



VIRGINIA

REGISTER OF REGULATIONS

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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>).

April 2017 through April 2018

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
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 2, 2017 (Friday)	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
34:8	November 21, 2017 (Tuesday)	December 11, 2017
34:9	December 6, 2017	December 25, 2017
34:10	December 19, 2017 (Tuesday)	January 8, 2018
34:11	January 3, 2018	January 22, 2018
34:12	January 17, 2018	February 5, 2018
34:13	January 31, 2018	February 19, 2018
34:14	February 14, 2018	March 5, 2018
34:15	February 28, 2018	March 19, 2018
34:16	March 14, 2018	April 2, 2018
34:17	March 28, 2018	April 16, 2018
34:18	April 11, 2018	April 30, 2018

*Filing deadlines are Wednesdays unless otherwise specified.

PETITIONS FOR RULEMAKING

TITLE 9. ENVIRONMENT

AIR POLLUTION CONTROL BOARD

Initial Agency Notice

Title of Regulation: 9VAC5-80. Permits for Stationary Sources.

Statutory Authority: § 10.1-1308 of the Code of Virginia.

Name of Petitioner: Susan V. Coleman.

Nature of Petitioner's Request: As a citizen of the Commonwealth of Virginia, I hereby petition the Department of Environmental Quality's Air Pollution Control Board to simultaneously promulgate both an emergency rulemaking and a formal rulemaking to limit and reduce total carbon dioxide pollution in the Commonwealth by 30% by 2030, from its largest source, electric generating units. The Air Pollution Control Board has clear legal authority to limit and reduce carbon pollution and other greenhouse gases (GHG), by powers vested by the Virginia Code (§§ 10.1-1300-1308). Specifically, Virginia law provides that the Air Pollution Control Board "shall have the power to promulgate regulations, including emergency regulations, abating, controlling and prohibiting air pollution throughout or in any part of the Commonwealth . . ." (§ 10.1-1308 A). Virginia law clearly encompasses carbon dioxide in its legal definition of air pollution: "Air pollution means the presence in the outdoor atmosphere of one or more substances which are or may be harmful or injurious to human health, welfare or safety, to animal or plant life, or to property, or which unreasonably interfere with the enjoyment by the people of life or property" (§ 10.1-1300). Moreover, the Air Pollution Control Board has already identified carbon dioxide and other GHGs as a category of emissions that shall be "subject to regulation" (9VAC5-85-30 C). Most importantly, limiting and reducing carbon pollution would achieve the Board's charge to prevent harm to "public health, safety or welfare; the health of animal or plant life; [and] property, whether . . . recreational, commercial, industrial, [or] agricultural" (9VAC5-10). As a nurse, I am working in the public health sphere and believe the Air Pollution Control Board should limit and reduce carbon pollution to protect human and economic health, because: Carbon pollution is an immediate threat to human health and the economy: sea level rise makes Virginia's coast one of the most imperiled places in the nation. As sea levels continue to rise, storm surges become higher as well, making most of the Hampton Roads region vulnerable to hurricane flooding. Without significant infrastructure investment, Tangier Island may be uninhabitable by the end of the century. Inland areas will see worsened flooding as well, due to heavy storm precipitation, which increased 27% between 1958 and 2012 across the Southeast. Henry Paulson's Risky Business Institute estimates there will be \$17.5 billion in additional sea-level rise damage

and storm damage in Virginia by 2030. We have a duty to exhibit moral leadership. Warmer temperatures also increase ozone levels, aggravating lung diseases such as asthma, including in Richmond, which already suffers some of the worst asthma rates in America. This issue significantly and disproportionately impacts the youth of Virginia, both in productivity and in quality of life. Carbon pollution immediately threatens plant and animal life. Climate change will likely reduce the productivity of livestock, which comprise the bulk of Virginia's farm commodities. Hotter summers will likely reduce corn yields, one of Virginia's largest crop commodities. In addition, the threat of emerging zoonotic diseases due to climate changes not only threatens livestock, but human health. Veterinary, environmental and human health are all inextricably linked. Injury to property, both public and private, is already occurring today: the Norfolk Naval Base is impacted in a variety of ways, including impaired electricity availability, transportation inaccessibility, and piers that must be raised at a cost of \$60 million each. Weakened armed forces bases pose a great risk to national security. In addition to concerns of public health and safety, climate change wreaks havoc on cross-sector stakeholders caused by displacement, transportation and utility interruptions, and increases in disease incidence related to flooding conditions and disrupted housing. The cost of prevention, whether measured in dollars or lives impacted, is so much less than that of attempting to recover after tragedy. The Air Pollution Control Board can cost effectively limit and reduce carbon pollution by 30% from 2015 levels by 2030 because: Virginia already reduced carbon emissions by a similar amount between 2000 and 2015, while the state economy continued to grow. 30% by 2030 would be similar to the amount required in Virginia by the U.S. EPA's Clean Power Plan, which underwent significant economic analysis, and which Governor McAuliffe already supports. Doing so would benefit the economy because clean energy resources like solar, wind, and energy efficiency are now as affordable as, or more affordable than, conventional carbon-based energy resources. For the above-stated legal, economic, and human health and safety reasons, I hereby petition the Air Pollution Control Board to initiate an emergency and formal rulemaking.

Agency Plan for Disposition of Request: The State Air Pollution Control Board, based on discussion and action at its March 16, 2017, meeting and as required by Virginia law, is submitting notice of the petition for publication in the Virginia Register of Regulations on April 17, 2017, and announcing a public comment period. The public comment period begins on April 17, 2017, and closes on July 17, 2017. Following receipt of comments on the petition, the board will consider whether to grant or deny the petition for rulemaking. Board consideration will occur at a meeting of the board. Board book material on the matter will be available approximately three weeks in advance of the meeting.

Petitions for Rulemaking

Public Comment Deadline: July 17, 2017.

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

VA.R. Doc. No. R17-14; Filed March 17, 2017, 11:53 a.m.

REGULATIONS

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

Symbol Key

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

TITLE 4. CONSERVATION AND NATURAL RESOURCES

BOARD OF GAME AND INLAND FISHERIES

Proposed Regulation

REGISTRAR'S NOTICE: The Board of Game and Inland Fisheries is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 A 3 of the Code of Virginia when promulgating regulations regarding the management of wildlife.

Title of Regulation: 4VAC15-20. Definitions and Miscellaneous: In General (amending 4VAC15-20-50).

Statutory Authority: §§ 29.1-103 and 29.1-501 of the Code of Virginia.

Public Hearing Information:

May 24, 2017 - 9 a.m. - Department of Game and Inland Fisheries, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228

Public Comment Deadline: May 10, 2017.

Agency Contact: Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228, telephone (804) 367-8341, or email phil.smith@dgif.virginia.gov.

Summary:

The proposed amendments (i) remove reference to red fox from the list of animals defined as domestic animals, (ii) clarify the definition of a European rabbit to differentiate between domestic rabbit breeds and wild European rabbits, and (iii) allow individuals who already own red foxes and European rabbits as pets to keep them in captivity until the animal dies, provided the individual declares such possession to the department prior to January 1, 2018.

4VAC15-20-50. Definitions; "wild animal," "native animal," "naturalized animal," "nonnative (exotic) animal," and "domestic animal."

A. In accordance with § 29.1-100 of the Code of Virginia, the following terms shall have the meanings ascribed to them by this section when used in regulations of the board:

"Native animal" means those species and subspecies of animals naturally occurring in Virginia, as included in the department's 2014 "List of Native and Naturalized Fauna of Virginia," with copies available in the Richmond and regional offices of the department.

"Naturalized animal" means those species and subspecies of animals not originally native to Virginia that have established wild, self-sustaining populations, as included in the department's 2014 "List of Native and Naturalized Fauna of Virginia," with copies available in the Richmond and regional offices of the department.

"Nonnative (exotic) animal" means those species and subspecies of animals not naturally occurring in Virginia, excluding domestic and naturalized species.

The following animals are defined as domestic animals:

Domestic dog (*Canis familiaris*), including wolf hybrids.

Domestic cat (*Felis catus*), including hybrids with wild felines.

Domestic horse (*Equus caballus*), including hybrids with *Equus asinus*.

Domestic ass, burro, and donkey (*Equus asinus*).

Domestic cattle (*Bos taurus* and *Bos indicus*).

Domestic sheep (*Ovis aries*) including hybrids with wild sheep.

Domestic goat (*Capra hircus*).

Domestic swine (*Sus scrofa*), including pot-bellied pig excluding any swine that are wild or for which no claim of ownership can be made.

Llama (*Lama glama*).

Alpaca (*Lama pacos*).

Camels (*Camelus bactrianus* and *Camelus dromedarius*).

Domesticated races of hamsters (*Mesocricetus* spp.).

Domesticated races of mink (*Mustela vison*) where adults are heavier than 1.15 kilograms or their coat color can be distinguished from wild mink.

~~Domesticated races of red fox (*Vulpes vulpes*) where their coat color can be distinguished from wild red fox.~~

Domesticated races of guinea pigs (*Cavia porcellus*).

Domesticated races of gerbils (*Meriones unguiculatus*).

Domesticated races of chinchillas (*Chinchilla laniger*).

Domesticated races of rats (*Rattus norvegicus* and *Rattus rattus*).

Domesticated races of mice (*Mus musculus*).

Domesticated ~~races~~ breeds of European rabbit (*Oryctolagus cuniculus*) recognized by the American Rabbit Breeders Association, Inc. and any lineage resulting from crossbreeding recognized breeds. A list of recognized rabbit breeds is available on the department's website.

Regulations

Domesticated races of chickens (*Gallus*).

Domesticated races of turkeys (*Meleagris gallopavo*).

Domesticated races of ducks and geese distinguishable morphologically from wild birds.

Feral pigeons (*Columba domestica* and *Columba livia*) and domesticated races of pigeons.

Domesticated races of guinea fowl (*Numida meleagris*).

Domesticated races of peafowl (*Pavo cristatus*).

"Wild animal" means any member of the animal kingdom, except domestic animals, including without limitation any native, naturalized, or nonnative (exotic) mammal, fish, bird, amphibian, reptile, mollusk, crustacean, arthropod or other invertebrate, and includes any hybrid of them, except as otherwise specified in regulations of the board, or part, product, egg, or offspring of them, or the dead body or parts of them.

B. Exception for red foxes and European rabbits. Domesticated red foxes (*Vulpes vulpes*) having coat colors distinguishable from wild red foxes and European rabbits possessed in captivity on July 1, 2017, may be maintained in captivity until the animal dies, but the animal may not be bred or sold without a permit from the department. Persons possessing domesticated red foxes or European rabbits without a permit from the department must declare such possession in writing to the department by January 1, 2018. This written declaration must include the number of individual animals in possession and date acquired, sex, estimated age, coloration, and a photograph of each fox or European rabbit. This written declaration shall (i) serve as a permit for possession only, (ii) is not transferable, and (iii) must be renewed every five years.

VA.R. Doc. No. R17-5066; Filed March 22, 2017, 11:39 a.m.

Proposed Regulation

REGISTRAR'S NOTICE: The Board of Game and Inland Fisheries is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 A 3 of the Code of Virginia when promulgating regulations regarding the management of wildlife.

Title of Regulation: 4VAC15-30. **Definitions and Miscellaneous: Importation, Possession, Sale, Etc., of Animals (amending 4VAC15-30-50).**

Statutory Authority: §§ 29.1-103 and 29.1-501 of the Code of Virginia.

Public Hearing Information:

May 24, 2017 - 9 a.m. - Department of Game and Inland Fisheries, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228

Public Comment Deadline: May 10, 2017.

Agency Contact: Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, 7870 Villa Park

Drive, Suite 400, Henrico, VA 23228, telephone (804) 367-8341, or email phil.smith@dgif.virginia.gov.

Summary:

The proposed amendments authorize (i) Department of Game and Inland Fisheries staff, federal employees involved in wildlife management, animal control officers, and commercial nuisance animal permit holders to humanely dispatch wildlife when necessary and (ii) the department director to set policy regarding the methods of and documentation for the capture, possession, transport, release, and humane dispatch of wildlife.

4VAC15-30-50. Possession, transportation, and release of wildlife by authorized persons.

A. Department employees in the performance of their official duties; U.S. government agencies' employees whose responsibility includes fisheries and wildlife management; and county, city, or town animal control officers in the performance of their official duties related to public health concerns or problem wildlife removal; and individuals operating under conditions of a commercial nuisance animal permit issued by the department pursuant to §§ 29.1-412 and 29.1-417 of the Code of Virginia will be deemed to be permitted pursuant to this section to capture, temporarily hold or possess, transport, release, and when necessary humanely ~~dispatch~~ ~~dispatch~~ wildlife, provided that the methods of and documentation for the capture, possession, transport, release, and ~~euthanasia~~ humane dispatch shall be in accordance with board director policy.

B. Local animal shelters operating under the authority of, or under contract with, any county, city, or town with animal control responsibilities shall be authorized to receive, temporarily confine, and humanely euthanize wildlife, except for state or federal threatened and endangered species; federally protected migratory bird species; black bear; white-tailed deer; and wild turkey, provided that the methods of and documentation for the possession, confinement, and euthanasia shall be in accordance with conditions defined by the agency director. Provided further that any person may legally transport wildlife, except for those species listed ~~above~~ in this subsection, to an authorized animal shelter after contacting the facility to confirm the animal will be accepted.

C. Employees or agents of other state wildlife agencies while in the performance of their official duty in transporting wildlife through the Commonwealth will be deemed to be permitted pursuant to this section, provided that a list of animals to be transported, a schedule of dates and locations where those animals will be housed while in the Commonwealth, and a letter of authorization from both the forwarding and receiving state agencies are provided to the department 24 hours prior to the transporting of such animals, and further provided that such animals shall not be liberated within the Commonwealth.

D. Employees or agents of government agencies, while in the performance of their official duties, may temporarily

possess, transport, and dispose of carcasses of wild animals killed by vehicles, except for state or federal threatened and endangered species, and federally protected migratory bird species.

E. With prior written approval from the director or his designee and under conditions of an applicable department permit, institutions with bona fide accreditation from the Association of Zoos and Aquariums may possess, transport, have transported, export, or import native and naturalized species defined in the List of Native and Naturalized Fauna of Virginia, which is incorporated by reference into 4VAC15-20-50.

VA.R. Doc. No. R17-5067; Filed March 22, 2017, 12:07 p.m.

Proposed Regulation

REGISTRAR'S NOTICE: The Board of Game and Inland Fisheries is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 A 3 of the Code of Virginia when promulgating regulations regarding the management of wildlife.

Title of Regulation: **4VAC15-40. Game: In General (amending 4VAC15-40-30, 4VAC15-40-275; adding 4VAC15-40-225, 4VAC15-40-287).**

Statutory Authority: §§ 29.1-103 and 29.1-501 of the Code of Virginia (4VAC15-40-30, 4VAC15-40-225, and 4VAC15-40-275).

§§ 29.1-103, 29.1-501, and 29.1-527.2 (4VAC15-40-287).

Public Hearing Information:

May 24, 2017 - 9 a.m. - Department of Game and Inland Fisheries, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228

Public Comment Deadline: May 10, 2017.

Agency Contact: Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228, telephone (804) 367-8341, or email phil.smith@dgif.virginia.gov.

Summary:

The proposed amendments (i) add raccoons to the list of species that may be taken by the use or aid of recorded animal or bird calls or sounds; (ii) specifically allow humane dispatch methods for animals captured in traps; (iii) prohibit the drowning of animals captured in cage and box traps; (iv) limit the requirement for a fur dealer permit to those who purchase raw fur or unskinned carcasses of fur-bearing animals; (v) provide for the purchase and sale of pelts not defined as being raw, skinned carcasses, and other furbearer parts by any person at any time without a permit; (vi) define "raw fur"; and (vii) provide a model ordinance for cities and towns to prohibit the feeding of deer.

4VAC15-40-30. Recorded wild animal or wild bird calls or sounds prohibited in taking game; bobcats, coyotes, crows, ~~and foxes, and raccoons~~ excepted.

It shall be unlawful to take or attempt to take wild animals and wild birds with the exception of bobcats, coyotes, crows, ~~and foxes, and raccoons~~ by the use or aid of recorded animal or bird calls or sounds or recorded or electrically amplified imitation of animal or bird calls or sounds; provided, that electronic calls may be used on private lands for hunting bobcats, coyotes, ~~and foxes, and raccoons~~ with written permission of the landowner and on public lands except where specifically prohibited.

4VAC15-40-225. Killing of animals captured in live traps permitted; drowning of animals captured in cage traps prohibited.

It shall be lawful to kill wild animals legally captured in live traps using any humane method of dispatch not specifically prohibited by law; however, it shall be unlawful to intentionally drown any wild animal captured in a cage or box trap.

4VAC15-40-275. Sale of furbearer pelts, carcasses, and parts.

Carcasses, including portions of carcasses, of legally taken and possessed fur-bearing animals may be sold at any time to buyers permitted. It shall be unlawful to buy, sell, barter, traffic or trade in, bargain for, or solicit for purchase raw pelts and unskinned carcasses of fur-bearing animals defined in § 29.1-100 of the Code of Virginia without having first obtained a fur dealer permit in accordance with §§ 29.1-400 through 29.1-407 of the Code of Virginia. A permit shall not be required of any hunter or trapper, or any person lawfully engaged in the business of fur farming, to sell or dispose of legally taken or possessed raw pelts and unskinned carcasses of fur-bearing animals at any time. Provided further, that a permit shall not be required for any person to buy or sell at any time pelts that are not defined as being raw, skinned carcasses or any other parts of legally taken and possessed fur-bearing animals defined in § 29.1-100 of the Code of Virginia. Such parts shall include skulls, teeth, claws, bones, glands, and secretions. For the purposes of this section, "raw pelt" shall be defined as any pelt with its hair or fur intact that has not been tanned, cured, chemically preserved, or converted to any usable form beyond initial cleaning, stretching, and drying. Salt-cured and sun-cured pelts shall be considered raw pelts.

4VAC15-40-287. Model ordinances related to feeding of deer in cities and towns.

Per the provisions of § 29.1-527.2 of the Code of Virginia, the following model ordinance related to the feeding of deer may be adopted by a city or town. Any city or town must notify the director of the Department of Game and Inland Fisheries of the adoption of such an ordinance by registered mail.

Regulations

Model ordinance:

A. Pursuant to § 29.1-527.2 of the Code of Virginia, it shall be unlawful for any person to place, distribute, or allow the placement of food, salt, minerals, or similar substances to feed or attract deer at any time.

B. No person shall continue to place, distribute, or allow the placement of food, salt, minerals, or similar substances for any purpose if the placement of these materials results in the presence of deer.

C. No part of this ordinance shall be construed to restrict agricultural, commercial, noncommercial, or residential plantings (including wildlife food plots); bona fide distribution of food to livestock; or wildlife management activities conducted or authorized by the Department of Game and Inland Fisheries.

VAR. Doc. No. R17-5068; Filed March 29, 2017, 1:29 a.m.

Proposed Regulation

REGISTRAR'S NOTICE: The Board of Game and Inland Fisheries is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 A 3 of the Code of Virginia when promulgating regulations regarding the management of wildlife.

Title of Regulation: **4VAC15-50. Game: Bear (amending 4VAC15-50-11, 4VAC15-50-71, 4VAC15-50-120).**

Statutory Authority: §§ 29.1-103 and 29.1-501 of the Code of Virginia.

Public Hearing Information:

May 24, 2017 - 9 a.m. - Department of Game and Inland Fisheries, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228

Public Comment Deadline: May 10, 2017.

Agency Contact: Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228, telephone (804) 367-8341, or email phil.smith@dgif.virginia.gov.

Summary:

The proposed amendments (i) add a three-day open season for hunting bear in 36 counties or portions of counties to run Monday through Wednesday in the week prior to the statewide archery hunting season; (ii) add one week to the muzzleloading hunting season for bears in 34 localities; (iii) change the start date of the fall bear hound training season to August 1; and (iv) change the bear hound training season dates in the counties of Brunswick, Charlotte, Greensville, Lunenburg, and Mecklenburg to match the western bear hound training season.

4VAC15-50-11. Open season; generally.

A. It shall be lawful to hunt bears ~~within~~ in the following localities, including the cities and towns therein, during the following seasons:

Location	Season
Accomack County	Closed
Albemarle County	Fourth Monday in November through the first Saturday in January, both dates inclusive.
Alleghany County	Fourth Monday <u>Fourth Monday following the last Saturday in September and for 2 days following; and the fourth Monday in November through the first Saturday in January, both dates inclusive.</u>
Amelia County	Monday nearest December 2 and for 5 consecutive hunting days following.
Amherst County	Fourth Monday in November through the first Saturday in January, both dates inclusive.
Appomattox County	Monday nearest December 2 and for 5 consecutive hunting days following.
Arlington County	Fourth Monday <u>Fourth Monday following the last Saturday in September and for 2 days following; and the fourth Monday in November through the first Saturday in January, both dates inclusive.</u>
Augusta County (North of US-250)	Fourth Monday <u>Fourth Monday following the last Saturday in September and for 2 days following; and the fourth Monday in November through the first Saturday in January, both dates inclusive.</u>
Augusta County (South of US-250)	Fourth Monday <u>Fourth Monday following the last Saturday in September and for 2 days following; and the fourth Monday in November through the first Saturday in January, both dates inclusive.</u>
Bath County	Fourth Monday <u>Fourth Monday following the last Saturday in September and for 2 days following; and the fourth Monday in November through the first Saturday in January, both dates inclusive.</u>
Bedford County	Fourth Monday in November through the first Saturday in January, both dates inclusive.

