia Register.
- (3) The Petitioners shall promptly make a copy of the Joint Petition and Proposed Form SMCC available to the public, who may obtain a copy of the Joint Petition and Proposed Form SMCC at no charge by requesting a copy of the same in writing from the coordinating counsel for the Petitioners: Anne Flampton Andrews, Esquire, McGuireWoods LLP, Gateway Plaza, 800 East Canal Street, Richmond, Virginia 23219. Customers of the Petitioners may also request a copy from their individual electric utility. The Joint Petition and related documents shall also be available for interested persons to review in the Commission's Document Control

Center, Tyler Building, First Floor, 1300 East Main Street, Richmond, Virginia 23219, between the hours of 8:15 a.m. and 5 p.m., Monday through Friday, excluding holidays. Interested persons may also download unofficial copies from the Commission's website: <http://www.scc.virginia.gov/case>.

(4) On or before November 9, 2016, the Petitioners shall cause the following notice to be published as display advertising (not classified) on one (1) occasion in newspapers of general circulation throughout the Commonwealth of Virginia:

NOTICE TO THE PUBLIC OF A JOINT
PETITION TO ESTABLISH A
RULEMAKING FOR THE LIMITED
PURPOSE OF MODIFYING THE
SERIOUS MEDICAL CONDITION
CERTIFICATION FORM PURSUANT
TO RULE 20 VAC 5-330-30 OF THE
RULES OF THE STATE
CORPORATION COMMISSION OF
VIRGINIA CASE NO. PUE-2016-00110

On September 23, 2016, Virginia Electric and Power Company d/b/a Dominion Virginia Power, Appalachian Power Company, Kentucky Utilities Company d/b/a Old Dominion Power Company, A&N Electric Cooperative, BARC Electric Cooperative, Central Virginia Electric Cooperative, Community Electric Cooperative, Craig-Botetourt Electric Cooperative, Mecklenburg Electric Cooperative, Northern Neck Electric Cooperative, Northern Virginia Electric Cooperative, Prince George Electric Cooperative, Rappahannock Electric Cooperative, Shenandoah Valley Electric Cooperative, Southside Electric Cooperative, and Virginia, Maryland & Delaware Association of Electric Cooperatives (collectively, "Petitioners"), filed a Joint Petition for Rulemaking ("Joint Petition") with the State Corporation Commission ("Commission"). The Petitioners request that the Commission initiate a rulemaking for the limited purpose of modifying the Serious Medical Condition Certification Form ("Form SMCC"), which was included in the adoption of 20 VAC 5-330-30 B of the Commission's regulations titled "Limitations on Disconnection of Electric and Water Service" ("Rules"), 20 VAC 5-330-10 et seq. in 2011.

Form SMCC enables the Petitioners to be aware of residential customers who have a serious medical condition(s) or who reside with a family member with a serious medical condition(s), as defined by Rule 20 VAC 5-330-20, particularly with regard to emergencies and the termination or

disconnection of electric service for such customers. Form SMCC requires certification by a licensed physician that the medical condition meets the definition of a "serious medical condition" in Rule 20 VAC 5-330-20. The Petitioners utilize the Form SMCC provided on the Commission's website but request in the Joint Petition that the Commission approve certain non-substantive modifications to Form SMCC to "make the form more user friendly for utility customers and their physician(s) and provide more useful information to a utility carrying out its service to the public including customers with serious medical conditions." Specifically, the Petitioners propose the following modifications: (1) add a separate description box specific to the "Required Treatment for Condition" section of Form SMCC; (2) add a checklist to the description box for equipment prescribed for the serious medical condition, and change that description box to state "Equipment prescribed and/or equipment required for treatment of condition (If any): (Check all that apply)"; and (3) delete the "Additional Comments" box on the bottom of Form SMCC. The Petitioners assert that the proposed modifications to Form SMCC ("Proposed Form SMCC") are "consistent with and continue[]" to meet the requirements of the [Rules]."

The Commission entered an Order for Notice and Comment that, among other things, docketed the Joint Petition, directed the Petitioners to provide notice to the public and provided interested persons an opportunity to comment and/or request a hearing on the Joint Petition and Proposed Form SMCC.