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Bland County	<u>Fourth Monday following the last Saturday in September and for 2 days following; and the fourth Monday in November through the first Saturday in January, both dates inclusive.</u>	Clarke County	<u>Fourth Monday following the last Saturday in September and for 2 days following; and the fourth Monday in November through the first Saturday in January, both dates inclusive.</u>
Botetourt County	<u>Fourth Monday following the last Saturday in September and for 2 days following; and the fourth Monday in November through the first Saturday in January, both dates inclusive.</u>	Craig County	<u>Fourth Monday following the last Saturday in September and for 2 days following; and the fourth Monday in November through the first Saturday in January, both dates inclusive.</u>
Brunswick County	Monday nearest December 2 and for 5 consecutive hunting days following.	Culpeper County	Fourth Monday in November through the first Saturday in January, both dates inclusive.
Buchanan County	<u>First Monday following the last Saturday in September and for 2 days following; and the first Monday in December through the first Saturday in January, both dates inclusive.</u>	Cumberland County	Monday nearest December 2 and for 5 consecutive hunting days following.
Buckingham County	Monday nearest December 2 and for 5 consecutive hunting days following.	Dickenson County	<u>First Monday following the last Saturday in September and for 2 days following; and the first Monday in December through the first Saturday in January, both dates inclusive.</u>
Campbell County	Monday nearest December 2 and for 5 consecutive hunting days following.	Dinwiddie County	Monday nearest December 2 and for 5 consecutive hunting days following.
Caroline County	Fourth Monday in November through the first Saturday in January, both dates inclusive.	Essex County	Monday nearest December 2 and for 5 consecutive hunting days following.
Carroll County	First Monday in December and for 19 days following.	Fairfax County	<u>Fourth Monday following the last Saturday in September and for 2 days following; and the fourth Monday in November through the first Saturday in January, both dates inclusive.</u>
Charles City County	Monday nearest December 2 and for 5 consecutive hunting days following.	Fauquier County	<u>Fourth Monday following the last Saturday in September and for 2 days following; and the fourth Monday in November through the first Saturday in January, both dates inclusive.</u>
Charlotte County	Monday nearest December 2 and for 5 consecutive hunting days following.	Floyd County	First Monday in December and for 19 days following.
Chesapeake (City of)	October 1 through the first Saturday in January, both dates inclusive.	Fluvanna County	Fourth Monday in November through the first Saturday in January, both dates inclusive.
Chesterfield County	Fourth Monday in November through the first Saturday in January, both dates inclusive.	Franklin County	First Monday in December and for 19 days following.

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Frederick County	Fourth Monday in November through the first Saturday in January, both dates inclusive.	James City County	Monday nearest December 2 and for 5 consecutive hunting days following.
Giles County	Fourth Monday following the last Saturday in September and for 2 days following; and the fourth Monday in November through the first Saturday in January, both dates inclusive.	King and Queen County	Monday nearest December 2 and for 5 consecutive hunting days following.
Gloucester County	Monday nearest December 2 and for 5 consecutive hunting days following.	King George County	Monday nearest December 2 and for 5 consecutive hunting days following.
Goochland County	Fourth Monday in November through the first Saturday in January, both dates inclusive.	King William County	Monday nearest December 2 and for 5 consecutive hunting days following.
Grayson County	First Monday in December and for 19 days following.	Lancaster County	Monday nearest December 2 and for 5 consecutive hunting days following.
Greene County	Fourth Monday following the last Saturday in September and for 2 days following; and the fourth Monday in November through the first Saturday in January, both dates inclusive.	Lee County	First Monday following the last Saturday in September and for 2 days following; and the first Monday in December through the first Saturday in January, both dates inclusive.
Greensville County	Monday nearest December 2 and for 5 consecutive hunting days following.	Loudoun County	Fourth Monday following the last Saturday in September and for 2 days following; and the fourth Monday in November through the first Saturday in January, both dates inclusive.
Halifax County	Monday nearest December 2 and for 5 consecutive hunting days following.	Louisa County	Fourth Monday in November through the first Saturday in January, both dates inclusive.
Hanover County	Fourth Monday in November through the first Saturday in January, both dates inclusive.	Lunenburg County	Monday nearest December 2 and for 5 consecutive hunting days following.
Henrico County	Fourth Monday in November through the first Saturday in January, both dates inclusive.	Madison County	Fourth Monday following the last Saturday in September and for 2 days following; and the fourth Monday in November through the first Saturday in January, both dates inclusive.
Henry County	First Monday in December and for 19 days following.	Mathews County	Monday nearest December 2 and for 5 consecutive hunting days following.
Highland County	Fourth Monday following the last Saturday in September and for 2 days following; and the fourth Monday in November through the first Saturday in January, both dates inclusive.	Mecklenburg County	Monday nearest December 2 and for 5 consecutive hunting days following.
Isle of Wight County	Monday nearest December 2 and for 5 consecutive hunting days following.	Middlesex County	Monday nearest December 2 and for 5 consecutive hunting days following.

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Montgomery County (southeast of I-81)	First Monday in December and for 19 days following.	Prince William County	Fourth <u>Monday following the last Saturday in September and for 2 days following; and the fourth</u> Monday in November through the first Saturday in January, both dates inclusive.
Montgomery County (northwest of I-81)	Fourth <u>Monday following the last Saturday in September and for 2 days following; and the fourth</u> Monday in November through the first Saturday in January, both dates inclusive.		Pulaski County (southeast of I-81)
Nelson County	Fourth Monday in November through the first Saturday in January, both dates inclusive.	Pulaski County (northwest of I-81)	Fourth <u>Monday following the last Saturday in September and for 2 days following; and the fourth</u> Monday in November through the first Saturday in January, both dates inclusive.
New Kent County	Monday nearest December 2 and for 5 consecutive hunting days following.		Rappahannock County
Northampton County	Closed	Richmond County	Monday nearest December 2 and for 5 consecutive hunting days following.
Northumberland County	Monday nearest December 2 and for 5 consecutive hunting days following.		Roanoke County
Nottoway County	Monday nearest December 2 and for 5 consecutive hunting days following.	Rockbridge County	Fourth <u>Monday following the last Saturday in September and for 2 days following; and the fourth</u> Monday in November through the first Saturday in January, both dates inclusive.
Orange County	Fourth Monday in November through the first Saturday in January, both dates inclusive.		Rockingham County
Page County	Fourth <u>Monday following the last Saturday in September and for 2 days following; and the fourth</u> Monday in November through the first Saturday in January, both dates inclusive.	Russell County (except on the Channels State Forest and Clinch Mountain WMA)	First <u>Monday following the last Saturday in September and for 2 days following; and the first</u> Monday in December through the first Saturday in January, both dates inclusive.
Patrick County	First Monday in December and for 19 days following.		Prince George County
Pittsylvania County	Monday nearest December 2 and for 5 consecutive hunting days following.		
Powhatan County	Fourth Monday in November through the first Saturday in January, both dates inclusive.		
Prince Edward County	Monday nearest December 2 and for 5 consecutive hunting days following.		
Prince George County	Monday nearest December 2 and for 5 consecutive hunting days following.		

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Russell County (on the Channels State Forest and Clinch Mountain WMA)	Fourth Monday following the last Saturday in September and for 2 days following; and the fourth Monday in November through the first Saturday in January, both dates inclusive.	Tazewell County	Fourth Monday following the last Saturday in September and for 2 days following; and the fourth Monday in November through the first Saturday in January, both dates inclusive.
Scott County	First Monday following the last Saturday in September and for 2 days following; and the first Monday in December through the first Saturday in January, both dates inclusive.	Virginia Beach (City of)	October 1 through the first Saturday in January, both dates inclusive.
Shenandoah County	Fourth Monday following the last Saturday in September and for 2 days following; and the fourth Monday in November through the first Saturday in January, both dates inclusive.	Warren County	Fourth Monday following the last Saturday in September and for 2 days following; and the fourth Monday in November through the first Saturday in January, both dates inclusive.
Smyth County (southeast of I-81)	First Monday in December and for 19 days following.	Washington County (southeast of I-81)	First Monday in December and for 19 days following.
Smyth County (northwest of I-81)	Fourth Monday following the last Saturday in September and for 2 days following; and the fourth Monday in November through the first Saturday in January, both dates inclusive.	Washington County (northwest of I-81 and east of Route 19)	First Monday following the last Saturday in September and for 2 days following; and the first Monday in December through the first Saturday in January, both dates inclusive.
Southampton County	Monday nearest December 2 and for 5 consecutive hunting days following.	Washington County (northwest of I-81 and west of Route 19)	First Monday following the last Saturday in September and for 2 days following; and the first Monday in December and for 19 days following.
Spotsylvania County	Fourth Monday in November through the first Saturday in January, both dates inclusive.	Westmoreland County	Monday nearest December 2 and for 5 consecutive hunting days following.
Stafford County	Fourth Monday following the last Saturday in September and for 2 days following; and the fourth Monday in November through the first Saturday in January, both dates inclusive.	Wise County	First Monday following the last Saturday in September and for 2 days following; and the first Monday in December through the first Saturday in January, both dates inclusive.
Suffolk (City of)	October 1 through the first Saturday in January, both dates inclusive.	Wythe County (southeast of I-81)	First Monday in December and for 19 days following.
Surry County	Monday nearest December 2 and for 5 consecutive hunting days following.	Wythe County (northwest of I-81)	Fourth Monday following the last Saturday in September and for 2 days following; and the fourth Monday in November through the first Saturday in January, both dates inclusive.
Sussex County	Monday nearest December 2 and for 5 consecutive hunting days following.	York County	Monday nearest December 2 and for 5 consecutive hunting days following.

B. Except as provided in the subsection A of this section, bears may be hunted from the Saturday prior to the fourth Monday in November through the first Saturday in January, both dates inclusive, within the incorporated limits of any city that allows bear hunting.

4VAC15-50-71. Muzzleloading gun hunting.

A. ~~Except as otherwise provided in this section, it shall be lawful to hunt bear bears~~ during the special muzzleloading season with muzzleloading guns from the Saturday prior to the second Monday in November through the Friday prior to the third Monday in November, both dates inclusive, except in the cities of Chesapeake, Suffolk, and Virginia Beach.

B. It shall be lawful to hunt bears during the muzzleloading season with muzzleloading guns from the Saturday prior to the first Monday in November through the Friday prior to the third Monday in November, both dates inclusive, in the counties (including the cities or towns within) of Albemarle, Alleghany, Amherst, Appomattox, Arlington, Augusta, Bath, Bedford, Botetourt, Buckingham, Caroline, Clarke, Culpeper, Fairfax, Fauquier, Fluvanna, Frederick, Greene, Highland, Loudoun, Louisa, Madison, Nelson, Orange, Page, Prince William, Rappahannock, Roanoke, Rockbridge, Rockingham, Shenandoah, Spotsylvania, Stafford, and Warren.

~~B. C.~~ It shall be unlawful to hunt bear with dogs during any special season for hunting with muzzleloading guns, except that tracking dogs as defined in § 29.1-516.1 of the Code of Virginia may be used.

~~C. D.~~ A muzzleloading gun, for the purpose of this section, means a single shot weapon, .45 caliber or larger, firing a single projectile or sabot (with a .38 caliber or larger projectile) of the same caliber loaded from the muzzle of the weapon and propelled by at least 50 grains of black powder (or black powder equivalent or smokeless powder).

~~D. E.~~ It shall be unlawful to have in immediate possession any firearm other than a muzzleloading gun while hunting with a muzzleloading gun in a special muzzleloading season.

4VAC15-50-120. Bear hound training season.

A. It shall be lawful to chase black bear with dogs, without capturing or taking, from ~~the second Saturday in August 1~~ through the last Saturday in September, both dates inclusive, in all counties and cities or in the portions in which bear hunting is permitted except in the counties of Accomack, Amelia, Appomattox, ~~Brunswick~~, Buckingham, Campbell, Caroline, Charles City, ~~Charlotte~~, Chesterfield, Clarke, Cumberland, Dinwiddie, Essex, Fairfax, Fauquier, Fluvanna, Frederick, Gloucester, Goochland, Grayson (west of Route 16), ~~Greensville~~, Halifax, Hanover, Henrico, Henry, Isle of Wight, James City, King and Queen, King George, King William, Lancaster, Loudoun, Louisa, ~~Lunenburg~~, Mathews, ~~Mecklenburg~~, Middlesex, New Kent, Northampton, Northumberland, Nottoway, Orange, Patrick, Pittsylvania, Powhatan, Prince Edward, Prince George, Prince William, Richmond, Roanoke (south of Interstate 81), Smyth (that part

south of Interstate 81 and west of Route 16), Southampton, Spotsylvania, Stafford, Surry, Sussex, Westmoreland, and York, and in the cities of Hampton, Newport News and Norfolk.

B. It shall be lawful to chase black bear with dogs, without capturing or taking, from the Saturday prior to the third Monday in November and for 14 days following, both dates inclusive, in the counties of Amelia, Appomattox, Buckingham, Brunswick, Campbell (east of the Norfolk Southern Railroad), Charles City, Charlotte, Cumberland, Essex, Gloucester, Greensville, Halifax, Isle of Wight, James City, King and Queen, King George, King William, Lancaster, Lunenburg, Mathews, Mecklenburg, Middlesex, New Kent, Northumberland, Nottoway, Pittsylvania (east of the Norfolk Southern Railroad), Prince Edward, Prince George, Richmond, Southampton, Surry, Sussex, Westmoreland, and York.

~~C. It shall be lawful to chase black bears with dogs, without capturing or taking, in the counties of Brunswick, Charlotte, Greensville, Lunenburg, and Mecklenburg from the first Saturday in September through the last Saturday in September, both dates inclusive.~~

~~D. C.~~ It shall be unlawful to have in possession a firearm, bow, crossbow, or any weapon capable of taking a black bear while participating in the bear hound training season. The meaning of "possession" for the purpose of this section shall include, ~~but not be limited to,~~ having a firearm, bow, crossbow, or any weapon capable of taking a black bear in or on one's person, vehicle, or conveyance.

VA.R. Doc. No. R17-5069; Filed March 29, 2017, 1:42 a.m.

Proposed Regulation

REGISTRAR'S NOTICE: The Board of Game and Inland Fisheries is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 A 3 of the Code of Virginia when promulgating regulations regarding the management of wildlife.

Title of Regulation: **4VAC15-80. Game: Crow (amending 4VAC15-80-10).**

Statutory Authority: §§ 29.1-103 and 29.1-501 of the Code of Virginia.

Public Hearing Information:

May 24, 2017 - 9 a.m. - Department of Game and Inland Fisheries, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228

Public Comment Deadline: May 10, 2017.

Agency Contact: Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228, telephone (804) 367-8341, or email phil.smith@dgif.virginia.gov.

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Summary:

The proposed amendments rescind Sundays and add Mondays as days of each week on which crows may be hunted during the crow hunting season.

4VAC15-80-10. Open season.

It shall be lawful to hunt crow on Monday, Wednesday, Friday, and Saturday, ~~and Sunday~~ of each week from the third Saturday in August through the third Friday in March, both dates inclusive.

VA.R. Doc. No. R17-5070; Filed March 22, 2017, 12:26 p.m.

Proposed Regulation

REGISTRAR'S NOTICE: The Board of Game and Inland Fisheries is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 A 3 of the Code of Virginia when promulgating regulations regarding the management of wildlife.

Title of Regulation: 4VAC15-90. **Game:** Deer (amending 4VAC15-90-70, 4VAC15-90-80, 4VAC15-90-89, 4VAC15-90-90, 4VAC15-90-91, 4VAC15-90-280, 4VAC15-90-291, 4VAC15-90-294).

Statutory Authority: §§ 29.1-103 and 29.1-501 of the Code of Virginia.

Public Hearing Information:

May 24, 2017 - 9 a.m. - Department of Game and Inland Fisheries, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228

Public Comment Deadline: May 10, 2017.

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Summary:

The proposed amendments (i) allow the use of a slingbow for deer hunting during archery deer hunting season; (ii) adjust the number of days on which deer of either sex may be taken during muzzleloading deer hunting season in various counties; (iii) reduce the minimum muzzleloading gun sabotaged bullet projectile size allowable for hunting deer to .35 caliber; (iv) require that antlerless deer be taken before multiple bucks may be taken during the license year in any town or city except Chesapeake, Suffolk, and Virginia Beach and on private lands in Fauquier and Montgomery Counties; (v) increase the daily deer bag limit west of the Blue Ridge Mountains to two deer per day; (vi) allow no more than one antlerless deer per hunter per day to be taken on national forest and department-owned lands statewide except in Arlington, Fairfax, Loudoun, and Prince William Counties; (vii) simplify and standardize the language describing the antler point restriction in effect in seven western counties; (viii) adjust the number of days during which deer of either sex may be taken during the general firearms deer hunting

season in a number of counties; (ix) allow the buying and selling of specified cervid parts, items made from such parts, and cervid mounts; (x) rescind requirements for intervals and associated permanent gaps in fencing intended to not impede the free egress of deer; and (xi) authorize permitted rehabilitators to transport and temporarily possess adult deer or elk solely for the purpose of immediate humane dispatch.

4VAC15-90-70. Archery hunting.

A. It shall be lawful to hunt deer during the early special archery season with archery equipment or a slingbow from the first Saturday in October through the Friday prior to the third Monday in November, both dates inclusive.

B. In addition to the season provided in subsection A of this section, it shall be lawful to hunt deer during the late special archery season with archery equipment ~~from~~ or a slingbow:

1. From the Sunday following the close of the general firearms season on deer through the first Saturday in January, both dates inclusive, in (i) all cities, towns, and counties west of the Blue Ridge Mountains (except Clarke County and on non-national forest lands in Frederick County) ~~and~~; (ii) in the counties (including the cities and towns within) of Amherst (west of Business U.S. 29 from the James River to its intersection with U.S. 29 just south of the Town of Amherst continuing north on U.S. 29 to the Tye River), Bedford, Franklin, Henry, Nelson (west of Route 151), and Patrick ~~and~~; (iii) on the Chester F. Phelps Wildlife Management Area; and (iv) on national forest lands in Frederick County ~~and from~~.

2. From December 1 through the first Saturday in January, both dates inclusive, in the cities of Chesapeake, Suffolk (east of the Dismal Swamp Line), and Virginia Beach.

C. Deer of either sex may be taken full season during the special archery seasons as provided in subsections A and B of this section (except on PALS (Public Access Lands) in Dickenson County where it shall be unlawful to take antlerless deer during the special archery seasons provided for in subsections A and B of this section).

D. It shall be unlawful to carry firearms while hunting with archery equipment during the special archery seasons, except that a muzzleloading gun, as defined in 4VAC15-90-80, may be in the possession of a properly licensed muzzleloading gun hunter when and where a special archery deer season overlaps a special muzzleloading deer season.

E. It shall be unlawful to use dogs when hunting with archery equipment during any special archery season, except that tracking dogs as described in § 29.1-516.1 of the Code of Virginia may be used.

F. It shall be lawful to hunt antlerless deer during the special urban archery season with archery equipment or a slingbow from the first Saturday in September through the Friday prior to the first Saturday in October, both dates inclusive, and from the Sunday following the first Saturday in January

through the last Sunday in March, both dates inclusive, within the incorporated limits of any city or town in the Commonwealth (except on national forest and department-owned lands) and counties with a human population density of 300 persons per square mile or more (except on national forest and department-owned lands), provided that its governing body submits by certified letter to the department prior to April 1, its intent to participate in the special urban archery season. Any city, town, or county no longer participating in this season shall submit by certified letter to the department prior to April 1 notice of its intent not to participate in the special urban archery season.

G. It shall be lawful to hunt antlerless deer during the special antlerless archery season with archery equipment or a slingbow from the Monday following the last Sunday in March through the last Sunday in April, both dates inclusive, in Arlington, Fairfax, Loudoun, and Prince William counties (including the cities and towns within).

4VAC15-90-80. Muzzleloading gun hunting.

A. It shall be lawful to hunt deer during the early special muzzleloading season with muzzleloading guns from the Saturday prior to the first Monday in November through the Friday prior to the third Monday in November, both dates inclusive, in all cities, towns, and counties where deer hunting with a rifle or muzzleloading gun is permitted, except in the cities of Chesapeake, Suffolk (east of the Dismal Swamp Line), and Virginia Beach.

B. It shall be lawful to hunt deer during the late special muzzleloading season with muzzleloading guns starting 21 consecutive days immediately prior to and on the first Saturday in January, ~~in~~:

1. In all cities, towns, and counties west of the Blue Ridge Mountains (except Clarke County and on non-national forest lands in Frederick County), ~~and east~~;

2. East of the Blue Ridge Mountains in the counties Counties (including the cities and towns within) of Amherst (west of Business U.S. 29 from the James River to its intersection with U.S. 29 just south of the Town of Amherst continuing north on U.S. 29 to the Tye River), Bedford, Franklin, Henry, Nelson (west of Route 151), and Patrick ~~and~~ ~~on~~;

3. On national forest lands in Frederick County; ~~and in~~

4. In the ~~cities~~ Cities of Chesapeake, Suffolk (east of the Dismal Swamp Line), and Virginia Beach.

C. Deer of either sex may be taken during the entire early special muzzleloading season east of the Blue Ridge Mountains unless otherwise noted below in this subsection:

1. Deer of either sex may be taken on the second Saturday only of the early special muzzleloading season on state forest lands, state park lands (except Occoneechee State Park), department-owned lands (except Merrimac Farm Wildlife Management Area), and Philpott Reservoir.

2. Antlered bucks only—no either-sex deer hunting days during the early special muzzleloading season on national forest lands in Amherst, Bedford, and Nelson counties Counties.

D. Deer of either sex may be taken on the second Saturday only during the early special muzzleloading season west of the Blue Ridge Mountains unless otherwise noted below in this subsection:

1. Deer of either sex may be taken during the entire early special muzzleloading season in Clarke and Floyd counties Counties and on private lands in Carroll, Frederick, Grayson, Montgomery, Pulaski, Roanoke, Scott, Shenandoah, and Warren counties Counties.

2. Deer of either sex may be taken on the second Saturday and the last five days of the early muzzleloading season on private lands in Botetourt County.

3. Antlered bucks only—no either-sex deer hunting days during the early special muzzleloading season in Buchanan, Dickenson, Lee, Russell, Tazewell, and Wise counties Counties and on national forest lands in Alleghany, Bland, Craig, Frederick, Giles, Grayson, Montgomery, Page, Pulaski, Rockingham, Scott, Shenandoah, Warren, and on national forest and department-owned lands in Augusta, Bath, Botetourt, Carroll, Highland (except Highland Wildlife Management Area), Roanoke, Rockbridge, Smyth, Washington, and Wythe counties Counties and on Channels State Forest, Grayson Highlands State Park, Hungry Mother State Park, and on private lands west of Routes 613 and 731 in Rockingham County.

E. Deer of either sex may be taken during the last six days of the late special muzzleloading season unless otherwise listed below in this subsection:

1. Deer of either sex may be taken full season during the entire late special muzzleloading season in the counties Counties (including the cities and towns within) of Amherst (west of Business U.S. 29 from the James River to its intersection with U.S. 29 just south of the Town of Amherst continuing north on U.S. 29 to the Tye River, except on national forest lands), Bedford (except on national forest lands), Floyd, Franklin, Henry, Nelson (west of Route 151, except on national forest lands), and Patrick and on private lands in Carroll, Grayson, Montgomery, Pulaski, Roanoke, Shenandoah, and Warren counties Counties.

2. Deer of either sex may be taken the last day only during the late special muzzleloading season in Alleghany, Bath, Dickenson (~~north of Route 83~~), Highland, Lee, Russell, Tazewell, and Wise counties Counties and on national forest lands in Amherst, Bedford, Bland, Craig, Frederick, Giles, Grayson, Montgomery, Nelson, Page, Pulaski, Rockingham, Scott, Shenandoah, and Warren counties Counties, and on national forest and department-owned lands in Augusta, Botetourt, Carroll, Roanoke, Rockbridge,

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Smyth, ~~and Washington counties~~, and Wythe Counties and on private lands west of Routes 613 and 731 in Rockingham County, Channels State Forest, and Grayson Highlands State Park, and Hungry Mother State Park.

3. Antlered bucks only—no either-sex deer hunting days during the late special muzzleloading season in Buchanan and Dickenson (south of Route 83).

F. Deer of either sex may be taken full season during the special muzzleloading seasons within the incorporated limits of any city or town in the Commonwealth that allows deer hunting except in the ~~counties~~ Counties of Buchanan, Dickenson, and Wise.

G. It shall be unlawful to hunt deer with dogs during any special season for hunting with muzzleloading guns, except that tracking dogs as described in § 29.1-516.1 of the Code of Virginia may be used.

H. A muzzleloading gun, for the purpose of this section, means a single shot weapon, .45 caliber or larger, firing a single projectile or sabot (with a ~~.38~~ .35 caliber or larger projectile) of the same caliber loaded from the muzzle of the weapon and propelled by at least 50 grains of black powder (or black powder equivalent or smokeless powder).

I. It shall be unlawful to have in immediate possession any firearm other than a muzzleloading gun while hunting with a muzzleloading gun in a special muzzleloading season.

4VAC15-90-89. Earn a buck (EAB).

For the purposes of this section, the term "license year" defines the period between July 1 and June 30 of the following year.

Arlington County (~~including the cities and towns within~~). During a license year, it shall be unlawful to take a second antlered deer in Arlington County prior to taking at least two antlerless deer in Arlington County, and it shall be unlawful to take a third antlered deer in Arlington County prior to taking at least three antlerless deer in Arlington County.

Bedford County on private lands (~~including the cities and towns within~~). During a license year, it shall be unlawful to take a second antlered deer on private lands in Bedford County prior to taking at least one antlerless deer on private lands in Bedford County, and it shall be unlawful to take a third antlered deer on private lands in Bedford County prior to taking at least two antlerless deer on private lands in Bedford County.

Clarke County on private lands (~~including the cities and towns within~~). During a license year, it shall be unlawful to take a second antlered deer on private lands in Clarke County prior to taking at least one antlerless deer on private lands in Clarke County.

Fairfax County (~~including the cities and towns within~~). During a license year, it shall be unlawful to take a second antlered deer in Fairfax County prior to taking at least two antlerless deer in Fairfax County, and it shall be unlawful to

take a third antlered deer in Fairfax County prior to taking at least three antlerless deer in Fairfax County.

Fauquier County on private lands. During a license year, it shall be unlawful to take a second antlered deer on private lands in Fauquier County prior to taking at least one antlerless deer on private lands in Fauquier County, and it shall be unlawful to take a third antlered deer on private lands in Fauquier County prior to taking at least two antlerless deer on private lands in Fauquier County.

Frederick County on private lands (~~including the cities and towns within~~). During a license year, it shall be unlawful to take a second antlered deer on private lands in Frederick County prior to taking at least one antlerless deer on private lands in Frederick County.

Loudoun County (~~including the cities and towns within~~). During a license year, it shall be unlawful to take a second antlered deer in Loudoun County prior to taking at least two antlerless deer in Loudoun County, and it shall be unlawful to take a third antlered deer in Loudoun County prior to taking at least three antlerless deer in Loudoun County.

Montgomery County on private lands. During a license year, it shall be unlawful to take a second antlered deer on private lands in Montgomery County prior to taking at least one antlerless deer on private lands in Montgomery County.

Prince William County except on Department of Defense lands (~~including the cities and towns within~~). During a license year, it shall be unlawful to take a second antlered deer in Prince William County (except on Department of Defense lands) prior to taking at least two antlerless deer in Prince William County (except on Department of Defense lands), and it shall be unlawful to take a third antlered deer in Prince William County (except on Department of Defense lands) prior to taking at least three antlerless deer in Prince William County (except on Department of Defense lands).

Rappahannock County (~~including the cities and towns within~~). During a license year, it shall be unlawful to take a second antlered deer in Rappahannock County prior to taking at least one antlerless deer in Rappahannock County, and it shall be unlawful to take a third antlered deer in Rappahannock County prior to taking at least two antlerless deer in Rappahannock County.

Roanoke County on private lands (~~including the cities and towns within~~). During a license year, it shall be unlawful to take a second antlered deer on private lands in Roanoke County prior to taking at least one antlerless deer on private lands in Roanoke County.

Warren County on private lands (~~including the cities and towns within~~). During a license year, it shall be unlawful to take a second antlered deer on private lands in Warren County prior to taking at least one antlerless deer on private lands in Warren County.

Cities and towns. During a license year in any town or city (except Chesapeake, Suffolk, and Virginia Beach) east of the

Blue Ridge Mountains, it shall be unlawful to take a second antlered deer prior to taking at least one antlerless deer, and it shall be unlawful to take a third antlered deer prior to taking at least two antlerless deer. During a license year in any town or city west of the Blue Ridge Mountains, it shall be unlawful to take a second antlered deer prior to taking at least one antlerless deer.

4VAC15-90-90. Bag limit, bonus deer permits and special antlerless provision for youth hunters.

A. The bag limit for deer east of the Blue Ridge Mountains (except on national forest lands in Amherst, Bedford, and Nelson ~~counties~~ Counties) is two per day (~~except for the counties of, including the cities and towns within, Arlington, Fairfax, Loudoun, and Prince William where the daily bag limit is unlimited~~), six per license year, three of which must be antlerless unless otherwise noted in this subsection.

1. Only one antlerless deer per hunter per day may be taken on national forest and department-owned lands unless otherwise noted in this subsection.

2. The daily bag limit for deer is unlimited in the Counties (including the cities and towns within) of Arlington, Fairfax, Loudoun, and Prince William.

B. The bag limit for deer west of the Blue Ridge Mountains and on national forest lands in Amherst, Bedford, and Nelson ~~counties~~ Counties is ~~one~~ two per day (~~except for private lands in the counties including the cities and towns within Clarke, Frederick, Roanoke, Shenandoah, and Warren where the daily bag limit is two per day~~), five per license year, three of which must be antlerless unless otherwise noted in this subsection. ~~Only one antlered buck taken in the county of Alleghany, Augusta, Bath, Highland, Shenandoah, Rockbridge, or Rockingham per license year may have less than four antler points one inch or longer on one side of the antlers.~~

1. Only one antlerless deer per hunter per day may be taken on national forest and department-owned lands.

2. If a deer hunter kills two antlered bucks in a license year in Alleghany, Augusta, Bath, Highland, Rockbridge, Rockingham, or Shenandoah County, at least one of the antlered bucks must have at least four antler points, one inch or longer, on one side of the antlers.

C. Except as noted in subsection E ~~below of this section~~, antlerless deer may be taken only during designated either-sex deer hunting days during the special archery seasons, special muzzleloading seasons, and the general firearms season.

D. Bonus deer permits shall be valid on private land in counties and cities where deer hunting is permitted (except Buchanan, Dickenson, and Wise ~~counties~~ Counties) during the special archery seasons, special muzzleloading seasons, and the general firearms season. Bonus deer permits shall be valid on public lands, including state parks, state forests, national wildlife refuges, military areas, etc., as authorized by the managing agency. Unless otherwise posted or authorized

in writing for wildlife management areas by the department, or for national forest lands by the U.S. Forest Service, the use of bonus permits is prohibited on department-owned and national forest lands. Bonus deer permits shall be valid for antlerless deer only. Deer taken on bonus permits shall count against the daily bag limit but are in addition to the seasonal bag limit.

E. Deer hunters 15 years of age and under, including those exempt from purchasing a hunting license, when in compliance with all applicable laws and license requirements, may take one antlerless deer per license year on days other than designated either-sex deer hunting days during the special muzzleloading seasons or the general firearms season in all counties that have at least one either-sex deer hunting day during the general firearms deer season.

4VAC15-90-91. General firearms season either-sex deer hunting days.

A. During the general firearms deer season, deer of either sex may be taken within:

Accomack County: full season.

Albemarle County: full season.

Alleghany County: the second Saturday and the last day.

~~-National forest lands: the last day antlered bucks only—~~
no either-sex days. Only deer with antlers above the hairline may be taken.

Amelia County: the second and third Saturdays and the last 13 days.

-Amelia WMA: the second and third Saturdays and the last six days.

Amherst County (east of Business U.S. 29 from the James River to its intersection with U.S. 29 just south of the Town of Amherst continuing north on U.S. 29 to the Tye River): the second, and third, ~~and fourth~~ Saturdays and the last ~~27~~ 29 days.

Amherst County (west of Business U.S. 29 from the James River to its intersection with U.S. 29 just south of the Town of Amherst continuing north on U.S. 29 to the Tye River): full season.

~~-National forest lands: the last day antlered bucks only—~~
no either-sex days. Only deer with antlers above the hairline may be taken.

Appomattox County: the second and third Saturdays and the last six days.

-Appomattox-Buckingham State Forest: the second and third Saturdays.

-Featherfin WMA: the second, and third, ~~and fourth~~ Saturdays and the last ~~27~~ 29 days.

Arlington County: full season.

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Augusta County: the second Saturday and the last six days.

-National forest and department-owned lands: ~~the last day antlered bucks only—no either-sex days.~~ Only deer with antlers above the hairline may be taken.

Bath County: the second Saturday and the last day.

-National forest and department-owned lands: ~~the last day antlered bucks only—no either-sex days.~~ Only deer with antlers above the hairline may be taken.

Bedford County: full season.

-National forest lands: ~~the last day antlered bucks only—no either-sex days.~~ Only deer with antlers above the hairline may be taken.

Bland County: the second Saturday and the last day.

-National forest lands: the second Saturday and the last day.

Botetourt County: full season.

-National forest and department-owned lands: ~~the last day antlered bucks only—no either-sex days.~~ Only deer with antlers above the hairline may be taken.

Brunswick County: the second and third Saturdays and the last six days.

Buchanan County: antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken.

Buckingham County: the second and third Saturdays and the last six days.

-Horsepen Lake WMA: the second and third Saturdays and the last six days.

-Appomattox-Buckingham State Forest: the second and third Saturdays.

-Featherfin WMA: the second, and third, ~~and fourth~~ Saturdays and the last ~~27~~ 29 days.

Campbell County: the second, and third, ~~and fourth~~ Saturdays and the last ~~27~~ 29 days.

Caroline County: the second and third Saturdays and the last ~~13~~ six days.

-Mattaponi WMA: the second and third Saturdays and the last six days.

Carroll County: full season.

-National forest and department-owned lands: the second Saturday and the last day.

Charles City County: the second, and third, ~~and fourth~~ Saturdays and the last ~~27~~ 13 days.

-Chickahominy WMA: antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken.

Charlotte County: the second and third Saturdays and the last six days.

Chesapeake (City of): the second and third Saturdays and the last 13 days.

Chesterfield County: the second and third Saturdays and the last ~~13~~ six days.

Clarke County: full season.

Craig County: full season.

-National forest lands: the second Saturday and the last day.

Culpeper County: full season.

-Chester F. Phelps WMA: the second Saturday and the last day.

Cumberland County: the second and third Saturdays and the last 13 days.

-Cumberland State Forest: the second and third Saturdays.

Dickenson County: antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken.

Dinwiddie County: the second and third Saturdays and the last six days.

Essex County: the second, and third, ~~and fourth~~ Saturdays and the last ~~27~~ six days.

Fairfax County: full season (~~restricted to certain parcels of land by special permit~~).

Fauquier County: full season.

-G. Richard Thompson WMA: the second Saturday and the last day.

-Chester F. Phelps WMA: the second Saturday and the last day.

Floyd County: full season.

Fluvanna County: second and third Saturdays and the last 13 days.

Franklin County: full season.

-Philpott Reservoir: the second Saturday and the last six days.

-Turkeycock Mountain WMA: the second Saturday and the last six days.

Frederick County: full season.

-National forest lands: ~~the last day antlered bucks only—no either-sex days.~~ Only deer with antlers above the hairline may be taken.

Giles County: full season.

-National forest lands: the second Saturday and the last day.

Gloucester County: the second, and third, ~~and fourth~~ Saturdays and the last ~~27~~ 29 days.

Goochland County: the second, and third, ~~and fourth~~ Saturdays and the last ~~27~~ 29 days.

Grayson County: full season.

-National forest lands and Grayson Highlands State Park: antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken.

Greene County: full season.

Greensville County: ~~full season~~ the second and third Saturdays and the last six days.

Halifax County: the second, and third, ~~and fourth~~ Saturdays and the last ~~27~~ 13 days.

Hanover County: full season.

Henrico County: full season.

Henry County: the second and third Saturdays and the last 13 days.

-Fairystone Farms WMA, Fairystone State Park, and Philpott Reservoir: the second Saturday and the last six days.

-Turkeycock Mountain WMA: the second Saturday and the last six days.

Highland County: the second Saturday and the last day.

-National forest ~~and department owned~~ lands: ~~the last day~~ antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken.

-Department-owned lands: the second Saturday and the last day.

Isle of Wight County: full season.

-Ragged Island WMA: antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken.

James City County: full season.

King and Queen County: the second and third Saturdays and the last ~~13~~ six days.

King George County: ~~full season~~ the second and third Saturdays and the last 29 days.

King William County: the second and third Saturdays and the last ~~13~~ six days.

Lancaster County: ~~full season~~ the second and third Saturdays and the last 29 days.

Lee County: the second Saturday and the last two days.

-National forest lands: antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken.

Loudoun County: full season.

Louisa County: the second, and third, ~~and fourth~~ Saturdays and the last ~~27~~ 29 days.

Lunenburg County: the second and third Saturdays and the last six days.

Madison County: full season.

-Rapidan WMA: the second, and third, ~~and fourth~~ Saturdays and the last ~~27~~ 29 days.

Mathews County: the second, and third, ~~and fourth~~ Saturdays and the last ~~27~~ 29 days.

Mecklenburg County: the second and third Saturdays and the last six days.

-Dick Cross WMA: the second and third Saturdays and the last six days.

Middlesex County: the second, and third, ~~and fourth~~ Saturdays and the last ~~27~~ 29 days.

Montgomery County: full season.

-National forest lands: the second Saturday and the last day.

Nelson County (east of Route 151): the second, and third, ~~and fourth~~ Saturdays and the last ~~27~~ 29 days.

-James River WMA: the second Saturday and the last six days.

Nelson County (west of Route 151): full season.

-National forest lands: ~~the last day~~ antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken.

New Kent County: the second, and third, ~~and fourth~~ Saturdays and the last ~~27~~ 13 days.

Northampton County: full season.

Northumberland County: ~~full season~~ the second and third Saturdays and the last 29 days.

Nottoway County: the second and third Saturdays and the last six days.

Orange County: full season.

Page County: the second Saturday and the last two days.

-National forest lands: ~~the last day~~ antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken.

Patrick County: the second and third Saturdays and the last 13 days.

-Fairystone Farms WMA, Fairystone State Park, and Philpott Reservoir: the second Saturday and the last six days.

Pittsylvania County: the second, and third, ~~and fourth~~ Saturdays and the last ~~27~~ 29 days.

-White Oak Mountain WMA: the second Saturday and the last day.

Powhatan County: the second and third Saturdays and the last 13 days.

-Powhatan WMA: the second and third Saturdays and the last 13 days.

Prince Edward County: the second and third Saturdays and the last six days.

-Briery Creek WMA: the second and third Saturdays and the last six days.

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-Featherfin WMA: the second, and third, ~~and fourth~~ Saturdays and the last ~~27~~ 29 days.

-Prince Edward State Forest: the second and third Saturdays.

Prince George County: full season.

Prince William County: full season.

Pulaski County: full season.

-National forest lands: the second Saturday and the last day.

Rappahannock County: full season.

Richmond County: ~~full season~~ the second and third Saturdays and the last 29 days.

Roanoke County: full season.

-National forest and department-owned lands: ~~the second Saturday and the last day~~ antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken.

Rockbridge County: the second Saturday and the last two days.

-National forest and department-owned lands: ~~the last day~~ antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken.

Rockingham County: ~~the second Saturday and the last six days~~ full season.

-National forest lands ~~and private lands~~: antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken.

-Private lands west of Routes 613 and 731: the last day.

Russell County: the second Saturday and the last two days.

-Clinch Mountain WMA, Hidden Valley WMA, and the Channels State Forest: antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken.

Scott County: the second Saturday and the last six days.

-National forest lands: antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken.

Shenandoah County: full season.

-National forest lands: ~~the last day~~ antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken.

Smyth County: the second Saturday and the last six days.

-National forest lands, Clinch Mountain WMA, and Hungry Mother State Park: antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken.

Southampton County: full season.

Spotsylvania County: the second, and third, ~~and fourth~~ Saturdays and the last ~~27~~ 29 days.

Stafford County: full season.

Suffolk (east of the Dismal Swamp Line): the second and third Saturdays and the last 13 days.

Suffolk (west of the Dismal Swamp Line): full season.

Surry County: full season.

-Carlisle ~~Tract~~ and Stewart Tracts of the Hog Island WMA: antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken.

Sussex County: full season.

-Parkers Branch Tract of the Big Woods WMA and Big Woods State Forest: the second and third Saturdays and the last six days.

Tazewell County: the second Saturday and the last two days.

-National forest lands and Clinch Mountain WMA: antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken.

Virginia Beach (City of): the second and third Saturdays and the last 13 days.

Warren County: full season.

-National forest lands: ~~the last day~~ antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken.

Washington County: the second Saturday and the last six days.

-National forest lands, Clinch Mountain WMA, Hidden Valley WMA, and the Channels State Forest: antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken.

Westmoreland County: ~~full season~~ the second and third Saturdays and the last 29 days.

Wise County: antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken.

Wythe County: full season.

-National forest lands and Big Survey WMA: the second Saturday and the last day.

York County: full season.

B. Except as provided in the subsection A of this section, deer of either sex may be taken full season during the general firearms deer season within the incorporated limits of any city or town, state park, national wildlife refuge, or military installation that allows deer hunting.

4VAC15-90-280. Sale of ~~hides~~ cervid parts and cervid mounts.

~~It shall be lawful to sell hides and hooves from any legally taken deer.~~ Provided that no extraneous muscle tissue is attached, it shall be lawful to purchase or sell the hair, hide, tail, sinew, skull, antlers, bones, and feet of a legally possessed cervid carcass or cervid carcass part, any products made from these deer parts, and cervid mounts.

4VAC15-90-291. Enclosed or fenced areas that prevent or impede the free egress of deer.

A. Pursuant to § 29.1-525.1 A and B of the Code of Virginia, an enclosed or fenced area having any of the following attributes shall be deemed to prevent or impede the free egress of deer:

1. A fence greater than 61 inches high anywhere along its entire length;
2. A fence greater than 61 inches high that incorporates any topographic or other physical barrier that prevents or impedes the free egress of deer; or
3. A fence or other barrier 61 inches or less in height having any attribute that prevents or impedes the free egress of deer, including ~~but not limited to~~ being slanted, doubled, offset, or electrified; ~~or.~~
4. ~~A fence or other barrier, having any of the attributes described in subdivision 1, 2, or 3 of this section that does not have a permanent gap of at least 40 linear feet per every 660 linear feet (1/8 mile) along the fence or barrier, including an additional permanent gap of at least 40 linear feet at every inside angle in the fence or barrier of less than 120 degrees. For the purposes of this section, a gap is defined as an interruption in the fence or barrier devoid of any impediment.~~

B. This ~~subsection~~ section shall not apply to enclosures and lands exempted under § 29.1-525.1 C and D of the Code of Virginia.