A copy of the Company's Joint Petition and Proposed Form SMCC may be obtained at no charge by requesting a copy of the same from the coordinating counsel for the Petitioners: Anne Hampton Andrews, Esquire, McGuire Woods LLP, Gateway Plaza, 800 East Canal Street, Richmond, Virginia 23219. Customers of the Petitioners may also request a copy from their individual electric utility. The Joint Petition and related documents shall also be available for review in the Commission's Document Control Center, Tyler Building, First Floor, 1300 East Main Street, Richmond, Virginia 23219, between the hours of 8:15 a.m. and 5 p.m., Monday through Friday, excluding holidays. Interested persons may also download unofficial copies from the Commission's website: <http://www.scc.virginia.gov/case>.

General Notices/Errata

On or before November 30, 2016, interested persons may file comments concerning whether the Commission should modify Form SMCC as requested in the Joint Petition. Such comments shall be filed with Joel H. Peck, Clerk, State Corporation Commission, P.O. Box 2118, Richmond, Virginia 23218, or may be submitted electronically by following the instructions on the Commission's website: <http://www.scc.virginia.gov/case>. Compact disks or any other form of electronic storage medium may not be filed with the comments. All such comments shall refer to Case No. PUE-2016-00110.

On or before November 30, 2016, interested persons may request that the Commission convene a hearing on the Joint Petition's proposed modifications to Form SMCC. Such request for hearing shall be filed with the Clerk of the Commission. If not filed electronically, an original and fifteen (15) copies of the request for hearing shall be submitted to the Clerk of the Commission at the address set forth above. Requests for hearing must refer to Case No. PUE-2016-00110 and 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 this matter.

A copy of any written comments and requests for hearing shall simultaneously be sent to the coordinating counsel for the Petitioners at the address set forth above.

VIRGINIA ELECTRIC AND POWER
COMPANY d/b/a DOMINION
VIRGINIA POWER, APPALACHIAN
POWER COMPANY, KENTUCKY
UTILITIES COMPANY d/b/a OLD
DOMINION POWER COMPANY, A&N
ELECTRIC COOPERATIVE,
BARC ELECTRIC COOPERATIVE,
CENTRAL VIRGINIA ELECTRIC
COOPERATIVE, COMMUNITY
ELECTRIC COOPERATIVE, CRAIG-
BOTETOURT ELECTRIC
COOPERATIVE, MECKLENBURG
ELECTRIC COOPERATIVE,
NORTHERN NECK ELECTRIC
COOPERATIVE, NORTHERN
VIRGINIA ELECTRIC COOPERATIVE,
PRINCE GEORGE ELECTRIC
COOPERATIVE, RAPPAHANNOCK

ELECTRIC COOPERATIVE,
SHENANDOAH VALLEY ELECTRIC
COOPERATIVE, SOUTHSIDE
ELECTRIC COOPERATIVE, and
VIRGINIA, MARYLAND &
DELAWARE ASSOCIATION OF
ELECTRIC COOPERATIVES

(5) On or before November 9, 2016, the Petitioners shall serve a copy of this Order and Proposed Form SMCC upon the individuals and entities listed in Attachment B hereto.

(6) On or before November 30, 2016, the Petitioners shall provide the Commission with the proof of notice and service required by Ordering Paragraphs (4) and (5).

(7) On or before November 30, 2016, interested persons may file comments concerning whether the Commission should modify Form SMCC as requested in the Joint Petition. Such comments shall be filed with Joel H. Peck, Clerk, State Corporation Commission, P.O. Box 2118, Richmond, Virginia 23218, or may be submitted electronically by following the instructions found on the Commission's website: <http://www.scc.virginia.gov/case>. Compact disks or any other form of electronic storage medium may not be filed with the comments. Comments shall refer to Case No. PUE-2016-00110.

(8) On or before November 30, 2016, interested persons may request that the Commission convene a hearing on the Joint Petition's proposed modifications to Form SMCC. Such request for hearing shall be filed with the Clerk of the Commission. If not filed electronically, an original and fifteen (15) copies of the request for hearing shall be submitted to the Clerk of the Commission at the address set forth in Ordering Paragraph (7). Requests for hearing must refer to Case No. PUE-2016-00110 and 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 this matter.

(9) A copy of any written comments and requests for hearing shall simultaneously be sent to the coordinating counsel for the Petitioners at the address set forth in Ordering Paragraph (3).

(10) On or before December 14, 2016, the Staff shall file with the Clerk of the Commission a statement of position regarding the proposed modifications to Form SMCC.

(11) On or before January 6, 2017, the Petitioners may file with the Clerk of the Commission any response in rebuttal to the Staff statement of position, requests for hearing, and any comments filed by interested persons in this proceeding.

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

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to: Horace P. Payne, Jr., Esquire, Dominion Resources Services, Inc., 120 Tredegar Street, Richmond, Virginia 23219; Vishwa B. Link, Esquire, and Anne Hampton Andrews, Esquire, McGuire Woods LLP, Gateway Plaza, 800 East Canal Street, Richmond, Virginia 23219-3916; Noelle J. Coates, Esquire, American Electric Power Service Corporation, 3 James Center, 1051 East Cary Street, Suite 1100, Richmond, Virginia 23219; Kendrick R. Riggs, Esquire, Stoll Keenon Ogden PLLC, 2000 PNC Plaza, 500 West Jefferson Street, Louisville, Kentucky 40202-2828; Allyson K. Sturgeon, Esquire, Senior Corporate Attorney, LG&E and KU Energy Corp., 220 West Main Street, Louisville, Kentucky 40202; Samuel R. Brumberg, Esquire, Association Counsel, Virginia, Maryland & Delaware Association of Electric Cooperatives, 4201 Dominion Boulevard, Suite 101, Glen Allen, Virginia 23060; and C. Meade Browder, Jr., Senior Assistant Attorney General, Division of Consumer Counsel, Office of the Attorney General, 202 North Ninth Street, Richmond, Virginia 23219; and a copy shall be delivered to the Commission's Office of General Counsel and Divisions of Energy Regulation and Utility Accounting and Finance.

¹ On October 5, 2016, the Petitioners filed a revised Attachment B and Paragraph 30 of the Joint Petition to clarify the proposed modifications to Form SMCC.

² 20 VAC 5-330-10 through 20 VAC 5-330-50.

³ Commonwealth of Virginia, ex rel. State Corporation Commission, Ex Parte: In re: Establishing rules providing limitations on disconnection of electric and water service for persons with serious medical conditions, Case No. PUE-2011-00060, 2011 S.C.C. Ann. Rept. 511, Order Adopting Regulations (Oct. 18, 2011).

⁴ Joint Petition at 11.

⁵ Id. at 11-12 and Attachment B (revised October 5, 2016).

⁶ Id. at 11.

ATTACHMENT A

Attachment B (Revised October 5, 2016)

161010086

Serious Medical Condition Certification Form

Form SMCC (approved 04/2015)