C. The director or his designee may grant exceptions for an enclosed or fenced area having any of the above attributes where necessary for bona fide agricultural livestock operations.

4VAC15-90-294. Rehabilitation of cervids.

A. For the purposes of this section:

"Juvenile" means any cervid less than one year of age on December 31 of the current calendar year.

"Adult" means any cervid greater than one year of age on December 31 of the current calendar year.

B. No person permitted by the department to rehabilitate cervids may ~~transport, possess, rehabilitate, or release adult cervids. Rehabilitators permitted by the department may transport and temporarily possess adult cervids solely for the purpose of immediate humane dispatch but must notify the department immediately after the deer has been dispatched.~~

C. Juvenile cervids requiring continued rehabilitation beyond December 31 of the current calendar year shall not be transported, possessed, released, or rehabilitated without written authorization from the department.

D. Cervids that originate within an area designated by the department for disease management shall not be transported or possessed for the purposes of rehabilitation. If such a cervid is brought to a rehabilitator permitted by the

department, the permittee shall hold the cervid in isolation and immediately notify the department.

E. Cervids from any county (including the cities and towns therein) containing an area designated by the department for cervid disease management may be rehabilitated and released in the county of origin only if the cervid originated from a portion of the county outside the disease management area.

VA.R. Doc. No. R17-5071; Filed March 29, 2017, 1:56 a.m.

Proposed Regulation

REGISTRAR'S NOTICE: The Board of Game and Inland Fisheries is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 A 3 of the Code of Virginia when promulgating regulations regarding the management of wildlife.

Title of Regulation: **4VAC15-190. Game: Quail (amending 4VAC15-190-10).**

Statutory Authority: §§ 29.1-103 and 29.1-501 of the Code of Virginia.

Public Hearing Information:

May 24, 2017 - 9 a.m. - Department of Game and Inland Fisheries, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228

Public Comment Deadline: May 10, 2017.

Agency Contact: Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228, telephone (804) 367-8341, or email phil.smith@dgif.virginia.gov.

Summary:

The proposed amendment closes the quail hunting season on all public lands west of the Blue Ridge Mountains.

4VAC15-190-10. Open season; generally.

A. Except as ~~otherwise specifically provided by the sections appearing in subsection B of this chapter section,~~ it shall be lawful to hunt quail from the Saturday prior to the second Monday in November through January 31, both dates inclusive.

B. It shall be unlawful to hunt quail on all public lands west of the Blue Ridge Mountains.

VA.R. Doc. No. R17-5072; Filed March 22, 2017, 12:37 p.m.

Proposed Regulation

REGISTRAR'S NOTICE: The Board of Game and Inland Fisheries is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 A 3 of the Code of Virginia when promulgating regulations regarding the management of wildlife.

Title of Regulation: **4VAC15-240. Game: Turkey (amending 4VAC15-240-50, 4VAC15-240-60, 4VAC15-240-70).**

Statutory Authority: §§ 29.1-103 and 29.1-501 of the Code of Virginia.

Regulations

Public Hearing Information:

May 24, 2017 - 9 a.m. - Department of Game and Inland Fisheries, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228

Public Comment Deadline: May 10, 2017.

Agency Contact: Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228, telephone (804) 367-8341, or email phil.smith@dgif.virginia.gov.

Summary:

The proposed amendments (i) provide fall and spring turkey hunting seasons in the Cities of Newport News and Hampton; (ii) close the Cities of Norfolk and Portsmouth to turkey hunting; (iii) close the archery turkey hunting season concurrent with the close of the first part of the fall turkey season, in which firearms and muzzleloader weapons are legal weapons; (iv) allow slingshots to be used during the archery turkey hunting season; and (v) allow turkey hunters to take two birds per day during the spring turkey hunting season.

4VAC15-240-50. Continuous closed season in certain counties, cities and areas.

There shall be continuous closed turkey season, except where a special spring season for bearded turkeys is provided for in 4VAC15-240-40, in ~~the county of Arlington County;~~ and in the ~~cities~~ Cities of Chesapeake, ~~Hampton, Newport News, Norfolk, Portsmouth,~~ and Virginia Beach.

4VAC15-240-60. Archery hunting.

A. Season. It shall be lawful to hunt turkey with archery equipment or a slingshot in those counties and areas open to fall turkey hunting from the first Saturday in October through the ~~Saturday prior to the second Monday in November~~ Friday that is 13 days after the Saturday before the last Monday in October, both dates inclusive.

B. Bag limit. The daily and seasonal bag limit for hunting turkey with archery equipment or a slingshot shall be the same as permitted during the general turkey season in those counties and areas open to fall turkey hunting, and any turkey taken shall apply toward the total season bag limit.

C. Carrying firearms prohibited. It shall be unlawful to carry firearms while hunting with archery equipment or a slingshot during the special archery season.

D. Use of dogs prohibited during archery season. It shall be unlawful to use dogs when hunting with archery equipment from the first Saturday in October through the Saturday prior to the second Monday in November, both dates inclusive.

4VAC15-240-70. Bag limit.

The bag limit for hunting turkeys shall be one a day in the fall, two per day during the spring, three a license year, no more than two of which may be taken in the fall.

VA.R. Doc. No. R17-5073; Filed March 29, 2017, 2:08 a.m.

Proposed Regulation

REGISTRAR'S NOTICE: The Board of Game and Inland Fisheries is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 A 3 of the Code of Virginia when promulgating regulations regarding the management of wildlife.

Title of Regulation: **4VAC15-260. Game: Waterfowl and Waterfowl Blinds (amending 4VAC15-260-160; adding 4VAC15-260-15, 4VAC15-260-35, 4VAC15-260-45, 4VAC15-260-115, 4VAC15-260-116; repealing 4VAC15-260-40).**

Statutory Authority: §§ 29.1-103, 29.1-351, and 29.1-501 of the Code of Virginia.

Public Hearing Information:

May 24, 2017 - 9 a.m. - Department of Game and Inland Fisheries, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228

Public Comment Deadline: May 10, 2017.

Agency Contact: Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228, telephone (804) 367-8341, or email phil.smith@dgif.virginia.gov.

Summary:

The proposed amendments (i) require reflective markers on stationary waterfowl blinds that are located in the public waters and allow such markers to be lowered or taken down when the blind is in use; (ii) clarify that all hunting, including hunting from a float blind, hunting while standing on the bottom of public waters, or any other type of hunting, is prohibited within 500 yards of any licensed stationary blind or floating blind stake; (iii) create float blind hunting areas in public waters in front of qualifying state, federal, and municipal properties and public lands on an opt-in basis by the public agencies, by prohibiting non-riparian stationary blinds in such public waters; (iv) prohibit activities on the Department of Game and Inland Fisheries Kittewan Creek refuge property that are not consistent with the property's function as a refuge for waterfowl; (v) prohibit stationary blinds in the public waters in front of national park and state park lands on the York River; and (vi) allow the department to designate float blind hunting areas in the Great Hunting Creek and Dyke Marsh areas using global positioning system coordinates.

4VAC15-260-15. Reflective markers on stationary blinds.

Stationary blinds located in the public waters must be marked with a stake or PVC pipe with at least 100 square inches of white or amber reflecting material visibly from 360 degrees and at least three feet above the high water mark. The requirement for reflective material on stationary blinds is not in effect while the stationary blind is occupied by a licensed hunter during legal shooting hours. In addition, any

abandoned or partial blind structures must be similarly marked until such time as they are removed from the public waters.

4VAC15-260-35. Distance from a licensed stationary blind and off-shore blind stake.

No person shall hunt migratory waterfowl in the public waters of this Commonwealth within 500 yards of any legally licensed erected stationary blind or legally licensed offshore blind stake site of another without possessing the written consent of the licensee that is immediately available upon request by any law-enforcement officer, except when in active pursuit of a visible crippled waterfowl that was legally shot by the person.

4VAC15-260-40. ~~Distance between floating blind and stationary blind.~~ (Repealed.)

It shall be unlawful to tie out or anchor a mat blind, or other floating blind, within 500 yards of a stationary shore or stationary water blind on which license has been paid for the season, except by the consent of the owner of such stationary shore blind or water blind, whether the same be occupied for shooting or not.

4VAC15-260-45. Float blind hunting areas established.

No licenses shall be issued for non-riparian stationary waterfowl blinds or offshore blind stake sites in the public waters in front of specified public, municipal, state, or federal properties in Virginia. Waterfowl hunting in public waters in front of these lands shall be by licensed floating blind only and shall occur only in designated waters and at designated times and locations as prescribed by the riparian landowner and approved by the Virginia Department of Game and Inland Fisheries. This section applies to areas where the managing agency has requested such in writing to the department by April 1 of any given year. These privileges will remain in effect until the managing agency requests termination in writing to the department by April 1 of any given year. This section shall not alter in any respect the privileges for landowners and their lessees and permittees prescribed in §§ 29.1-344 and 29.1-347 of the Code of Virginia.

4VAC15-260-115. Disturbing waterfowl on Kittewan Creek refuge in Charles City County.

It shall be unlawful to hunt on the waters of Kittewan Creek in Charles City County west (upstream) of the posted refuge boundary markers (latitude-longitude coordinates 37.29831 - 77.05134) located approximately one mile upstream from its mouth at the James River. In addition, camping and other recreational activities that are not consistent with the property's function as a refuge for waterfowl are not permitted.

4VAC15-260-116. Blinds adjacent to Werowocomoco National Park and York River State Park.

No licenses shall be issued for stationary waterfowl blinds in front of Werowocomoco National Park in Purtan Bay and on the York River between Purtan Island and Barren Point in

Gloucester County, and in front of York River State Park between Taskinas Creek and the eastern boundary of York River State Park in James City County. These prohibitions shall not alter the privileges prescribed in §§ 29.1-344 and 29.1-347 of the Code of Virginia for riparian owners and their lessees and permittees.

4VAC15-260-160. Great Hunting Creek and Dyke Marsh; floating blind area.

No license shall be issued for stationary waterfowl blinds on the Potomac River in Fairfax County adjacent to National Park Service ~~lands~~ lands in the Great Hunting Creek and Dyke Marsh areas. Waterfowl hunting in Commonwealth waters adjacent to the above mentioned lands shall be by licensed floating blind only. Such floating blinds (i) must be attached securely to a post or buoy affixed to the river bottom by the department; or anchored at global positioning system (GPS) locations designated by the department and (ii) are limited to one floating blind per post at any time. Hunters in licensed floating blinds may hunt from designated locations during legal shooting hours on Thanksgiving Day and on Mondays, Wednesdays and Fridays during the open seasons for hunting waterfowl in Virginia. Blind sites shall be occupied on a daily first-come basis, such sites to be occupied no earlier than 4 a.m. or later than one-half hour after sunset. All such blinds shall be removed each day.

VA.R. Doc. No. R17-5074; Filed March 29, 2017, 11:10 a.m.

Proposed Regulation

REGISTRAR'S NOTICE: The Board of Game and Inland Fisheries is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 A 3 of the Code of Virginia when promulgating regulations regarding the management of wildlife.

Title of Regulation: **4VAC15-270. Game: Firearms (adding 4VAC15-270-96).**

Statutory Authority: §§ 29.1-103 and 29.1-501 of the Code of Virginia.

Public Hearing Information:

May 24, 2017 - 9 a.m. - Department of Game and Inland Fisheries, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228

Public Comment Deadline: May 10, 2017.

Agency Contact: Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228, telephone (804) 367-8341, or email phil.smith@dgif.virginia.gov.

Summary:

The proposed amendments (i) set the minimum caliber for pneumatic rifles used for hunting deer at .35 and (ii) prohibit the use of pneumatic rifles for hunting bear or elk.

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4VAC15-270-96. Pneumatic rifles permitted for hunting deer; prohibited for hunting bear and elk.

Pneumatic (air or gas) rifles must be .35 caliber or larger for the hunting or killing of deer. Pneumatic rifles are prohibited for the hunting or killing of bear and elk.

VA.R. Doc. No. R17-5075; Filed March 29, 2017, 11:21 a.m.

Proposed Regulation

REGISTRAR'S NOTICE: The Board of Game and Inland Fisheries is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 A 3 of the Code of Virginia when promulgating regulations regarding the management of wildlife.

Title of Regulation: **4VAC15-290. Game: Permits (amending 4VAC15-290-140).**

Statutory Authority: §§ 29.1-103 and 29.1-501 of the Code of Virginia.

Public Hearing Information:

May 24, 2017 - 9 a.m. - Department of Game and Inland Fisheries, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228

Public Comment Deadline: May 10, 2017.

Agency Contact: Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228, telephone (804) 367-8341, or email phil.smith@dgif.virginia.gov.

Summary:

The proposed amendments require all hunters of migratory game birds, including those who are exempt from being licensed, to possess Harvest Information Program (HIP) authorization.

4VAC15-290-140. Possession and display of a harvest information program ~~registration number~~ authorization to hunt migratory game birds.

Every person ~~required to obtain a harvest information program registration number to hunt, whether licensed or exempt from being licensed, (i) must be registered with the Virginia Harvest Information Program (HIP) to hunt migratory game birds, including waterfowl, doves, woodcock, snipe, rails, gallinules, moorhens, and coots; (ii) must carry the registration number HIP authorization~~ on his person when hunting; and (iii) shall present it immediately upon demand of any officer whose duty it is to enforce the game and inland fish laws. The penalty for violation of this section is prescribed by § 29.1-505 of the Code of Virginia.

VA.R. Doc. No. R17-5076; Filed March 29, 2017, 11:30 a.m.

MARINE RESOURCES COMMISSION

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: **4VAC20-252. Pertaining to the Taking of Striped Bass (amending 4VAC20-252-20, 4VAC20-252-60, 4VAC20-252-70, 4VAC20-252-80).**

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

Effective Date: April 1, 2017.

Agency Contact: Jennifer Farmer, Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, or email jennifer.farmer@mrc.virginia.gov.

Summary:

The amendments (i) simplify the reporting requirements, (ii) change the term "recreational vessel" to "private recreational vessel" and add "kayak" to the definition; and (iii) make the captain or operator responsible for reporting.

4VAC20-252-20. Definitions.

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

"Chesapeake area" means the area that includes the Chesapeake Bay and its tributaries and the Potomac River tributaries.

"Chesapeake Bay and its tributaries" means all tidal waters of the Chesapeake Bay and its tributaries within Virginia, westward of the shoreward boundary of the Territorial Sea, excluding the coastal area and the Potomac River tributaries as defined by this section.

"Coastal area" means the area that includes Virginia's portion of the Territorial Sea, plus all of the creeks, bays, inlets, and tributaries on the seaside of Accomack County, Northampton County (including areas east of the causeway from Fisherman Island to the mainland), and the City of Virginia Beach (including federal areas and state parks, fronting on the Atlantic Ocean and east and south of the point where the shoreward boundary of the Territorial Sea joins the mainland at Cape Henry).

"Commission" means the Marine Resources Commission.

"Commercial fishing" or "fishing commercially" or "commercial fishery" means fishing by any person where the catch is for sale, barter, trade, or any commercial purpose, or is intended for sale, barter, trade, or any commercial purpose.

"Great Wicomico-Tangier Striped Bass Management Area" means the area that includes the Great Wicomico River and those Virginia waters bounded by a line beginning at

Dameron Marsh at NAD 83 North Latitude 37-46.9535, West Longitude 76-17.1294; thence extending to the southernmost point of Tangier Island, and thence north to a point on the Virginia-Maryland state boundary at NAD 83 North Latitude 37-57.0407, West Longitude 75-58.5043, thence westerly along the Virginia-Maryland state boundary to Smith Point.

"Potomac River tributaries" means all the tributaries of the Potomac River that are within Virginia's jurisdiction beginning with, and including, Flag Pond thence upstream to the District of Columbia boundary.

"Recreational fishing" or "fishing recreationally" or "recreational fishery" means fishing by any person, whether licensed or exempted from licensing, where the catch is not for sale, barter, trade, or any commercial purpose, or is not intended for sale, barter, trade, or any commercial purpose.

~~"Recreational vessel"~~ "Private recreational vessel" means any ~~private vessel, charter vessel, or headboat vessel~~ or kayak participating in the recreational striped bass fishery.

"Share" means a percentage of the striped bass commercial harvest quota.

"Spawning reaches" means sections within the spawning rivers as follows:

1. James River from a line connecting Dancing Point and New Sunken Meadow Creek upstream to a line connecting City Point and Packs Point.
2. Pamunkey River from the Route 33 Bridge at West Point upstream to a line connecting Liberty Hall and the opposite shore.
3. Mattaponi River from the Route 33 Bridge at West Point upstream to the Route 360 bridge at Aylett.
4. Rappahannock River from the Route 360 Bridge at Tappahannock upstream to the Route 1 Falmouth Bridge.

"Spear" or "spearing" means to fish while the person is fully submerged under the water's surface with a mechanically aided device designed to accelerate a barbed spear.

"Striped bass" means any fish of the species *Morone saxatilis*, including any hybrid of the species *Morone saxatilis*.

"Trophy-size striped bass" means any striped bass that is 36 inches or greater in total length.

4VAC20-252-60. Bay and Coastal Spring Trophy-size Striped Bass Recreational Fisheries.

A. The open season for the Bay Spring Trophy-size Striped Bass Recreational Fishery shall be May 1 through June 15, inclusive.

B. The area open for the Bay Spring Trophy-size Striped Bass Recreational Fishery shall be the Chesapeake Bay and its tributaries, except the spawning reaches of the James, Pamunkey, Mattaponi, and Rappahannock Rivers.

C. The open season for the Coastal Spring Trophy-size Striped Bass Recreational Fishery shall be May 1 through May 15, inclusive.

D. The area open for the Coastal Spring Trophy-size Striped Bass Recreational Fishery is the coastal area as described in 4VAC20-252-20.

E. The minimum size limit for the fisheries described in this section shall be 36 inches total length.

F. The possession limit for the fisheries described in this section shall be one fish per person.

G. ~~It shall be unlawful for any person participating in the any Bay and spring trophy-size striped bass recreational fishery or Coastal Spring Trophy-size striped bass recreational fisheries fishery to fail to obtain an Individual, Private Vessel, or Charter Headboat possess or land any trophy-size striped bass from a private recreational vessel unless the captain or operator of that private recreational vessel has obtained a Spring Recreational Striped Bass Trophy Permit. The captain or operator shall be responsible for reporting for all anglers on the private recreational vessel and shall provide his Marine Resources Commission identification (MRC ID) number, the date of harvest, the number of individuals on board, the mode of fishing, the water body where the trophy-size striped bass was caught, and the number of trophy-size striped bass kept or released.~~

H. It shall be unlawful for any person participating in any Bay spring trophy-size striped bass recreational fishery or Coastal spring trophy-size striped bass recreational fishery to possess or land any trophy-size striped bass harvested recreationally from shore, a pier, or any other manmade structure without first having obtained a Spring Recreational Striped Bass Trophy Permit from the Marine Resources Commission. Any such permittee shall provide his MRC ID number, the date of harvest, the mode of fishing, the water body where the trophy-size striped bass was caught, and the number of trophy-size striped bass kept or released.

~~H. I. It shall be unlawful for any spring recreational striped bass trophy permittee or any charter boat striped bass permittee to fail to report trips where striped bass are caught, whether harvest or harvested, released, or the possession of any trophy size striped bass possessed, as described in subsection E of this section, on forms provided by the commission within seven days after the trip occurred. It shall be unlawful for any permittee to fail to report trips where striped bass are targeted but not successfully caught by the 15th day after the any close of the Bay and spring trophy-size striped bass recreational fisheries fishery. The report requirements shall be as follows:~~

- ~~1. Any individual spring recreational striped bass trophy permittee shall provide his own commission permit identification number; the commission permit identification number of the recreational vessel the individual is fishing from, if applicable; the date of any~~

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harvest; the number of individuals on board; the water body where the trophy size striped bass was caught; and number of trophy size striped bass kept or released.

~~2. Any private vessel or charter headboat spring recreational striped bass trophy permittee shall provide the recreational vessel's commission permit identification number, date of any harvest, number of individuals on board, and number of trophy size striped bass kept or released. Any such permittee must report all trips made by the vessel to which the permit applies where trophy size bass are caught or targeted even if the permittee was not on board the vessel during every such trip.~~

~~3. Any permittee who did not participate in the Bay and Coastal Spring Trophy size striped bass recreational seasons shall notify the commission of his lack of participation by the 15th day after the close of the Bay and Coastal Spring Trophy size striped bass recreational seasons on forms provided by the commission.~~

~~I. It shall be unlawful for any permittee, as described in 4VAC20-252-50 H and subsection G of this section, to fail to report either the harvest of trophy size striped bass or no harvest activity within 15 days of the closing of the Bay and Coastal Spring Trophy size striped bass recreational seasons.~~

~~J. Any permittee who did not participate in any Bay spring trophy-size striped bass recreational fishery or Coastal spring trophy-size striped bass recreational fishery shall notify the commission of his lack of participation by the 15th day after the close of any Bay spring trophy-size striped bass recreational fishery or Coastal spring trophy-size striped bass recreational fishery.~~

4VAC20-252-70. Potomac River tributaries spring trophy-size striped bass recreational fishery.

A. The open season for the Potomac River tributaries spring striped bass recreational fishery shall correspond to the open season as established by the Potomac River Fisheries Commission for the mainstem Potomac River spring fishery.

B. The area open for this fishery shall be those tributaries of the Potomac River that are within Virginia's jurisdiction beginning with, and including, Flag Pond thence upstream to the Route 301 bridge.

C. The minimum size limit for this fishery shall correspond to the minimum size limit as established by the Potomac River Fisheries Commission for the mainstem Potomac River spring trophy-size fishery.