To Be Completed by the Customer:			
Customer Name:		Electric Account Number:	
Customer Address:		Water Account Number:	
		Contact Telephone Number:	
City:	State:	Zip Code:	Alternate Telephone Number:
<i>I certify that the information provided above is accurate and the patient is the customer or a family member of the customer residing at this residence.</i>			
Customer Signature:			Date:
To Be Completed by the Patient/ Legal Guardian/ Power of Attorney:			
Patient Name:		Patient Relationship to Customer:	
Contact Telephone Number:		Alternate Telephone Number:	
<i>I hereby authorize my physician to release the following information about the above-named patient to the utility's representatives and/or the State Corporation Commission and to answer related questions to help determine if the identified medical condition(s) meets the definition of a serious medical condition which is defined below. I certify that the patient lives at the address listed above and that all information provided is accurate.</i>			
Patient/ Legal Guardian/ Power of Attorney Signature:			Date:
To Be Completed by the Physician (M.D. or D.O.):			
Physician Name:		Contact Telephone Number:	
Physician Office Address:		Alternate Telephone Number:	
City:	State:	Zip Code:	Fax Number:
Current License Number:		Licensing State:	
Patient's Diagnosis/ Serious Medical Condition:			
Required Treatment for Condition:			
Equipment prescribed and/or equipment required for treatment for condition (if any): (Check all that apply)			
<input type="checkbox"/> Mechanical Ventilator	<input type="checkbox"/> CPAP Machine	<input type="checkbox"/> Ventricular Assist Device	
<input type="checkbox"/> Feeding Pump	<input type="checkbox"/> Nebulizer	<input type="checkbox"/> Other:	
<input type="checkbox"/> Infant Apnea Monitor	<input type="checkbox"/> Hospital Bed		
<input type="checkbox"/> Continuous Oxygen	<input type="checkbox"/> Refrigeration		
<input type="checkbox"/> Home Dialysis	<input type="checkbox"/> HVAC		
Expected Duration of Condition-Additional Comments:			
<i>I certify that the above patient has a serious medical condition which is defined as a physical or psychiatric condition that requires medical intervention to prevent further disability, loss of function, or death. Such conditions are characterized by a need for ongoing medical supervision or the consultation of a physician. A serious medical condition carries with it a risk to health beyond that experienced by the majority of children and adults in their day-to-day minor illnesses and injuries. Individuals with a serious medical condition may require administration of specialized treatments and may be dependent on medical technology such as ventilators, dialysis machines, enteral or parenteral nutrition support, or continuous oxygen. Medical interventions may include medications with special storage requirements, use of powered equipment, or access to water. I certify that the preceding information is correct.</i>			
Physician's Signature:			Date:

This form was developed pursuant to: 20VAC 5-330 "Limitations on Disconnection of Electric and Water Service"

DEPARTMENT OF ENVIRONMENTAL QUALITY

SolUnesco LLC - Notice of Intent for Small Renewable Energy (Solar) Project Permit by Rule - Albemarle County

SolUnesco LLC has provided a notice of intent to the Department of Environmental Quality of its intention to submit the necessary documentation for a permit by rule for a renewable energy project (solar) in Charlottesville, Albemarle County, Virginia, pursuant to 9VAC15-60. SolUnesco and Sol Systems are developing a 14-megawatt direct current, 11-megawatt alternating current (39,216 360-watt modules) solar farm located in Charlottesville, Albemarle County, Virginia. The system will be a ground-mounted array covering approximately 70.54 acres.

Contact Information: Mary E. Major, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4423, FAX (804) 698-4510, or email mary.major@deq.virginia.gov.

SolUnesco LLC - Notice of Intent for Small Renewable Energy (Solar) Project Permit by Rule - Caroline County

SolUnesco LLC has provided a notice of intent to the Department of Environmental Quality of its intention to submit the necessary documentation for a permit by rule for a renewable energy project (solar) in Woodford, Caroline County, Virginia, pursuant to 9VAC15-60. SolUnesco and Sol Systems are developing a 20-megawatt direct current, 15-megawatt alternating current (54,739 360-watt modules) solar farm located in Woodford, Carolina County, Virginia. The system will be a ground-mounted array covering approximately 89.55 acres.

Contact Information: Mary E. Major, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4423, FAX (804) 698-4510, or email mary.major@deq.virginia.gov.

SolUnesco LLC - Notice of Intent for Small Renewable Energy (Solar) Project Permit by Rule - Henry County

SolUnesco LLC has notified the Department of Environmental Quality of its intent to submit the necessary documentation for a permit by rule for a small solar renewable energy project in Axton, Henry County, Virginia, pursuant to 9VAC15-60.

SolUnesco and Sol Systems are developing a 23-megawatt direct current, 20-megawatt alternating current (64,182 360-watt modules) solar farm located in Axton, Henry County, Virginia. The system will be a ground-mounted array covering approximately 120.16 acres.

Contact Information: Mary E. Major, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105,

Richmond, VA 23218, telephone (804) 698-4423, FAX (804) 698-4510, or email mary.major@deq.virginia.gov.

SolUnesco LLC - Notice of Intent for Small Renewable Energy (Solar) Project Permit by Rule - Orange County

SolUnesco LLC has provided a notice of intent to the Department of Environmental Quality of its intention to submit the necessary documentation for a permit by rule for a renewable energy project (solar) in Locust Grove, Orange County, Virginia, pursuant to 9VAC15-60. SolUnesco and Sol Systems are developing an 80-megawatt direct current, 61.5-megawatt alternating current (222,224 360-watt modules) solar farm located in Locust Grove, Orange County, Virginia. The system will be a ground-mounted array covering approximately 397.6 acres.