D. The possession limit for this fishery shall be one fish per person.

E. It shall be unlawful for any person participating in the any Potomac River tributaries spring trophy-size striped bass recreational fishery to fail to obtain an Individual, Private Vessel, or Charter Headboat possess or land any trophy-size striped bass from a private recreational vessel unless the captain or operator of that private recreational vessel has obtained a Spring Recreational Striped Bass Trophy Permit.

The captain or operator shall be responsible for reporting for all anglers on the private recreational vessel and shall provide his Marine Resources Commission identification (MRC ID) number, the date of harvest, the number of individuals on board, the mode of fishing, the water body where the trophy-size striped bass was caught, and the number of trophy-size striped bass kept or released.

F. It shall be unlawful for any person participating in any Potomac River tributaries spring trophy-size striped bass recreational fisheries to possess or land any trophy-size striped bass harvested recreationally from shore, a pier, or any other manmade structure without first having obtained a Spring Recreational Striped Bass Trophy Permit from the Marine Resources Commission. Any such permittee shall provide his MRC ID number, the date of harvest, the mode of fishing, the water body where the trophy-size striped bass was caught, and the number of trophy-size striped bass kept or released.

~~F. G. It shall be unlawful for any spring recreational striped bass trophy permittee or any charter boat striped bass permittee to fail to report trips where striped bass are caught, whether harvested or released, or the possession of any trophy size striped bass possessed, as described in this section, on forms provided by the commission within seven days after the trip occurred. It shall be unlawful for any permittee to fail to report trips where striped bass are targeted but not successfully caught by the 15th day after the close of the any Potomac River tributaries spring trophy-size striped bass recreational fishery. The report requirements shall be as follows:~~

~~1. Any individual spring recreational striped bass trophy permittee shall provide the permit identification number; the commission permit identification number of the recreational vessel the individual is fishing from, if applicable; the date of any harvest; the water body where the trophy size striped bass was caught; the number of individuals on board; and number of trophy size striped bass kept or released.~~

~~2. Any private vessel or charter headboat spring recreational striped bass trophy permittee shall provide the vessel's commission permit identification number; the date of any harvest; the number of individuals on board; and the number of trophy size striped bass kept or released. Any such permittee must report all trips made by the vessel to which the permit applies where trophy size bass are caught or targeted even if the permittee was not on board the vessel during every such trip.~~

~~3. Any permittee who did not participate in the Potomac River tributaries spring trophy size striped bass recreational season shall notify the commission of his lack of participation by the 15th day after the close of the Potomac River tributaries spring trophy size striped bass recreational season on forms provided by the commission.~~

~~G. It shall be unlawful for any permittee, as described in 4VAC20-252-50 H and 4VAC20-252-60 G, to fail to report either the harvest of trophy size striped bass or no harvest activity within 15 days of the closing of the Potomac River tributaries spring trophy size striped bass recreational season.~~

H. Any permittee who did not participate in any Potomac River tributaries spring trophy-size striped bass recreational fishery shall notify the commission of his lack of participation by the 15th day after the close of any Potomac River tributaries spring trophy-size striped bass recreational fishery.

4VAC20-252-80. Bay Spring/Summer Striped Bass Recreational Fishery.

A. The open season for the Bay Spring/Summer Striped Bass Recreational Fishery shall be May 16 through June 15 inclusive.

B. The area open for this fishery shall be the Chesapeake Bay and its tributaries.

C. The minimum size limit for this fishery shall be 20 inches total length, and the maximum size limit for this fishery shall be 28 inches total length, except as provided in subsection E of this section.

D. The possession limit for this fishery shall be two fish per person.

E. The possession limit described in subsection D of this section may consist of one trophy-size striped bass 36 inches or greater, which is subject to the provisions of subsections A, B, E, F, G, ~~and H, I, and J~~ of 4VAC20-252-60.

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 with a hyperlink 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 (4VAC20-252)

~~2017 Recreational/Charter Reporting Form (undated, filed 12/2016)~~

[2017 Recreational/Charter Reporting Form \(rev. 4/2017\)](#)

VA.R. Doc. No. R17-5092; Filed March 31, 2017, 1:55 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: **4VAC20-510. Pertaining to Amberjack and Cobia (amending 4VAC20-510-12, 4VAC20-510-15, 4VAC20-510-20).**

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

Effective Date: April 1, 2017.

Agency Contact: Jennifer Farmer, Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, or email jennifer.farmer@mrc.virginia.gov.

Summary:

The amendments (i) simplify the recreational reporting requirements, (ii) make the captain or operator responsible for reporting, (iii) add "kayak" to the definition of recreational vessel, (iv) set the commercial cobia season as June 1 through September 15, and (v) change the maximum vessel limit for cobia as three fish.

4VAC20-510-12. Definitions.

The following term when used in this chapter shall have the following meaning unless the context clearly indicates otherwise:

"Recreational vessel" means any ~~private~~ vessel, kayak, charter vessel, or headboat vessel.

4VAC20-510-15. Recreational cobia permit and mandatory reporting.

A. It shall be unlawful for any person to possess or land any cobia harvested ~~recreationally without first having from a recreational vessel unless the captain or operator of that recreational vessel has obtained an Individual, Private Vessel, or Charter Headboat a Recreational Cobia Permit from the Marine Resources Commission (commission). The captain or operator shall be responsible for reporting for all anglers on the recreational vessel and shall provide his Marine Resources Commission identification (MRC ID) number, the date of harvest, the number of individuals on board, the mode of fishing, and the number of cobia kept or released.~~

B. It shall be unlawful for any person to possess or land any cobia harvested recreationally from shore, a pier, or any other manmade structure without first having obtained a Recreational Cobia Permit from the Marine Resources Commission. Any such permittee shall provide his MRC ID number, the date of harvest, the mode of fishing, and the number of cobia kept or released on that report to the commission.

~~B. C.~~ C. It shall be unlawful for any permittee to fail to report trips where cobia are caught, whether harvested, ~~or~~ released, or ~~the possession of any cobia possessed~~ in accordance with this section on forms provided by the commission within seven days after the trip occurred. It shall be unlawful for any permittee to fail to report trips where cobia were targeted but not successfully caught, ~~by the 15th day after the close of the any recreational cobia fishery season. The reporting requirements shall be as follows:~~

- ~~1. Any individual recreational cobia permittee shall provide his own commission permit identification number; the commission permit identification number of the recreational vessel the individual is fishing from, if~~

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applicable; the date of any harvest; and the number of cobia kept or released.

~~2. Any private vessel or charter headboat recreational cobia permittee shall provide the vessel's commission permit identification number; the date of any harvest; the number of individuals on board; and the number of cobia kept or released. Any such permittee must report all trips made by the vessel to which the permit applies where cobia are caught or targeted even if the permittee was not on board the vessel during every such trip.~~

3. 1. Any permittee who did not participate in the recreational cobia season shall notify the commission of his lack of participation by the 15th day after the close of the recreational cobia season on forms provided by the commission.

4. 2. Any permittee who either fails to report the harvest of cobia or did not participate in any recreational cobia season and fails to report no activity shall be ineligible to receive an Individual, Private Vessel, or Charter Headboat a Recreational Cobia Permit in the year following the year in which that permittee failed to report. Any permittee who did not participate in the recreational cobia season and fails to report no activity shall also be ineligible to receive an Individual, Private Vessel, or Charter Headboat Recreational Cobia Permit in the year following the year where that permittee failed to report.

4VAC20-510-20. Recreational fishery possession limits; season closure; vessel allowance; prohibition on gaffing.

A. It shall be unlawful for any person fishing recreationally to possess more than two amberjack or more than one cobia at any time. Any amberjack or cobia caught after the possession limit has been reached shall be returned to the water immediately. When fishing from any boat or vessel where the entire catch is held in a common hold or container, the possession limit shall be for the boat or vessel and shall be equal to the number of persons on board legally eligible to fish multiplied by two for amberjack or one for cobia, except there is a maximum vessel limit of ~~two~~ three cobia per vessel per day. That vessel limit may only include one cobia greater than 50 inches in total length. The captain or operator of the boat or vessel shall be responsible for any boat or vessel possession limit.

B. In ~~2016~~ 2017, it shall be unlawful for any person, fishing recreationally, to harvest or possess any cobia before June 1 or after ~~August 30~~ September 15.

C. It shall be unlawful for any person fishing recreationally to gaff or attempt to gaff any cobia.

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 with a hyperlink 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 (4VAC20-510)

[2017 Recreational Reporting Form \(filed 12/2016\)](#)

[2017 Recreational/Charter Reporting Form \(rev. 4/2017\)](#)

V.A.R. Doc. No. R17-5091; Filed March 31, 2017, 1:56 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: **4VAC20-1120. Pertaining to Tilefish and Grouper (amending 4VAC20-1120-20, 4VAC20-1120-31; repealing 4VAC20-1120-32).**

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

Effective Date: April 1, 2017.

Agency Contact: Jennifer Farmer, Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, or email jennifer.farmer@mrc.virginia.gov.

Summary:

The amendments (i) simplify the permitting and reporting requirements and (ii) add "kayak" to the definition of recreational vessel.

4VAC20-1120-20. Definitions.

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

"Commercial fishing" or "fishing commercially" or "commercial fishery" means fishing by any person where the catch is for sale, barter, trade, or any commercial purpose, or is intended for sale, barter, trade, or any commercial purpose.

"Grouper" means any of the following species:

Black grouper, *Mycteroperca bonaci*

Coney, *Cephalopholis fulva*

Gag grouper, *Mycteroperca microlepis*

Goliath grouper, *Epinephelus itajara*

Graysby, *Cephalopholis cruentata*

Misty grouper, *Epinephelus mystacinus*

Nassau grouper, *Epinephelus striatus*

Red grouper, *Epinephelus morio*

Red Hind, *Epinephelus guttatus*

Rock Hind, *Epinephelus adscensionis*

Scamp, *Mycteroperca phenax*

Snowy grouper, *Epinephelus niveatus*

Speckled Hind, *Epinephelus drummondhayi*

- Tiger grouper, *Mycteroperca tigris*
- Warsaw grouper, *Epinephelus nigritus*
- Wreckfish, *Polyprion americanus*
- Yellowedge grouper, *Epinephelus flavolimbatus*
- Yellowfin grouper, *Mycteroperca venenosa*
- Yellowmouth grouper, *Mycteroperca interstitialis*

"Recreational fishing" or "fishing recreationally" or "recreationally fishing" means fishing by any person, whether licensed or exempted from licensing, where the catch is not for sale, barter, trade, or any commercial purpose, or is not intended for sale, barter, trade, or any commercial purpose.

"Recreational vessel" means any ~~private~~ vessel, kayak, charter vessel, or headboat vessel participating in the recreational tilefish and grouper fishery.

"Tilefish" means any of the following species:

- Blueline tilefish, *Caulolatilus microps*
- Golden tilefish, *Lopholatilus chamaeleonticeps*
- Sand tilefish, *Malacanthus plumieri*

4VAC20-1120-31. Recreational landing permit and mandatory reporting.

A. It shall be unlawful to possess aboard or to land any tilefish or grouper harvested recreationally without first having from a recreational vessel unless the captain or operator of that recreational vessel has obtained an Individual, Private Vessel, or Charter Headboat a Recreational Tilefish and Grouper Landing Permit from the Marine Resources Commission (MRC). The captain or operator shall be responsible for reporting for all anglers on the recreational vessel and shall provide his MRC identification (ID) number, the date of harvest, the number of individuals on board, the mode of fishing, and the number of tilefish and grouper, by species, kept or released.

B. It shall be unlawful for any person to possess or land any tilefish or grouper harvested recreationally from shore, a pier, or any other manmade structure without first having obtained a Recreational Tilefish and Grouper Permit from the Marine Resources Commission. Any such permittee shall provide his MRC ID number, the date of harvest, the mode of fishing, and the number of tilefish and grouper, by species, kept or released on that report to the commission.

C. It shall be unlawful for any registered tilefish and grouper permittee, as described in this section, to fail to report trips where tilefish or grouper were caught, whether harvested, released, or possessed, in accordance with this section on forms provided by the commission within seven days after the trip occurred. It shall be unlawful for any permittee to fail to report trips where tilefish or grouper were targeted but not successfully caught on forms provided by the commission by the 15th day after the close of any tilefish and grouper recreational fishery seasons.

1. Any permittee who did not participate in the tilefish and grouper recreational fishery season shall notify the commission of his lack of participation by the 15th day after the close of the tilefish and grouper recreational fishery seasons.

2. Any permittee who either fails to report the harvest of any tilefish or grouper or did not participate in any recreational tilefish and grouper recreational season and fails to report no activity shall be ineligible to receive the permit in the following year.

4VAC20-1120-32. ~~Recreational mandatory harvest reporting. (Repealed).~~

~~A. It shall be unlawful for any registered tilefish and grouper landing permittee, as described in 4VAC20 1120 31, to fail to report trips where tilefish or grouper are caught, whether harvested or released, or the possession of any tilefish or grouper in accordance with this section, on forms provided by the Marine Resources Commission (commission) within seven days after the trip occurred. It shall be unlawful for any permittee to fail to report trips where tilefish or grouper were targeted but not successfully caught, and reports shall be made using forms provided by the commission by the 15th day after the close of the tilefish and grouper recreational fishery seasons.~~

~~B. Any individual tilefish and grouper landing permittee shall submit a report including the commission permit identification number of the registered tilefish and grouper landing permittee; commission permit identification number of the vessel the individual is fishing from, if applicable; date of harvest; number of individuals on board, including captain; and the number of tilefish and grouper, by species, kept and released.~~

~~C. Any private vessel or charter headboat recreational tilefish and grouper landing permittee shall provide the vessel's commission permit identification number; date of any harvest; number of individuals on board; and number of tilefish and grouper, by species, kept and released. Any such permittee must report all trips made by the vessel to which the permit applies where tilefish and grouper are caught or targeted even if the permittee was not on board the vessel during every such trip.~~

~~D. Any permittee who did not participate in the tilefish and grouper recreational fishery season shall notify the commission of his lack of participation by the 15th day after the close of the tilefish and grouper recreational fishery seasons.~~

~~E. Any permittee who fails to report the harvest of any tilefish or grouper shall be ineligible to receive the permit in the year following the year in which that permittee failed to report. Any permittee who did not participate in the recreational tilefish and grouper recreational fishery seasons and fails to report no activity shall also be ineligible to receive the permit in the year following the year in which that permittee failed to report.~~

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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 with a hyperlink 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 (4VAC20-1120)

~~2017 Recreational Reporting Form (undated, filed 12/2016)~~

[2017 Recreational/Charter Reporting Form \(rev. 4/2017\)](#)

V.A.R. Doc. No. R17-5090; Filed March 31, 2017, 1:56 p.m.

TITLE 9. ENVIRONMENT

STATE AIR POLLUTION CONTROL BOARD

Final Regulation

REGISTRAR'S NOTICE: The following regulatory action is exempt from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 4 c of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations, provided such regulations do not differ materially from those required by federal law or regulation. The State Air Pollution Control Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Titles of Regulations: **9VAC5-30. Ambient Air Quality Standards (amending 9VAC5-30-65).**

9VAC5-80. Permits for Stationary Sources (amending 9VAC5-80-2000, 9VAC5-80-2010).

9VAC5-160. Regulation for General Conformity (amending 9VAC5-160-30).

Statutory Authority: § 10.1-1308 of the Code of Virginia; §§ 108, 109, and 302 of the Clean Air Act; 40 CFR Parts 50, 53, and 58.

Effective Date: May 17, 2017.

Agency Contact: 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.

Summary:

The State Air Pollution Control Board has adopted amendments to its Ambient Air Quality Standards (9VAC5-30), as well as the regulation governing permitting for nonattainment areas found in Article 9 (9VAC5-80-2000 et seq.) of 9VAC5-80 and the Regulation for General Conformity (9VAC5-160), to meet the U.S. Environmental Protection Agency (EPA) requirements established in its

final implementation rule for the 2012 national ambient air quality standard (NAAQS) for very fine particulate matter (PM_{2.5}) (81 FR 58010). The EPA rule addresses a range of nonattainment area state implementation plan requirements for the 2012 PM_{2.5} NAAQS, including how to address the revoked 1997 PM_{2.5} NAAQS.

9VAC5-30-65. Particulate matter (PM_{2.5}).

A. The primary and secondary ambient air quality standards for particulate matter are:

1. 15.0 micrograms per cubic meter -- annual arithmetic mean concentration.
2. 65 micrograms per cubic meter -- 24-hour average concentration.

B. Particulate matter shall be measured in the ambient air as PM_{2.5} (particles with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers) by a reference method based on Appendix L of 40 CFR Part 50, or other method designated as such, or by an equivalent method.

C. The annual primary and secondary PM_{2.5} standards are met when the annual arithmetic mean concentration, as determined in accordance with Appendix N of 40 CFR Part 50, is less than or equal to 15.0 micrograms per cubic meter.

D. The 24-hour primary and secondary PM_{2.5} standards are met when the 98th percentile 24-hour concentration, as determined in accordance with Appendix N of 40 CFR Part 50, is less than or equal to 65 micrograms per cubic meter.

E. The PM_{2.5} standards set forth in this section were established by EPA on July 18, 1997 (62 FR 38652) and became effective on September 8, 2004, by adoption by the board. The PM_{2.5} standards set forth in this section shall continue to apply only for purposes of the following:

1. Control strategy implementation plan revisions, maintenance plans, and associated emissions budgets relative to the PM_{2.5} standards in this section.
2. Designation of nonattainment areas and maintenance areas relative to the PM_{2.5} standards in this section.

Nothing in this section shall prevent the redesignation of any nonattainment area to attainment at any time.

F. The primary annual standard set forth in subsection A of this section shall no longer apply as of October 24, 2016. The secondary annual standard and the 24-hour standard set forth in subsection A of this section shall remain in effect.

Article 9

Permits for Major Stationary Sources and Major Modifications Locating in Nonattainment Areas or the Ozone Transport Region

9VAC5-80-2000. Applicability.

A. The provisions of this article apply to the construction of any new major stationary source or a major modification that is major for the pollutant for which the area is designated as nonattainment. Different pollutants, including individual

precursors, are not summed to determine applicability of a major stationary source or major modification.

B. The provisions of this article apply in (i) nonattainment areas designated in 9VAC5-20-204 or (ii) the Ozone Transport Region as defined in 9VAC5-80-2010 C. This article applies to all localities in the Ozone Transport Region regardless of a locality's nonattainment status.

C. If the Ozone Transport Region is designated attainment for ozone, sources located or planning to locate in the region shall be subject to the offset requirements for areas classified as moderate in 9VAC5-80-2120 B 2. If the Ozone Transport Region is designated nonattainment for ozone, sources located or planning to locate in the region shall be subject to the offset requirements of 9VAC5-80-2120 B depending on the classification except if the classification is marginal or there is no classification, the classification shall be moderate for purpose of applying 9VAC5-80-2120 B.

D. At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements of this article shall apply to the source or modification as though construction had not commenced on the source or modification.

E. Unless specified otherwise, the provisions of this article apply as follows:

1. Provisions referring to "sources," "new and/or modified sources" or "stationary sources" apply to the construction of all major stationary sources and major modifications.
2. Any emissions units or pollutants not subject to the provisions of this article may be subject to the provisions of Article 6 (9VAC5-80-1100 et seq.), Article 7 (9VAC5-80-1400 et seq.), or Article 8 (9VAC5-80-1605 et seq.) of this part.
3. Provisions referring to "state and federally enforceable" and "federally and state enforceable" or similar wording shall mean "state-only enforceable" for terms and conditions of a permit designated state-only enforceable under 9VAC5-80-2020 E.

F. Unless otherwise approved by the board or prescribed in these regulations, when this article is amended, the previous provisions of this article shall remain in effect for all applications that are deemed complete under the provisions of 9VAC5-80-2060 A prior to September 1, 2006. Any permit applications that have not been determined to be complete as of September 1, 2006, shall be subject to the new provisions.

G. Regardless of the exemptions provided in this article, no owner or other person shall circumvent the requirements of this article by causing or allowing a pattern of ownership or development over a geographic area of a source which,

except for the pattern of ownership or development, would otherwise require a permit.

H. The requirements of this article will be applied in accordance with the following principles:

1. Except as otherwise provided in subsection I of this section, and consistent with the definition of "major modification," a project is a major modification for a regulated NSR pollutant if it causes two types of emissions increases: (i) a significant emissions increase and (ii) a significant net emissions increase. A project is not a major modification if it does not cause a significant emissions increase. If a project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase.
2. The procedure for calculating (before beginning actual construction) whether a significant emissions increase (i.e., the first step of the process) will occur depends upon the type of emissions units being modified, according to subdivisions 3 and 4 of this subsection. The procedure for calculating (before beginning actual construction) whether a significant net emissions increase will occur at the source (i.e., the second step of the process) is contained in the definition of "net emissions increase." Regardless of any such preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.
3. The actual-to-projected-actual applicability test for projects that only involve existing emissions units shall be as provided in this subdivision. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the projected actual emissions and the baseline actual emissions for each existing emissions unit, equals or exceeds the significant amount for that pollutant.
4. The actual-to-potential test for projects that only involve construction of a new emissions unit shall be as provided in this subdivision. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the potential to emit from each new emissions unit following completion of the project and the baseline actual emissions of these units before the project equals or exceeds the significant amount for that pollutant.
5. The hybrid test for projects that involve multiple types of emissions units shall be as provided in this subdivision. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the emissions increases for each emissions unit, using the method specified in subdivisions 3 and 4 of this subsection as applicable with respect to each emissions unit, for each type of emissions unit is significant for that pollutant. For example, if a project involves both an existing emissions unit and a new unit, the projected increase is determined by summing the values determined using the method specified in subdivision 3 of this subsection for the existing unit and

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using the method specified in subdivision 4 of this subsection for the new unit.

I. For any major stationary source for a PAL for a regulated NSR pollutant, the major stationary source shall comply with the requirements under 9VAC5-80-2144.

J. The provisions of 40 CFR Part 60, Part 61 and Part 63 cited in this article apply only to the extent that they are incorporated by reference in Article 5 (9VAC5-50-400 et seq.) of Part II of 9VAC5 Chapter 50 and Article 1 (9VAC5-60-60 et seq.) and Article 2 (9VAC5-60-90 et seq.) of Part II of 9VAC5 Chapter 60.

K. The provisions of 40 CFR Part 51 and Part 58 cited in this article apply only to the extent that they are incorporated by reference in 9VAC5-20-21.

9VAC5-80-2010. Definitions.

A. As used in this article, all words or terms not defined here shall have the meanings given them in 9VAC5-10 (General Definitions), unless otherwise required by context.

B. For the purpose of this article, 9VAC5-50-270, and any related use, the words or terms shall have the meanings given them in subsection C of this section.

C. Terms defined.

"Actual emissions" means the actual rate of emissions of a regulated NSR pollutant from an emissions unit, as determined in accordance with subdivisions a, b, and c of this definition, except that this definition shall not apply for calculating whether a significant emissions increase has occurred, or for establishing a PAL under 9VAC5-80-2144. Instead, the definitions of "projected actual emissions" and "baseline actual emissions" shall apply for those purposes.

a. In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a consecutive 24-month period which precedes the particular date and which is representative of normal source operation. The board will allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

b. The board may presume that the source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

c. For any emissions unit that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

"Actuals PAL for a major stationary source" means a PAL based on the baseline actual emissions of all emissions units at the source that emit or have the potential to emit the PAL pollutant.

"Administrator" means the administrator of the U.S. Environmental Protection Agency (EPA) or an authorized representative.

"Allowable emissions" means the emissions rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to federally and state enforceable limits which restrict the operating rate, hours of operation, or both) and the most stringent of the following:

- a. The applicable standards set forth in 40 CFR Parts 60, 61 and 63;
- b. Any applicable implementation plan emissions limitation including those with a future compliance date; or
- c. The emissions limit specified as a federally and state enforceable permit condition, including those with a future compliance date.

For the purposes of actuals PALs, "allowable emissions" shall also be calculated considering any emission limitations that are enforceable as a practical matter on the emissions unit's potential to emit.

"Applicable federal requirement" means all of, but not limited to, the following as they apply to emissions units in a source subject to this article (including requirements that have been promulgated or approved by the administrator through rulemaking at the time of permit issuance but have future-effective compliance dates):

- a. Any standard or other requirement provided for in an implementation plan established pursuant to § 110 or 111(d) of the federal Clean Air Act, including any source-specific provisions such as consent agreements or orders.
- b. Any limit or condition in any construction permit issued under the new source review program or in any operating permit issued pursuant to the state operating permit program.
- c. Any emission standard, alternative emission standard, alternative emission limitation, equivalent emission limitation, or other requirement established pursuant to § 112 or 129 of the federal Clean Air Act as amended in 1990.
- d. Any new source performance standard or other requirement established pursuant to § 111 of the federal Clean Air Act, and any emission standard or other requirement established pursuant to § 112 of the federal Clean Air Act before it was amended in 1990.
- e. Any limitations and conditions or other requirement in a Virginia regulation or program that has been approved by EPA under subpart E of 40 CFR Part 63 for the purposes of implementing and enforcing § 112 of the federal Clean Air Act.
- f. Any requirement concerning accident prevention under § 112(r)(7) of the federal Clean Air Act.

g. Any compliance monitoring requirements established pursuant to either § 504(b) or 114(a)(3) of the federal Clean Air Act.

h. Any standard or other requirement for consumer and commercial products under § 183(e) of the federal Clean Air Act.

i. Any standard or other requirement for tank vessels under § 183(f) of the federal Clean Air Act.

j. Any standard or other requirement in 40 CFR Part 55 to control air pollution from outer continental shelf sources.

k. Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the federal Clean Air Act, unless the administrator has determined that such requirements need not be contained in a permit issued under this article.

l. With regard to temporary sources subject to 9VAC5-80-130, (i) any ambient air quality standard, except applicable state requirements, and (ii) requirements regarding increments or visibility as provided in Article 8 (9VAC5-80-1605 et seq.) of this part.

"Baseline actual emissions" means the rate of emissions, in tons per year, of a regulated NSR pollutant, as determined in accordance with the following:

a. For any existing electric utility steam generating unit, baseline actual emissions means the average rate, in tons per year, at which the unit actually emitted the pollutant during any consecutive 24-month period selected by the owner within the five-year period immediately preceding when the owner begins actual construction of the project. The board may allow the use of a different time period upon a determination that it is more representative of normal source operation.

(1) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

(2) The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive 24-month period.

(3) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period shall be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24-month period may be used for each regulated NSR pollutant.

(4) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by subdivision a (2) of this definition.

b. For an existing emissions unit other than an electric utility steam generating unit, baseline actual emissions means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive 24-month period selected by the owner within the 10-year period immediately preceding either the date the owner begins actual construction of the project, or the date a complete permit application is received by the board for a permit required either under this section or under a plan approved by the administrator, whichever is earlier, except that the 10-year period shall not include any period earlier than November 15, 1990. The board will allow the use of a different time period upon a determination that it is more representative of normal source operation.

(1) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

(2) The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive 24-month period.

(3) The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the source shall currently comply, had such source been required to comply with such limitations during the consecutive 24-month period. However, if an emission limitation is part of a maximum achievable control technology standard that the administrator proposed or promulgated under 40 CFR Part 63, the baseline actual emissions need only be adjusted if the state has taken credit for such emissions reductions in an attainment demonstration or maintenance plan consistent with the requirements of 9VAC5-80-2120 K.

(4) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period shall be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24-month period may be used for each regulated NSR pollutant.

(5) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by subdivisions b (2) and b (3) of this definition.

c. For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero; and thereafter, for all other purposes, shall equal the unit's potential to emit.

d. For a PAL for a major stationary source, the baseline actual emissions shall be calculated for existing electric

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utility steam generating units in accordance with the procedures contained in subdivision a of this definition, for other existing emissions units in accordance with the procedures contained in subdivision b of this definition, and for a new emissions unit in accordance with the procedures contained in subdivision c of this definition.

"Begin actual construction" means, in general, initiation of physical on-site construction activities on an emissions unit that are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operation, this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.

"Best available control technology" or "BACT" means an emissions limitation (including a visible emissions standard) based on the maximum degree of reduction for each regulated NSR pollutant that would be emitted from any proposed major stationary source or major modification that the board, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. In no event shall application of best available control technology result in emissions of any pollutant that would exceed the emissions allowed by any applicable standard under 40 CFR Parts 60, 61, and 63. If the board determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard, or combination thereof, may be prescribed instead to satisfy the requirement for the application of best available control technology. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice or operation, and shall provide for compliance by means that achieve equivalent results.

"Building, structure, facility, or installation" means all of the pollutant-emitting activities that belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "major group" (i.e., which have the same two-digit code) as described in the "Standard Industrial Classification Manual," as amended by the supplement (see 9VAC5-20-21).

"Clean coal technology" means any technology, including technologies applied at the precombustion, combustion, or post-combustion stage, at a new or existing facility that will

achieve significant reductions in air emissions of sulfur dioxide or nitrogen oxides associated with the utilization of coal in the generation of electricity, or process steam that was not in widespread use as of November 15, 1990.

"Clean coal technology demonstration project" means a project using funds appropriated under the heading "Department of Energy-Clean Coal Technology," up to a total amount of ~~\$2,500,000,000~~ \$2.5 billion for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the U.S. EPA. The federal contribution for a qualifying project shall be at least 20% of the total cost of the demonstration project.

"Commence," as applied to construction of a major stationary source or major modification, means that the owner has all necessary preconstruction approvals or permits and either has:

- a. Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or
- b. Entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner, to undertake a program of actual construction of the source, to be completed within a reasonable time.

"Complete application" means that the application contains all the information necessary for processing the application and the provisions of § 10.1-1321.1 of the Virginia Air Pollution Control Law have been met. Designating an application complete for purposes of permit processing does not preclude the board from requesting or accepting additional information.

"Construction" means any physical change in or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) that would result in a change in actual emissions.

"Continuous emissions monitoring system" or "CEMS" means all of the equipment that may be required to meet the data acquisition and availability requirements of this article, to sample, condition (if applicable), analyze, and provide a record of emissions on a continuous basis.

"Continuous emissions rate monitoring system" or "CERMS" means the total equipment required for the determination and recording of the pollutant mass emissions rate (in terms of mass per unit of time).

"Continuous parameter monitoring system" or "CPMS" means all of the equipment necessary to meet the data acquisition and availability requirements of this article, to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O₂ or CO₂ concentrations), and to record average operational parameter values on a continuous basis.

"Electric utility steam generating unit" means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 megawatt electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

"Emissions cap" means any limitation on the rate of emissions of any air pollutant from one or more emissions units established and identified as an emissions cap in any permit issued pursuant to the new source review program or operating permit program.

"Emissions unit" means any part of a stationary source that emits or would have the potential to emit any regulated NSR pollutant and includes an electric steam generating unit. For purposes of this article, there are two types of emissions units: (i) a new emissions unit is any emissions unit that is (or will be) newly constructed and that has existed for less than two years from the date such emissions unit first operated; and (ii) an existing emissions unit is any emissions unit that is not a new emissions unit. A replacement unit is an existing emissions unit.

"Enforceable as a practical matter" means that the permit contains emission limitations that are enforceable by the board or the department and meet the following criteria:

- a. Are permanent;
- b. Contain a legal obligation for the owner to adhere to the terms and conditions;
- c. Do not allow a relaxation of a requirement of the implementation plan;
- d. Are technically accurate and quantifiable;
- e. Include averaging times or other provisions that allow at least monthly (or a shorter period if necessary to be consistent with the implementation plan) checks on compliance. This may include, but not be limited to, the following: compliance with annual limits in a rolling basis, monthly or shorter limits, and other provisions consistent with this article and other regulations of the board; and
- f. Require a level of recordkeeping, reporting and monitoring sufficient to demonstrate compliance.

"Federal land manager" means, with respect to any lands in the United States, the secretary of the department with authority over such lands.

"Federally enforceable" means all limitations and conditions that are enforceable by the administrator and citizens under the federal Clean Air Act or that are enforceable under other statutes administered by the administrator. Federally enforceable limitations and conditions include, but are not limited to the following:

- a. Emission standards, alternative emission standards, alternative emission limitations, and equivalent emission limitations established pursuant to § 112 of the federal Clean Air Act as amended in 1990.
- b. New source performance standards established pursuant to § 111 of the federal Clean Air Act, and emission standards established pursuant to § 112 of the federal Clean Air Act before it was amended in 1990.
- c. All terms and conditions (unless expressly designated as not federally enforceable) in a federal operating permit, including any provisions that limit a source's potential to emit.
- d. Limitations and conditions that are part of an implementation plan established pursuant to § 110, 111(d), or 129 of the federal Clean Air Act.
- e. Limitations and conditions (unless expressly designated as not federally enforceable) that are part of a federal construction permit issued under 40 CFR 52.21 or any construction permit issued under regulations approved by EPA into the implementation plan.
- f. Limitations and conditions (unless expressly designated as not federally enforceable) that are part of a state operating permit where the permit and the permit program pursuant to which it was issued meet all of the following criteria:
 - (1) The operating permit program has been approved by the EPA into the implementation plan under § 110 of the federal Clean Air Act.
 - (2) The operating permit program imposes a legal obligation that operating permit holders adhere to the terms and limitations of such permits and provides that permits that do not conform to the operating permit program requirements and the requirements of EPA's underlying regulations may be deemed not "federally enforceable" by EPA.
 - (3) The operating permit program requires that all emission limitations, controls, and other requirements imposed by such permits will be at least as stringent as any other applicable limitations and requirements contained in the implementation plan or enforceable under the implementation plan, and that the program may not issue permits that waive, or make less stringent, any limitations or requirements contained in or issued pursuant to the implementation plan, or that are otherwise "federally enforceable."
 - (4) The limitations, controls, and requirements in the permit in question are permanent, quantifiable, and otherwise enforceable as a practical matter.
 - (5) The permit in question was issued only after adequate and timely notice and opportunity for comment by the EPA and the public.
- g. Limitations and conditions in a regulation of the board or program that has been approved by EPA under subpart

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E of 40 CFR Part 63 for the purposes of implementing and enforcing § 112 of the federal Clean Air Act.

h. Individual consent agreements that EPA has legal authority to create.

"Federal operating permit" means a permit issued under the federal operating permit program.

"Federal operating permit program" means an operating permit system (i) for issuing terms and conditions for major stationary sources, (ii) established to implement the requirements of Title V of the federal Clean Air Act and associated regulations, and (iii) codified in Article 1 (9VAC5-80-50 et seq.), Article 2 (9VAC5-80-310 et seq.), Article 3 (9VAC5-80-360 et seq.), and Article 4 (9VAC5-80-710 et seq.) of this part.

"Fugitive emissions" means those emissions that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

"Lowest achievable emissions rate" or "LAER" means for any source, the more stringent rate of emissions based on the following:

a. The most stringent emissions limitation that is contained in the implementation plan of any state for such class or category of stationary source, unless the owner of the proposed stationary source demonstrates that such limitations are not achievable; or

b. The most stringent emissions limitation that is achieved in practice by such class or category of stationary sources. This limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions units within the stationary source. In no event shall the application of this term permit a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under an applicable new source standard of performance.

"Major emissions unit" means (i) any emissions unit that emits or has the potential to emit 100 tons per year or more of the PAL pollutant in an attainment area; or (ii) any emissions unit that emits or has the potential to emit the PAL pollutant in an amount that is equal to or greater than the major source threshold for the PAL pollutant for nonattainment areas in subdivision a (1) of the definition of "major stationary source."

"Major modification"

a. Means any physical change in or change in the method of operation of a major stationary source that would result in (i) a significant emissions increase of a regulated NSR pollutant; and (ii) a significant net emissions increase of that pollutant from the source.

b. Any significant emissions increase from any emissions units or net emissions increase at a source that is considered significant for volatile organic compounds shall be considered significant for ozone.

c. A physical change in or change in the method of operation shall not include the following:

(1) Routine maintenance, repair and replacement.

(2) Use of an alternative fuel or raw material by reason of an order under § 2 (a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act.

(3) Use of an alternative fuel by reason of an order or rule § 125 of the federal Clean Air Act.

(4) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste.

(5) Use of an alternative fuel or raw material by a stationary source that:

(a) The source was capable of accommodating before December 21, 1976, unless such change would be prohibited under any federally and state enforceable permit condition which was established after December 21, 1976, pursuant to 40 CFR 52.21 or this chapter; or

(b) The source is approved to use under any permit issued under 40 CFR 52.21 or this chapter.

(6) An increase in the hours of operation or in the production rate, unless such change is prohibited under any federally and state enforceable permit condition which was established after December 21, 1976, pursuant to 40 CFR 52.21 or this chapter.

(7) Any change in ownership at a stationary source.

(8) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with:

(a) The applicable implementation plan; and

(b) Other requirements necessary to attain and maintain the national ambient air quality standard during the project and after it is terminated.

d. This definition shall not apply with respect to a particular regulated NSR pollutant when the source is complying with the requirements under 9VAC5-80-2144 for a PAL for that pollutant. Instead, the definition for "PAL major modification" shall apply.

"Major new source review (NSR) permit" means a permit issued under the major new source review program.

"Major new source review (major NSR) program" means a preconstruction review and permit program (i) for new major stationary sources or major modifications (physical changes or changes in the method of operation), (ii) established to implement the requirements of §§ 112, 165 and 173 of the federal Clean Air Act and associated regulations, and (iii) codified in Article 7 (9VAC5-80-1400 et seq.), Article 8 (9VAC5-80-1605 et seq.) and Article 9 (9VAC5-80-2000 et seq.) of this part.

"Major stationary source"

a. Means:

(1) Any stationary source of air pollutants that emits, or has the potential to emit, (i) 100 tons per year or more of a regulated NSR pollutant, (ii) 50 tons per year or more of volatile organic compounds or nitrogen oxides in ozone nonattainment areas classified as serious in 9VAC5-20-204, (iii) 25 tons per year or more of volatile organic compounds or nitrogen oxides in ozone nonattainment areas classified as severe in 9VAC5-20-204, or (iv) 100 tons per year or more of nitrogen oxides or 50 tons per year of volatile organic compounds in the Ozone Transport Region; or

(2) Any physical change that would occur at a stationary source not qualifying under subdivision a (1) of this definition as a major stationary source if the change would constitute a major stationary source by itself.

b. A major stationary source that is major for volatile organic compounds shall be considered major for ozone.

c. The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this article whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources:

- (1) Coal cleaning plants (with thermal dryers).
- (2) Kraft pulp mills.
- (3) Portland cement plants.
- (4) Primary zinc smelters.
- (5) Iron and steel mills.
- (6) Primary aluminum ore reduction plants.
- (7) Primary copper smelters.
- (8) Municipal incinerators (or combinations of them) capable of charging more than 250 tons of refuse per day.
- (9) Hydrofluoric acid plants.
- (10) Sulfuric acid plants.
- (11) Nitric acid plants.
- (12) Petroleum refineries.
- (13) Lime plants.
- (14) Phosphate rock processing plants.
- (15) Coke oven batteries.
- (16) Sulfur recovery plants.
- (17) Carbon black plants (furnace process).
- (18) Primary lead smelters.
- (19) Fuel conversion plants.
- (20) Sintering plants.
- (21) Secondary metal production plants.
- (22) Chemical process plants (which shall not include ethanol production facilities that produce ethanol by

natural fermentation included in NAICS codes 325193 or 312140).

(23) Fossil-fuel boilers (or combination of them) totaling more than 250 million British thermal units per hour heat input.

(24) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels.

(25) Taconite ore processing plants.

(26) Glass fiber manufacturing plants.

(27) Charcoal production plants.

(28) Fossil fuel steam electric plants of more than 250 million British thermal units per hour heat input.

(29) Any other stationary source category, which, as of August 7, 1980, is being regulated under 40 CFR Part 60, 61 or 63.

"Minor new source review (NSR) permit" means a permit issued under the minor new source review program.

"Minor new source review (minor NSR) program" means a preconstruction review and permit program (i) for new stationary sources or modifications (physical changes or changes in the method of operation) that are not subject to review under the major new source review program, (ii) established to implement the requirements of §§ 110(a)(2)(C) and 112 of the federal Clean Air Act and associated regulations, and (iii) codified in Article 6 (9VAC5-80-1100 et seq.) of this part.

"Necessary preconstruction approvals or permits" means those permits required under the NSR program that are part of the applicable implementation plan.

"Net emissions increase" means:

a. With respect to any regulated NSR pollutant emitted by a major stationary source, the amount by which the sum of the following exceeds zero:

(1) The increase in emissions from a particular physical change or change in the method of operation at a stationary source as calculated pursuant to 9VAC5-80-2000 H; and

(2) Any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable. Baseline actual emissions for calculating increases and decreases under this subdivision shall be determined as provided in the definition of "baseline actual emissions," except that subdivisions a (3) and b (4) of that definition shall not apply.

b. An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs before the date that the increase from the particular change occurs. For sources located in ozone nonattainment areas classified as serious or severe in 9VAC5-20-204, an increase or decrease in actual emissions of volatile organic compounds or nitrogen

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oxides is contemporaneous with the increase from the particular change only if it occurs during a period of five consecutive calendar years which includes the calendar year in which the increase from the particular change occurs.

c. An increase or decrease in actual emissions is creditable only if:

(1) It occurs between the date five years before construction on the particular change commences and the date that the increase from the particular change occurs; and

(2) The board has not relied on it in issuing a permit for the source pursuant to this article which permit is in effect when the increase in actual emissions from the particular change occurs.

d. An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

e. A decrease in actual emissions is creditable only to the extent that:

(1) The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

(2) It is enforceable as a practical matter at and after the time that actual construction on the particular change begins;

(3) The board has not relied on it in issuing any permit pursuant to this chapter or the board has not relied on it in demonstrating attainment or reasonable further progress in the implementation plan; and

(4) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

f. An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

g. Subdivision a of the definition of "actual emissions" shall not apply for determining creditable increases and decreases or after a change.

"New source performance standard" or "NSPS" means the U.S. Environmental Protection Agency Regulations on Standards of Performance for New Stationary Sources, as promulgated in 40 CFR Part 60 and designated in 9VAC5-50-410.

"New source review (NSR) permit" means a permit issued under the new source review program.

"New source review (NSR) program" means a preconstruction review and permit program (i) for new stationary sources or modifications (physical changes or

changes in the method of operation); (ii) established to implement the requirements of §§ 110(a)(2)(C), 112 (relating to permits for hazardous air pollutants), 165 (relating to permits in prevention of significant deterioration areas), and 173 (relating to permits in nonattainment areas) of the federal Clean Air Act and associated regulations; and (iii) codified in Article 6 (9VAC5-80-1100 et seq.), Article 7 (9VAC5-80-1400 et seq.), Article 8 (9VAC5-80-1605 et seq.) and Article 9 (9VAC5-80-2000 et seq.) of this part.

"Nonattainment major new source review (NSR) program" means a preconstruction review and permit program (i) for new major stationary sources or major modifications (physical changes or changes in the method of operation), (ii) established to implement the requirements of § 173 of the federal Clean Air Act and associated regulations, and (iii) codified in Article 9 (9VAC5-80-2000 et seq.) of this part. Any permit issued under such a program is a major NSR permit.