Contact Information: Mary E. Major, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4423, FAX (804) 698-4510, or email mary.major@deq.virginia.gov.

SunPower Corporation - Notice of Intent for Small Renewable Energy (Solar) Project Permit by Rule - Southampton County

SunPower Corporation has notified the Department of Environmental Quality that it intends to submit the necessary documentation for a permit by rule for a small renewable energy project (solar) in Southampton County, Virginia. The project will consist of a photovoltaic solar facility of up to 91 megawatts of capacity on approximately 525 acres of land. The proposed site is situated south and west of Southampton Parkway, east of Smiths Ferry Road, and north of farms that border Brooks Road; approximately 1.5 miles south of Franklin. When fully commissioned the facility will have approximately 290,000 solar panels.

Contact Information: Mary E. Major, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4423, FAX (804) 698-4510, or email mary.major@deq.virginia.gov.

VIRGINIA LOTTERY

Director's Orders

The following Director's Orders of the Virginia Lottery were filed with the Virginia Registrar of Regulations on October 26, 2016. The orders may be viewed at the Virginia Lottery, 900 East Main Street, Richmond, Virginia, or at the office of the Registrar of Regulations, 201 North 9th Street, 2nd Floor, Richmond, Virginia.

Director's Order Number Ninety-Eight (16)

Final Rules for Operation: "Subscription Program" for Certain Virginia Lottery Computer-Generated Games

General Notices/Errata

(effective with subscriptions purchased on or after October 31, 2016)

Director's Order Number One Hundred Fifty-Five (16)

Virginia Lottery's Computer-Generated Game "Virginia's New Year's Millionaire Raffle" Final Rules for Game Operation (effective November 1, 2016)

Director's Order Number One Hundred Fifty-Six (16)

Certain Virginia Instant Game Lotteries; End of Games.

In accordance with the authority granted by §§ 2.2-4002 B 15 and 58.1-4006 A of the Code of Virginia, I hereby give notice that the following Virginia Lottery instant games will officially end at midnight on October 21, 2016:

Game 1656	Fast \$50s (TOP)
Game 1654	2X The Money (TOP)
Game 1651	5X The Money
Game 1636	Cupcake Cash
Game 1634	Double Shot Crossword
Game 1630	Lucky \$50s (TOP)
Game 1625	Neon 9s
Game 1623	Casino Thrills (TOP)
Game 1611	Cash Vault
Game 1607	Rolling Dice (TOP)
Game 1601	Dogs Playing Poker
Game 1589	Lucky Lines
Game 1584	\$1,000 Frenzy
Game 1568	On The Money (TOP)
Game 1557	20X The Money (TOP)
Game 1535	Triple Black Cherry
Game 1514	Blackjack
Game 1501	Gold (TOP)
Game 1417	Millions To The Max (TOP)

The last day for lottery retailers to return for credit unsold tickets from any of these games will be December 9, 2016. The last day to redeem winning tickets for any of these games will be April 19, 2017, 180 days from the declared official end of the game. Claims for winning tickets from any of these games will not be accepted after that date. Claims that are mailed and received in an envelope bearing a postmark of the United States Postal Service or another sovereign nation of April 19, 2017, or earlier, will be deemed to have been received on time. This notice amplifies and conforms to the

duly adopted State Lottery Board regulations for the conduct of lottery games.

This order is available for inspection and copying during normal business hours at the Virginia Lottery headquarters, 900 East Main Street, Richmond, Virginia, and at any Virginia Lottery regional office. A copy may be requested by mail by writing to Director's Office, Virginia Lottery, 900 East Main Street, Richmond, Virginia 23219.

This Director's Order becomes effective October 17, 2016, and shall remain in full force and effect unless amended or rescinded by further Director's Order.

BOARD OF PHARMACY

Scheduling of Chemicals

Pursuant to § 54.1-3443 D of the Code of Virginia, the Board of Pharmacy is giving notice that it will consider placement of chemical substances in Schedule I of the Drug Control Act. A public hearing will be conducted at 9:00 a.m. on December 12, 2016, at the Perimeter Center, 9960 Mayland Drive, Suite 201, Richmond, VA 23233. Public comment may also be submitted electronically or in writing prior to December 1, 2016, to Caroline Juran, Executive Director of the Board of Pharmacy to caroline.juran@dhp.virginia.gov.

As specified in § 54.1-3443, the Virginia Department of Forensic Science (DFS) has identified eight compounds for recommended inclusion by the Board of Pharmacy into Schedule I in the Code of Virginia. A brief description and chemical name for each compound is as follows:

The following compounds are classified as research chemicals. Drugs of this type have been placed in Schedule I (subdivision 3 of § 54.1-3446 of the Code of Virginia) in previous legislative sessions.

1. 1-(1,3-benzodioxol-5-yl)-2-(dimethylamino)-1-pentanone (other names: N,N-Dimethylpentylone, Dipentylone)
2. 4-chloro-alpha-Pyrrolidinovalerophenone (other name: 4-chloro-alpha-PVP)
3. 4-methyl-alpha-Pyrrolidinohexiophenone (other name: MPHP)
4. 4-fluoro-alpha-Pyrrolidinoheptiophenone (other name: 4-fluoro-PV8)
5. 1-(4-methoxyphenyl)-2-(pyrrolidin-1-yl)octan-1-one (other name: 4-methoxy-PV9)
6. 4-allyloxy-3,5-dimethoxyphenethylamine (other name: Allylescaline)
7. 4-methyl-alpha-ethylaminopentiophenone

The following compound is a powerful synthetic opioid. DFS recommends placing this compound into Schedule I (subdivision 1 of § 54.1-3446 of the Code of Virginia).

N-(4-fluorophenyl)-2-methyl-N-[1-(2-phenylethyl)-4-piperidinyl]-propanamide (other name: para-fluoroisobutaryl fentanyl)

If approved by the Board of Pharmacy, the placement of these substances in Schedule I in the Virginia Drug Control Act shall remain in effect for a period of 18 months from the date of board action and shall then be de-scheduled unless the Drug Control Act is amended by enactment of legislation by the General Assembly.

A [30-day comment forum](#) begins on November 1, 2016, and ends midnight December 1, 2016.

Contact Information: Caroline Juran, RPh, Executive Director, Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4578, FAX (804) 527-4472, or email caroline.juran@dhp.virginia.gov.

STATE WATER CONTROL BOARD

Proposed Consent Order for the Town of Broadway

An enforcement action has been proposed for the Town of Broadway for violations at the Broadway Regional Wastewater Treatment Facility in Rockingham County, Virginia. The State Water Control Board proposes to issue a consent order to the Town of Broadway to address noncompliance with State Water Control Law. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Tamara Ambler will accept comments by email at tamara.ambler@deq.virginia.gov, FAX at (540) 574-7878, or postal mail at Department of Environmental Quality, Valley Regional Office, P.O. Box 3000, Harrisonburg, VA 22801, from November 14, 2016, to December 14, 2016.

Proposed Consent Order for 5th Street Station Ventures, LLC

An enforcement action has been proposed for 5th Street Station Ventures, LLC (5th Street) for violations in Charlottesville, Virginia. The State Water Control Board proposes to issue a consent order to 5th Street for noncompliance with State Water Control Law. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Tiffany Severs will accept comments by email at tiffany.severs@deq.virginia.gov, FAX at (540) 574-7878, or postal mail at Department of Environmental Quality, Valley Regional Office, 4411 Early Road, P.O. Box 3000, Harrisonburg, VA 22801, from November 14, 2016, to December 15, 2016.

Proposed Enforcement Action for Perdue Foods LLC (Accomac)

An enforcement action has been proposed for Perdue Foods LLC (Accomac) for alleged violations of the State Water Control Law. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Jennifer Coleman will accept comments by email at jennifer.coleman@deq.virginia.gov, FAX at (757) 518-2009, or postal mail at Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Boulevard, Virginia Beach, VA 23462, from November 14, 2016, to December 13, 2016.