"Nonattainment pollutant" means, within a nonattainment area, the pollutant for which such area is designated nonattainment. For ozone nonattainment areas, the nonattainment pollutants shall be volatile organic compounds (including hydrocarbons) and nitrogen oxides.

"Ozone transport region" means the area established by § 184(a) of the federal Clean Air Act or any other area established by the administrator pursuant to § 176A of the federal Clean Air Act for purposes of ozone. For the purposes of this article, the Ozone Transport Region consists of the following localities: Arlington County, Fairfax County, Loudoun County, Prince William County, Stafford County, Alexandria City, Fairfax City, Falls Church City, Manassas City, and Manassas Park City.

"Plantwide applicability limitation" or "PAL" means an emission limitation expressed in tons per year, for a pollutant at a major stationary source, that is enforceable as a practical matter and established sourcewide in accordance with 9VAC5-80-2144.

"PAL effective date" generally means the date of issuance of the PAL permit. However, the PAL effective date for an increased PAL is the date any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

"PAL effective period" means the period beginning with the PAL effective date and ending 10 years later.

"PAL major modification" means, notwithstanding the definitions for "major modification" and "net emissions increase," any physical change in or change in the method of operation of the PAL source that causes it to emit the PAL pollutant at a level equal to or greater than the PAL.

"PAL permit" means the state operating permit issued by the board that establishes a PAL for a major stationary source.

"PAL pollutant" means the pollutant for which a PAL is established at a major stationary source.

"Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment, and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is federally and state enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source. For the purposes of actuals PALs, any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment, and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is federally enforceable or enforceable as a practical matter by the state.

"Predictive emissions monitoring system" or "PEMS" means all of the equipment necessary to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O₂ or CO₂ concentrations), and calculate and record the mass emissions rate (for example, pounds per hour) on a continuous basis.

"Prevention of significant deterioration (PSD) program" means a preconstruction review and permit program (i) for new major stationary sources or major modifications (physical changes or changes in the method of operation), (ii) established to implement the requirements of § 165 of the federal Clean Air Act and associated regulations, and (iii) codified in Article 8 (9VAC5-80-1605 et seq.) of this part.

"Project" means a physical change in or change in the method of operation of an existing major stationary source.

"Projected actual emissions" means the maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated NSR pollutant in any one of the five years (12-month period) following the date the unit resumes regular operation after the project, or in any one of the 10 years following that date, if the project involves increasing the emissions unit's design capacity or its potential to emit of that regulated NSR pollutant and full utilization of the unit would result in a significant emissions increase or a significant net emissions increase at the source. In determining the projected actual emissions before beginning actual construction, the owner shall:

- a. Consider all relevant information, including but not limited to, historical operational data, the company's own representations, the company's expected business activity and the company's highest projections of business activity, the company's filings with the state or federal regulatory authorities, and compliance plans under the approved plan;

- b. Include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions; and

- c. Exclude, in calculating any increase in emissions that results from the particular project, that portion of the unit's emissions following the project that an existing unit could have emitted during the consecutive 24-month period used to establish the baseline actual emissions and that are also unrelated to the particular project, including any increased utilization due to product demand growth, provided such exclusion shall not reduce any calculated increases in emissions that are caused by, result from, or are related to the particular project; or

- d. In lieu of using the method set out in subdivisions a, b, and c of this definition, may elect to use the emissions unit's potential to emit, in tons per year, as defined under the definition of "potential to emit."

"Public comment period" means a time during which the public shall have the opportunity to comment on the new or modified source permit application information (exclusive of confidential information), the preliminary review and analysis of the effect of the source upon the ambient air quality, and the preliminary decision of the board regarding the permit application.

"Reasonable further progress" means the annual incremental reductions in emissions of a given air pollutant (including substantial reductions in the early years following approval or promulgation of an implementation plan and regular reductions thereafter) which are sufficient in the judgment of the board to provide for attainment of the applicable ambient air quality standard within a specified nonattainment area by the attainment date prescribed in the implementation plan for such area.

"Reasonably available control technology" or "RACT" means the lowest emission limit that a particular source is capable of meeting by the application of control technology that is reasonably available, considering technological and economic feasibility.

"Regulated NSR pollutant" means any of the following:

- a. Nitrogen oxides or any volatile organic compound.
- b. Any pollutant for which an ambient air quality standard has been promulgated.
- c. Any pollutant that is identified under this subdivision as a constituent or precursor of a general pollutant listed under subdivision a or b of this definition, provided that such constituent or precursor pollutant may only be regulated under this article as part of regulation of the general pollutant. Precursors identified for purposes of this article shall be the following:

- (1) Volatile organic compounds and nitrogen oxides are precursors to ozone in all ozone nonattainment areas.

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(2) Sulfur dioxide is a precursor, nitrogen oxides, volatile organic compounds, and ammonia are precursors to PM_{2.5} in ~~all~~ any PM_{2.5} nonattainment areas area.

(3) Nitrogen oxides are presumed to be precursors to PM_{2.5} in all PM_{2.5} nonattainment areas, unless the board determines that emissions of nitrogen oxides from sources in a specific area are not a significant contributor to that area's ambient PM_{2.5} concentrations.

(4) Volatile organic compounds and ammonia are presumed not to be precursors to PM_{2.5} in any PM_{2.5} nonattainment area, unless the board determines that emissions of volatile organic compounds or ammonia from sources in a specific area are a significant contributor to that area's ambient PM_{2.5} concentrations.

d. PM_{2.5} emissions and PM₁₀ emissions shall include gaseous emissions from a source or activity that condense to form particulate matter at ambient temperatures. On or after January 1, 2011, such condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for PM_{2.5} and PM₁₀ in permits issued under this article. Compliance with emissions limitations for PM_{2.5} and PM₁₀ issued prior to this date shall not be based on condensable particulate matter unless required by the terms and conditions of the permit. Applicability determinations made prior to this date without accounting for condensable particulate matter shall not be considered in violation of this article.

"Replacement unit" means an emissions unit for which all the following criteria are met. No creditable emission reductions shall be generated from shutting down the existing emissions unit that is replaced.

a. The emissions unit is a reconstructed unit within the meaning of 40 CFR 60.15(b)(1), or the emissions unit completely takes the place of an existing emissions unit.

b. The emissions unit is identical to or functionally equivalent to the replaced emissions unit.

c. The replacement does not alter the basic design parameters of the process unit.

d. The replaced emissions unit is permanently removed from the major stationary source, otherwise permanently disabled, or permanently barred from operation by a permit that is enforceable as a practical matter. If the replaced emissions unit is brought back into operation, it shall constitute a new emissions unit.

"Secondary emissions" means emissions that would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purpose of this article, secondary emissions shall be specific, well defined, quantifiable, and affect the same general area as the stationary source or modification which causes the secondary emissions. Secondary emissions include emissions from any off-site support facility which would not be constructed or

increase its emissions except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions that come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

"Significant" means, in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

a. Ozone nonattainment areas classified as serious or severe in 9VAC5-20-204.

POLLUTANT	EMISSIONS RATE
Carbon Monoxide	100 tons per year (tpy)
Nitrogen Oxides	25 tpy
Sulfur Dioxide	40 tpy
PM ₁₀	15 tpy
PM _{2.5}	10 tpy of direct PM _{2.5} emissions; 40 tpy of sulfur dioxide emissions; 40 tpy of nitrogen oxide emissions unless demonstrated not to be or 40 tpy of volatile organic compound emissions, to the extent that any such pollutant is defined as a precursor for PM _{2.5} precursor under in the definition of "regulated NSR pollutant"
Ozone	25 tpy of volatile organic compounds
Lead	0.6 tpy

b. Other nonattainment areas.

POLLUTANT	EMISSIONS RATE
Carbon Monoxide	100 tons per year (tpy)
Nitrogen Oxides	40 tpy
Sulfur Dioxide	40 tpy
PM ₁₀	15 tpy
PM _{2.5}	10 tpy of direct PM _{2.5} emissions; 40 tpy of sulfur dioxide emissions; 40 tpy of nitrogen oxide

	emissions unless demonstrated not to be or 40 tpy of volatile organic compound emissions, <u>to the extent that any such pollutant is defined as a precursor for PM_{2.5} precursor under in the definition of "regulated NSR pollutant"</u>
Ozone	40 tpy of volatile organic compounds
Lead	0.6 tpy

"Significant emissions increase" means, for a regulated NSR pollutant, an increase in emissions that is significant for that pollutant.

"Significant emissions unit" means an emissions unit that emits or has the potential to emit a PAL pollutant in an amount that is equal to or greater than the significant level for that PAL pollutant, but less than the amount that would qualify the unit as a major emissions unit.

"Small emissions unit" means an emissions unit that emits or has the potential to emit the PAL pollutant in an amount less than the significant level for that PAL pollutant.

"State enforceable" means all limitations and conditions that are enforceable as a practical matter, including any regulation of the board, those requirements developed pursuant to 9VAC5-170-160, requirements within any applicable order or variance, and any permit requirements established pursuant to this chapter.

"State operating permit" means a permit issued under the state operating permit program.

"State operating permit program" means an operating permit program (i) for issuing limitations and conditions for stationary sources, (ii) promulgated to meet the EPA's minimum criteria for federal enforceability, including adequate notice and opportunity for the EPA and public comment prior to issuance of the final permit, and practicable enforceability, and (iii) codified in Article 5 (9VAC5-80-800 et seq.) of this part.

"Stationary source" means any building, structure, facility, or installation that emits or may emit a regulated NSR pollutant.

"Synthetic minor" means a stationary source whose potential to emit is constrained by state-enforceable and federally enforceable limits, so as to place that stationary source below the threshold at which it would be subject to permit or other requirements governing major stationary sources in regulations of the board or in the federal Clean Air Act.

"Temporary clean coal technology demonstration project" means a clean coal technology demonstration project that is operated for a period of five years or less, and that complies with the applicable implementation plan and other requirements necessary to attain and maintain the national

ambient air quality standards during the project and after it is terminated.

Part II
General Provisions

9VAC5-160-30. Applicability.

A. The provisions of this chapter shall apply in all nonattainment and maintenance areas for criteria pollutants for which the area is designated nonattainment or has a maintenance plan. Conformity requirements for newly designated nonattainment areas are not applicable until one year after the effective date of the final nonattainment designation for each national ambient air quality standard and pollutant in accordance with § 176(c)(6) of the federal Clean Air Act.

B. The provisions of this chapter apply with respect to emissions of the following criteria pollutants: ozone, carbon monoxide, nitrogen dioxide, particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM₁₀), and particles with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers (PM_{2.5}). The provisions of this chapter shall not apply in nonattainment and maintenance areas that were designated nonattainment or maintenance under a federal standard that has been revoked (see 9VAC5-20-204 B).

C. The provisions of this chapter apply with respect to emissions of the following precursor pollutants:

1. For ozone:
 - a. Nitrogen oxides, unless an area is exempted from nitrogen oxides requirements under § 182(f) of the federal Clean Air Act, and
 - b. Volatile organic compounds.
2. For PM₁₀, those pollutants described in the PM₁₀ nonattainment area applicable implementation plan as significant contributors to the PM₁₀ levels.
3. For PM_{2.5}, (i) sulfur dioxide in all PM_{2.5} nonattainment and maintenance areas, (ii) nitrogen oxides in all PM_{2.5} nonattainment and maintenance areas unless both the department and EPA determine that it is not a significant precursor, and (iii) volatile organic compounds and ammonia only in PM_{2.5} nonattainment or maintenance areas where either the department or EPA determines that they are significant precursors.

D. Conformity determinations for federal actions related to transportation plans, programs, and projects developed, funded, or approved under Title 23 USC or the Federal Transit Act (49 USC § 5301 et seq.) shall meet the procedures and criteria of 9VAC5-151 (Regulation for Transportation Conformity), in lieu of the procedures set forth in this chapter.

E. For federal actions not covered by subsection D of this section, a conformity determination is required for each criteria pollutant or precursor where the total of direct and

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indirect emissions of the criteria pollutant or precursor in a nonattainment or maintenance area caused by a federal action would equal or exceed any of the rates in subdivision 1 or 2 of this subsection.

1. For the purposes of this subsection, the following rates apply in nonattainment areas:

	Tons per year
Ozone (VOCs or NO _x):	
Serious nonattainment areas	50
Severe nonattainment areas	25
Extreme nonattainment areas	10
Other ozone nonattainment areas outside an ozone transport region	100
Other ozone nonattainment areas inside an ozone transport region:	
VOC	50
NO _x	100
Carbon monoxide, all nonattainment areas	100
Sulfur dioxide or nitrogen dioxide, all nonattainment areas	100
PM ₁₀ :	
Moderate nonattainment areas	100
Serious nonattainment areas	70
PM _{2.5} (<u>direct emissions, SO₂, NO_x, VOC, and ammonia</u>):	
Direct emissions <u>Moderate nonattainment areas</u>	100
Sulfur dioxide <u>Serious nonattainment areas</u>	100 70
Nitrogen oxides (unless determined not to be significant precursors)	100
Volatile organic compounds or ammonia (if determined to be significant precursors)	100
Lead, all nonattainment areas	25

2. For the purposes of this subsection, the following rates apply in maintenance areas:

	Tons per year
Ozone (NO _x), sulfur dioxide, or nitrogen dioxide, all maintenance areas	100
Ozone (VOCs):	
Maintenance areas inside an ozone transport region	50
Maintenance areas outside an ozone transport region	100
Carbon monoxide, all maintenance areas	100
PM ₁₀ , all maintenance areas	100
PM _{2.5} (<u>direct emissions, SO₂, NO_x, VOC, and ammonia</u>):	<u>100</u>
Direct emissions <u>All maintenance areas</u>	100
Sulfur dioxide	100
Nitrogen oxides (unless determined not to be a significant precursor)	100
Volatile organic compounds or ammonia (if determined to be significant precursors)	100
Lead, all maintenance areas	25

F. The requirements of this section shall not apply to the following federal actions:

1. Actions where the total of direct and indirect emissions are below the emissions levels specified in subsection E of this section.
2. The following actions which would result in no emissions increase or an increase in emissions that is clearly de minimis:
 - a. Judicial and legislative proceedings.
 - b. Continuing and recurring activities such as permit renewals where activities conducted shall be similar in scope and operation to activities currently being conducted.
 - c. Rulemaking and policy development and issuance.
 - d. Routine maintenance and repair activities, including repair and maintenance of administrative sites, roads, trails, and facilities.
 - e. Civil and criminal enforcement activities, such as investigations, audits, inspections, examinations, prosecutions, and the training of law-enforcement personnel.

f. Administrative actions such as personnel actions, organizational changes, debt management, internal agency audits, program budget proposals, and matters relating to administration and collection of taxes, duties, and fees.

g. The routine, recurring transportation of materiel and personnel.

h. Routine movement of mobile assets, such as ships and aircraft, in home port reassignments and stations (when no new support facilities or personnel are required) to perform as operational groups and for repair or overhaul or both.

i. Maintenance dredging and debris disposal where no new depths are required, applicable permits are secured, and disposal shall be at an approved disposal site.

j. With respect to existing structures, properties, facilities, and lands where future activities conducted shall be similar in scope and operation to activities currently being conducted at the existing structures, properties, facilities, and lands, actions such as relocation of personnel, disposition of federally-owned existing structures, properties, facilities, and lands, rent subsidies, operation and maintenance cost subsidies, the exercise of receivership or conservatorship authority, assistance in purchasing structures, and the production of coins and currency.

k. The granting of leases, licenses such as for exports and trade, permits, and easements where activities conducted shall be similar in scope and operation to activities currently being conducted.

l. Planning, studies, and provision of technical assistance.

m. Routine operation of facilities, mobile assets, and equipment.

n. Transfers of ownership, interests, and titles in land, facilities, and real and personal properties, regardless of the form or method of the transfer.

o. The designation of empowerment zones, enterprise communities, or viticultural areas.

p. Actions by any of the federal banking agencies or the federal reserve banks, including actions regarding charters, applications, notices, licenses, the supervision or examination of depository institutions or depository institution holding companies, access to the discount window, or the provision of financial services to banking organizations or to any state, agency, or instrumentality of the United States.

q. Actions by the Board of Governors of the federal reserve system or any federal reserve bank to effect monetary or exchange rate policy.

r. Actions that implement a foreign affairs function of the United States.

s. Actions or portions thereof associated with transfers of land, facilities, title, and real properties through an enforceable contract or lease agreement where the delivery of the deed is required to occur promptly after a specific, reasonable condition is met, such as promptly after the land is certified as meeting the requirements of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 USC 9601 et seq., and where the federal agency does not retain continuing authority to control emissions associated with the lands, facilities, title, or real properties.

t. Transfers of real property, including land, facilities, and related personal property from a federal entity to another federal entity, and assignments of real property, including land, facilities, and related personal property from a federal entity to another federal entity, for subsequent deeding to eligible applicants.

u. Actions by the Department of the Treasury to effect fiscal policy and to exercise the borrowing authority of the United States.

v. Air traffic control activities and adopting approach, departure, and en route procedures for aircraft operations above the mixing height specified in the applicable implementation plan. Where the applicable implementation plan does not specify a mixing height, the federal agency may use the 3,000 feet above ground level as a default mixing height, unless the agency demonstrates that use of a different mixing height is appropriate because the change in emissions at and above that height caused by the federal action is de minimis.

3. Actions where the emissions are not reasonably foreseeable, such as the following:

a. Initial outer continental shelf lease sales which are made on a broad scale and are followed by exploration and development plans on a project level.

b. Electric power marketing activities that involve the acquisition, sale, and transmission of electric energy.

4. Individual actions which implement a decision to conduct or carry out a program that has been found to conform to the applicable implementation plan, such as prescribed burning actions which are consistent with a conforming land management plan, that has been found to conform to the applicable implementation plan. The land management plan shall have been found to conform within the past five years.

G. Notwithstanding the other requirements of this section, a conformity determination is not required for the following federal actions or portions thereof:

1. The portion of an action that includes major or minor new or modified stationary sources that require a permit under the new source review program.

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2. Actions in response to emergencies that are typically commenced on the order of hours or days after the emergency and, if applicable, that meet the requirements of subsection H of this section.

3. Research, investigations, studies, demonstrations, or training (other than those exempted under subdivision F 2 of this section), where no environmental detriment is incurred, or the particular action furthers air quality research, as determined by the department.

4. Alteration and additions of existing structures as specifically required by new or existing applicable environmental legislation or environmental regulations (for example, hush houses for aircraft engines and scrubbers for air emissions).

5. Direct emissions from remedial and removal actions carried out under CERCLA and associated regulations to the extent the emissions either comply with the substantive requirements of the new source review program or are exempted from other environmental regulation under the provisions of CERCLA and applicable regulations issued under CERCLA.

H. Federal actions which are part of a continuing response to an emergency or disaster under subdivision G 2 of this section and which are to be taken more than six months after the commencement of the response to the emergency or disaster under subdivision G 2 of this section are exempt from the requirements of this subsection only if:

1. The federal agency taking the actions makes a written determination that, for a specified period not to exceed an additional six months, it is impractical to prepare the conformity analyses which would otherwise be required and the actions cannot be delayed due to overriding concerns for public health and welfare, national security interests, and foreign policy commitments; or

2. For actions which are to be taken after those actions covered by subdivision H 1 of this section, the federal agency makes a new determination as provided in subdivision H 1 of this section, and:

a. Provides a draft copy of the written determinations required to affected EPA regional offices, the affected states and air pollution control agencies, and any federally recognized Indian tribal government in the nonattainment or maintenance area. Those organizations shall be allowed 15 days from the beginning of the extension period to comment on the draft determination; and

b. Within 30 days after making the determination, publish a notice of the determination by placing a prominent advertisement in a daily newspaper of general circulation in the area affected by the action.

3. If additional actions are necessary in response to an emergency or disaster under subdivision G 2 of this section beyond the specified time period in subdivision 2 of this

subsection, a federal agency may make a new written determination as described in subdivision 2 of this subsection for as many six-month periods as needed, but in no case shall this exemption extend beyond three six-month periods except where an agency provides information to EPA and the department stating that the conditions that gave rise to the emergency exemption continue to exist and how such conditions effectively prevent the agency from conducting a conformity evaluation.

I. Notwithstanding other requirements of this chapter, actions specified by individual federal agencies that have met the criteria set forth in subdivision J 1, J 2, or J 3 of this section and the procedures set forth in subsection K of this section are presumed to conform, except as provided in subsection M of this section. Actions specified by individual federal agencies as presumed to conform shall not be used in combination with one another when the total direct and indirect emissions from the combination of actions would equal or exceed any of the rates specified in subdivision E 1 or E 2 of this section.

J. The federal agency shall meet the criteria for establishing activities that are presumed to conform by fulfilling the requirements set forth in either subdivision 1, 2, or 3 of this subsection.

1. The federal agency shall clearly demonstrate, using methods consistent with this regulation, that the total of direct and indirect emissions from the type of activities which would be presumed to conform would not:

a. Cause or contribute to any new violation of any standard in any area;

b. Interfere with the provisions in the applicable implementation plan for maintenance of any standard;

c. Increase the frequency or severity of any existing violation of any standard in any area;

d. Delay timely attainment of any standard or any required interim emissions reductions or other milestones in any area including, where applicable, emission levels specified in the applicable implementation plan for purposes of:

(1) A demonstration of reasonable further progress;

(2) A demonstration of attainment; or

(3) A maintenance plan.

2. The federal agency shall provide documentation that the total of direct and indirect emissions from the future actions would be below the emission rates for a conformity determination that are established in subsection B of this section, based, for example, on similar actions taken over recent years.

3. The federal agency shall clearly demonstrate that the emissions from the type or category of actions and the amount of emissions from the action are included in the

applicable implementation plan and the department provides written concurrence that the emissions from the actions along with all other expected emissions in the area will not exceed the emission budget in the applicable implementation plan.