Proposed Enforcement Action: Tidewater Wood Products, LLC (Hampton)

An enforcement action has been proposed for Tidewater Wood Products, LLC (Hampton) for alleged violations of the State Water Control Law. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Jennifer Coleman will accept comments by email at jennifer.coleman@deq.virginia.gov, FAX at (757) 518-2009, or postal mail at Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Boulevard, Virginia Beach, VA 23462, from November 14, 2016, to December 13, 2016.

Total Maximum Daily Load Implementation Plan for the Clinch River and Cove Creek Watersheds

The Department of Environmental Quality (DEQ) seeks written and oral comments from interested persons on the total maximum daily load (TMDL) implementation plan (IP) for the Clinch River and Cove Creek watersheds. There are 11 different impaired stream segments in this study area and include the following streams: Clinch River, Cove Creek, Stock Creek, Moll Creek, Valley Creek, Blackwater Creek, Copper Creek, and North Fork Clinch River. All segments are listed as impaired on Virginia's § 303(d) TMDL Priority List and Report due to violations of the state's water quality standard for bacteria.

Ten of the segments were first listed as impaired in 2008 and have remained on the § 303(d) list for bacteria impairments, one segment was listed in 2010. The Clinch River segment extends 9.69 miles from the Copper Creek confluence near Speers Ferry downstream to the Tennessee state line near Shelby. Cove Creek extends 6.94 miles from its confluence with Millstone Branch to the confluence with the Clinch River north of Starnes Slant. Stock Creek extends from stream mile 4.56 downstream to the Clinch River confluence at Clinchport. Moll Creek extends 4.20 miles from Copper Creek upstream, to a second tributary including Porter Hollow. Valley Creek extends 1.01 miles from near Farley Chapel to the confluence with Copper Creek. Blackwater

General Notices/Errata

Creek extends 2.11 miles from the East Fork Blackwater Creek confluence downstream to the Tennessee state line. Copper Creek extends 14 miles from the Grassy Creek confluence upstream through Dickensonville to stream mile 56.8. The North Fork Clinch River extends 11.01 miles from the Fraley Branch confluence downstream to the Cox Branch confluence. An additional segment of the North Fork Clinch River was listed in 2010 and extends 5.59 miles from the Cox Branch confluence near Fairview downstream to the Tennessee state line near Dona.

The TMDL studies for these stream impairments were completed in 2014 and can be found in the Bacteria TMDL Development for the Clinch River and Cove Creek Watershed, Virginia report, which is available on the DEQ website at <http://www.deq.virginia.gov/Programs/Water/WaterQualityInformationTMDLs/TMDL/TMDLDevelopment/ApprovedTMDLReports.aspx>.

Section 62.1-44.19:7 C of the Code of Virginia requires expeditious implementation of total maximum daily loads when appropriate. The IP will provide measurable goals and the date of expected achievement of water quality objectives. The IP will also include corrective actions needed and their associated costs, benefits, and environmental impacts.

The Virginia Department of Environmental Quality will host two public meetings to present the draft TMDL implementation plan for the Clinch River and Cove Creek watershed. Both meetings will be held on Thursday, November 17, 2016, from 6 p.m. to 8 p.m.

One meeting will be held at the Crooked Road Tech Center, 372 Technology Trail Lane, Duffield, VA 24244. An additional meeting will take place on the same day and time at the Senior and Community Building, Keith Memorial Park, 163 Spartan Band Avenue, Nickelsville, VA near the Dollar General Store.

A 30-day public comment period for the meetings begins November 17, 2016, and ends December 19, 2016. Written comments should include the name, address, and telephone number of the person submitting the comments and should be sent to Martha Chapman, Department of Environmental Quality, 355A Deadmore Street, Abingdon, VA 24210, telephone (276) 676-4845, or email to martha.chapman@deq.virginia.gov.

VIRGINIA CODE COMMISSION

Notice to State Agencies

Contact Information: *Mailing Address:* Virginia Code Commission, General Assembly Building, 201 North 9th Street, 2nd Floor, Richmond, VA 23219; *Telephone:* Voice (804) 786-3591; *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/connect/commonwealth-calendar>.

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

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