K. In addition to meeting the criteria for establishing exemptions set forth in subdivision J 1, J 2, or J 3 of this section, the following procedures shall also be complied with to presume that activities shall conform:

1. The federal agency shall identify through publication in the Federal Register its list of proposed activities that are presumed to conform, and the basis for the presumptions. The notice shall clearly identify the type and size of the action that would be presumed to conform and provide criteria for determining if the type and size of action qualifies it for the presumption;
2. The federal agency shall notify the appropriate EPA regional office or offices, department, and local air quality agencies and, where applicable, the lead planning organization, and the metropolitan planning organization and provide at least 30 days for the public to comment on the list of proposed activities presumed to conform. If the presumed to conform action has regional or national application (e.g., the action will cause emission increases in excess of the de minimis levels identified in subsection E of this section in more than one EPA region), the federal agency, as an alternative to sending it to EPA regional offices, may send the draft conformity determination to EPA, Office of Air Quality Planning and Standards;
3. The federal agency shall document its response to all the comments received and make the comments, response, and final list of activities available to the public upon request; and
4. The federal agency shall publish the final list of such activities in the Federal Register.

L. Emissions from the following actions are presumed to conform:

1. Actions at installations with facility-wide emission budgets meeting the requirements in 9VAC5-160-181 provided that the department has included the emission budget in the EPA-approved applicable implementation plan and the emissions from the action along with all other emissions from the installation will not exceed the facility-wide emission budget.
2. Prescribed fires conducted in accordance with a smoke management program that meets the requirements of EPA's Interim Air Quality Policy on Wildland and Prescribed Fires (April 1998) or an equivalent replacement EPA policy.
3. Emissions for actions that the department identifies in the EPA-approved applicable implementation plan as presumed to conform.

M. Even though an action would otherwise be presumed to conform under subsection I or L of this section, an action shall not be presumed to conform and the requirements of 9VAC5-160-110 through 9VAC5-160-180, 9VAC5-160-182 through 9VAC5-160-184, and 9VAC5-160-190 shall apply to the action if EPA or a third party shows that the action would:

1. Cause or contribute to any new violation of any standard in any area;
2. Interfere with provisions in the applicable implementation plan for maintenance of any standard;
3. Increase the frequency or severity of any existing violation of any standard in any area; or
4. Delay timely attainment of any standard or any required interim emissions reductions or other milestones in any area including, where applicable, emission levels specified in the applicable implementation plan for purposes of (i) a demonstration of reasonable further progress, (ii) a demonstration of attainment, or (iii) a maintenance plan.

N. Any measures used to affect or determine applicability of this chapter, as determined under this section, shall result in projects that are in fact de minimis, shall result in the de minimis levels prior to the time the applicability determination is made, and shall be state or federally enforceable. Any measures that are intended to reduce air quality impacts for this purpose shall be identified (including the identification and quantification of all emission reductions claimed) and the process for implementation (including any necessary funding of the measures and tracking of the emission reductions) and enforcement of the measures shall be described, including an implementation schedule containing explicit timelines for implementation. Prior to a determination of applicability, the federal agency making the determination shall obtain written commitments from the appropriate persons or agencies to implement any measures which are identified as conditions for making the determinations. The written commitment shall describe the mitigation measures and the nature of the commitment, in a manner consistent with the previous sentence. After this regulation is approved by EPA, enforceability through the applicable implementation plan of any measures necessary for a determination of applicability shall apply to all persons who agree to reduce direct and indirect emissions associated with a federal action for a conformity applicability determination.

VA.R. Doc. No. R17-4991; Filed March 20, 2017, 12:45 p.m.



Regulations

TITLE 10. FINANCE AND FINANCIAL INSTITUTIONS

STATE CORPORATION COMMISSION

Proposed Regulation

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

Title of Regulation: 10VAC5-210. Motor Vehicle Title Lending (amending 10VAC5-210-10, 10VAC5-210-30, 10VAC5-210-50).

Statutory Authority: §§ 6.2-2214 and 12.1-13 of the Code of Virginia.

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

Public Comment Deadline: May 12, 2017.

Agency Contact: Susan Hancock, Deputy Commissioner, Bureau of Financial Institutions, State Corporation Commission, P.O. Box 640, Richmond, VA 23218, telephone (804) 371-9701, FAX (804) 371-9416, or email susan.hancock@scc.virginia.gov.

Summary:

The proposed amendments prohibit licensees from (i) obtaining agreements from borrowers that give licensees or third parties the authority to prepare checks that are drawn upon borrowers' accounts at depository institutions; (ii) obtaining or receiving personal identification numbers for borrowers' credit cards, prepaid cards, debit cards, or other cards; and (iii) providing borrowers or prospective borrowers with false, misleading, or deceptive information. The proposed amendments also expand the definition of "good funds instrument," define the term "prepaid card," address evasions of 10VAC5-210 and compliance with federal laws and regulations, and conform the regulation to the text of the borrower rights and responsibilities pamphlet.

AT RICHMOND, MARCH 27, 2017

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. BFI-2017-00013

Ex Parte: In re: amendments to motor vehicle title lending regulations

ORDER TO TAKE NOTICE

Section 6.2-2214 of the Code of Virginia ("Code") provides that the State Corporation Commission ("Commission") shall adopt such regulations as it deems appropriate to effect the

purposes of Chapter 22 (§ 6.2-2200 et seq.) of Title 6.2 of the Code. The Commission's regulations governing licensed motor vehicle title lenders ("licensees") are set forth in Chapter 210 of Title 10 of the Virginia Administrative Code ("Chapter 210").

The Bureau of Financial Institutions ("Bureau") has submitted to the Commission proposed amendments to Chapter 210. The proposal expands the definition of "good funds instrument" and adds consumer protections relating to personal identification numbers, the preparation of checks drawn on borrowers' deposit accounts, and false, misleading or deceptive information. Other changes to 10 VAC 5-210-50 address evasions of Chapter 210 and compliance with federal laws and regulations. Amendments to the text of the borrower rights and responsibilities pamphlet have also been proposed.

NOW THE COMMISSION, based on the information supplied by the Bureau, is of the opinion and finds that the proposed regulations should be considered for adoption with a proposed effective date of July 1, 2017.

Accordingly, IT IS ORDERED THAT:

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

(2) Comments or requests for a hearing on the proposed regulations must be submitted in writing to Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, on or before May 12, 2017. Requests for a hearing shall state why a hearing is necessary and why the issues cannot be adequately addressed in written comments. All correspondence shall contain a reference to Case No. BFI-2017-00013. Interested persons desiring to submit comments or request a hearing electronically may do so by following the instructions available at the Commission's website: <http://www.scc.virginia.gov/case>.

(3) This Order and the attached proposed regulations shall be posted on the Commission's website at <http://www.scc.virginia.gov/case>.

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

AN ATTESTED COPY hereof, together with a copy of the proposed regulations, shall be sent by the Clerk of the Commission to the Commission's Office of General Counsel and the Commissioner of Financial Institutions, who shall forthwith send by e-mail or U.S. mail a copy of this Order, together with a copy of the proposed regulations, to all licensed motor vehicle title lenders and such other interested parties as he may designate.

10VAC5-210-10. Definitions.

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

"Act" means Chapter 22 (§ 6.2-2200 et seq.) of Title 6.2 of the Code of Virginia.

"Advertisement" for purposes of the Act and this chapter means a commercial message in any medium that promotes, directly or indirectly, a motor vehicle title loan. The term includes a communication sent to a consumer as part of a solicitation of business, but excludes messages on promotional items such as pens, pencils, notepads, hats, calendars, etc.

"Bureau" means the Bureau of Financial Institutions.

"Business day" for purposes of the Act and this chapter means a day on which the licensee's office is open for business as posted as required by subsection B of 10VAC5-210-50.

"Commission" means the State Corporation Commission.

"Commissioner" means the Commissioner of Financial Institutions.

"Duplicate original" for purposes of the Act and this chapter means an exact copy of a signed original, an exact copy with signatures created by the same impression as the original, or an exact copy bearing an original signature.

"Good funds instrument" for purposes of the Act and this chapter means a certified check, cashier's check, money order or, if the licensee is equipped to handle and willing to accept such payments, payment effected by use of a credit card, prepaid card, or debit card.

"Liquid assets" for purposes of the Act and this chapter means cash in depository institutions, money market funds, commercial paper, and treasury bills.

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

B. Other terms used in this chapter shall have the meanings set forth in § 6.2-2200 of the Act.

10VAC5-210-30. Notice and pamphlet.

A. Prior to furnishing a prospective borrower with a loan application or receiving any information relating to loan qualification, a licensee shall provide the prospective borrower with (i) a written notice that complies with subsection B of this section; and (ii) a borrower rights and responsibilities pamphlet that complies with subsections C and D of this section.

B. 1. The required text of the written notice shall be as follows: "WARNING: A motor vehicle title loan is not intended to meet your long-term financial needs. The interest rate on a motor vehicle title loan is high and you are pledging your motor vehicle as collateral for the loan. If you fail to

repay your loan in accordance with your loan agreement, we may repossess and sell your motor vehicle. You should consider whether there are other lower cost loans available to you. If you obtain a motor vehicle title loan, you should request the minimum loan amount required to meet your immediate needs." A licensee shall not modify or supplement the required text of the written notice.

2. The written notice shall be printed on a single 8-1/2 x 11 sheet of paper and be separate from all other papers, documents, or notices obtained or furnished by the licensee. The notice shall be printed in at least 24-point bold type and contain an acknowledgment that is signed and dated by each prospective borrower. The ~~acknowledgement~~ acknowledgment shall state the following: "I acknowledge that I have received a copy of this notice and the pamphlet entitled "Motor Vehicle Title Lending in the Commonwealth of Virginia - Borrower Rights and Responsibilities."

3. A duplicate original of the acknowledged notice shall be kept by a licensee in the separate file maintained with respect to the loan for the period specified in § 6.2-2209 of the Code of Virginia.

C. The borrower rights and responsibilities pamphlet shall be printed in at least 12-point type and be separate from all other papers, documents, or notices obtained or furnished by the licensee. The pamphlet shall contain the exact language prescribed in subsection D of this section. A licensee shall not modify or supplement the required text of the pamphlet. The title of the pamphlet ("Motor Vehicle Title Lending in the Commonwealth of Virginia - Borrower Rights and Responsibilities") and the headings for the individual sections of the pamphlet (e.g., "In General," "Notice from Lender," etc.) shall be printed in bold type.

D. The required text of the borrower rights and responsibilities pamphlet shall be as follows:

**MOTOR VEHICLE TITLE LENDING IN THE COMMONWEALTH OF VIRGINIA
BORROWER RIGHTS AND RESPONSIBILITIES**

Please take the time to carefully review the information contained in this pamphlet. It is designed to advise you of your rights and responsibilities in connection with obtaining a motor vehicle title loan in Virginia under Chapter 22 (§ 6.2-2200 et seq.) of Title 6.2 of the Code of Virginia.

If you have any questions about motor vehicle title lending or want additional information, you may contact the Virginia State Corporation Commission's Bureau of Financial Institutions toll-free at (800) 552-7945 or on the Internet at <http://www.scc.virginia.gov/bfi>.

In General: You are responsible for evaluating whether a motor vehicle title loan is right for you. Alternatives may include among other things less expensive short-term financing from another financial institution, family, or

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friends, a cash advance on a credit card, or an account with overdraft protection.

Notice from Lender: A motor vehicle title lender is required to provide you with a clear and conspicuous printed notice advising you that a motor vehicle title loan is not intended to meet your long-term financial needs; that the interest rate on a motor vehicle title loan is high; and that if you fail to repay your loan in accordance with your loan agreement, the motor vehicle title lender may repossess and sell your motor vehicle.

Information from Lender: Virginia law prohibits a motor vehicle title lender from providing you with any false, misleading, or deceptive information.

Prohibition on Obtaining Loan if Motor Vehicle has Existing Lien / One Loan at a Time: Virginia law prohibits a motor vehicle title lender from making a motor vehicle title loan to you if (i) your certificate of title indicates that your motor vehicle is security for another loan or has an existing lien; or (ii) you currently have another motor vehicle title loan from either the same motor vehicle title lender or any other motor vehicle title lender conducting a motor vehicle title lending business in Virginia.

Prohibition on Obtaining Loan on Same Day Another Loan was Repaid: Virginia law prohibits a motor vehicle title lender from making a motor vehicle title loan to you on the same day that you repaid or satisfied in full a motor vehicle title loan from either the same motor vehicle title lender or any other motor vehicle title lender conducting a motor vehicle title lending business in Virginia.

Prohibition on Loans to Covered Members of the Armed Forces and their Dependents: Virginia law prohibits a motor vehicle title lender from making motor vehicle title loans to covered members of the armed forces and their dependents. If you are (i) on active duty under a call or order that does not specify a period of 30 days or less; or (ii) on active guard and reserve duty, then you are a covered member of the armed forces and a motor vehicle title lender is prohibited from making a motor vehicle title loan to you. A motor vehicle title lender is also prohibited from making a motor vehicle title loan to you if (i) you are married to a covered member of the armed forces; (ii) you are the child, as defined in 38 USC § 101(4), of a covered member of the armed forces; or (iii) more than one-half of your support during the past 180 days was provided by a covered member of the armed forces.

Certificate of Title / Other Security Interests: Prior to obtaining a motor vehicle title loan, you will be required to give a motor vehicle title lender the certificate of title for your motor vehicle. The motor vehicle title lender is required to record its lien with the motor vehicle department in the state where your motor vehicle is registered and hold the certificate of title until your loan is repaid or satisfied in full. The motor vehicle title lender cannot take an interest in more than one motor vehicle as security for a motor vehicle title loan. Apart

from your motor vehicle and any accessories that are attached to it, the motor vehicle title lender cannot take an interest in any other property you own as security for a motor vehicle title loan.

Maximum Loan Amount: A motor vehicle title lender cannot loan you more than 50% of the fair market value of your motor vehicle. The fair market value is generally based on the loan value for your motor vehicle according to a recognized pricing guide.

Minimum and Maximum Loan Term / Monthly Payments: Under Virginia law, your loan term cannot be either less than 120 days or more than 12 months. Your motor vehicle title loan will be repayable in substantially equal monthly installments of principal and interest. However, if you have a longer first payment period, your first monthly payment may be larger than your remaining monthly payments.

Interest and Other Loan Costs: The following are the maximum interest rates that a motor vehicle title lender is permitted to charge you PER MONTH on the principal amount of your loan that remains outstanding: (i) 22% per month on the portion of the outstanding balance up to and including \$700; (ii) 18% per month on the portion of the outstanding balance between \$700.01 and \$1,400; and (iii) 15% per month on the portion of the outstanding balance of \$1,400.01 and higher. As long as these maximum rates are not exceeded, a motor vehicle title lender is allowed to accrue interest using a single blended interest rate if the initial principal is higher than \$700. In addition to interest, a motor vehicle title lender may charge you for the actual cost of recording its lien with the motor vehicle department in the state where your motor vehicle is registered.

If you make a payment more than seven calendar days after its due date, a motor vehicle title lender may impose a late charge of up to five percent of the amount of the payment.

A motor vehicle title lender is prohibited from accruing or charging you interest on or after (i) the date the motor vehicle title lender repossesses your motor vehicle; or (ii) 60 days after you fail to make a monthly payment on your loan, unless you are hiding your motor vehicle.

Other than interest and the costs specifically mentioned in this section and the section below ("Costs of Repossession and Sale"), no additional amounts may be directly or indirectly charged, contracted for, collected, received, or recovered by a motor vehicle title lender.

Costs of Repossession and Sale: A motor vehicle title lender may charge you for any reasonable costs that it incurs in repossessing, preparing for sale, and selling your motor vehicle if (i) you default on your motor vehicle title loan; (ii) the motor vehicle title lender sends you a written notice at least 10 days prior to repossession advising you that your motor vehicle title loan is in default and that your motor vehicle may be repossessed unless you pay the outstanding principal and interest; and (iii) you fail to pay the amount

owed prior to the date of repossession. A motor vehicle title lender is prohibited from charging you for any storage costs if the motor vehicle title lender takes possession of your motor vehicle.

Written Loan Agreement: A motor vehicle title lender must provide you with a written loan agreement, which must be signed by both you and an authorized representative of the motor vehicle title lender. Your motor vehicle title loan agreement is a binding, legal document that requires you to repay your loan. Make sure you read the entire loan agreement carefully before signing and dating it. A motor vehicle title lender must provide you with a duplicate original of your loan agreement at the time you sign it. If any provision of your loan agreement violates Chapter 22 (§ 6.2-2200 et seq.) of Title 6.2 of the Code of Virginia, the provision will not be enforceable against you.

Property Insurance: A motor vehicle title lender may require you to purchase or maintain property insurance for your motor vehicle. However, a motor vehicle title lender cannot require you to purchase or maintain property insurance from or through a particular provider or list of providers.

Prohibition on Obtaining Funds Electronically / Authority to Prepare Checks / Obtaining PINs: A motor vehicle title lender is prohibited from electronically debiting your deposit account or obtaining any of your funds by electronic means. The lender also cannot obtain any agreement from you that gives the lender or a third party the authority to prepare a check that is drawn upon your deposit account. If the motor vehicle title lender is equipped to handle and willing to accept such payments, you may make a payment on your loan by using a credit card, prepaid card, or debit card. However, the lender is prohibited from obtaining or receiving a personal identification number (PIN) for a credit card, prepaid card, debit card, or any other type of card in connection with your loan.

Loan Proceeds: You will receive your loan proceeds in the form of (i) cash; (ii) a check from the motor vehicle title lender; or (iii) a debit card. If you receive a check, the motor vehicle title lender is prohibited from charging you a fee for cashing the check. Similarly, a check casher located in the same office as the motor vehicle title lender is prohibited from charging you a fee for cashing the motor vehicle title lender's check. If you receive a debit card, the motor vehicle title lender is prohibited from charging you an additional fee when you withdraw or use the loan proceeds.

Other Businesses: A motor vehicle title lender is prohibited from engaging in any other businesses in its motor vehicle title loan offices unless permitted by order of the State Corporation Commission. A motor vehicle title lender is also prohibited by statute from selling you any type of insurance coverage.

Using Motor Vehicle Title Loan to Purchase Products or Services or Repay Other Loans: A motor vehicle title lender is prohibited from making you a motor vehicle title

loan so that you can purchase another product or service sold at the motor vehicle title lender's business location. A motor vehicle title lender is also prohibited from making you a motor vehicle title loan so that you can repay another loan you may have from either the motor vehicle title lender or an affiliate of the motor vehicle title lender.

Right to Cancel: You have the right to cancel your motor vehicle title loan at any time prior to the close of business on the next day the motor vehicle title lender is open following the date your loan is made by either returning the original loan proceeds check or paying the motor vehicle title lender the amount advanced to you in cash or by certified check, cashier's check, money order or, if the motor vehicle title lender is equipped to handle and willing to accept such payments, by using a credit card, prepaid card, or debit card. If you cancel your motor vehicle title loan, the motor vehicle title lender must mark your original loan agreement with the word "canceled" and return it to you along with your certificate of title.

Cash Payments / Partial Payments / Prepayments: You have the right to receive a signed, dated receipt for each cash payment made in person, which will show the balance remaining on your motor vehicle title loan.

Additionally, you have the right to make a partial payment on your motor vehicle title loan at any time prior to its specified due date without penalty. However, a motor vehicle title lender may apply a partial payment first to any amounts that are due and unpaid at the time of such payment. If your motor vehicle title loan is current, a partial payment will reduce your outstanding balance as well as the total amount of interest that you will be required to pay.

You also have the right to prepay your motor vehicle title loan in full before its specified maturity date without penalty by paying the motor vehicle title lender the total outstanding balance on your loan, including any accrued and unpaid interest and other charges that you may owe on your motor vehicle title loan.

Lender to Return Original Loan Agreement and Certificate of Title: Within 10 days after the date that you repay your motor vehicle title loan in full, the motor vehicle title lender must (i) mark your original loan agreement with the word "paid" or "canceled" and return it to you; (ii) take any action necessary to reflect the termination of its lien on your motor vehicle's certificate of title; and (iii) return the certificate of title to you. If you have any questions or concerns regarding your certificate of title, you should contact the motor vehicle department in the state where your motor vehicle is registered.

No Rollovers, Extensions, Etc.: A motor vehicle title lender cannot refinance, renew, extend, or rollover your motor vehicle title loan.

Failure to Repay: Pay back your motor vehicle title loan! Know when your payments are due and be sure to repay your motor vehicle title loan on time and in full. IF YOU DO NOT

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REPAY YOUR MOTOR VEHICLE TITLE LOAN IN ACCORDANCE WITH YOUR LOAN AGREEMENT, THE MOTOR VEHICLE TITLE LENDER MAY REPOSSESS AND SELL YOUR MOTOR VEHICLE (see section below on "Repossession and Sale of your Motor Vehicle").

In general, a motor vehicle title lender cannot seek a personal money judgment against you if you fail to pay any amount owed in accordance with your loan agreement. However, a motor vehicle title lender may seek a personal money judgment against you if you impair the motor vehicle title lender's security interest by (i) intentionally damaging or destroying your motor vehicle; (ii) intentionally hiding your motor vehicle; (iii) giving the motor vehicle title lender a lien on a motor vehicle that has an undisclosed prior lien; (iv) selling your motor vehicle without the motor vehicle title lender's written consent; or (v) securing another loan or obligation with a security interest in your motor vehicle without the motor vehicle title lender's written consent.

In collecting or attempting to collect a motor vehicle title loan, a motor vehicle title lender is required to comply with the restrictions and prohibitions applicable to debt collectors contained in the Fair Debt Collection Practices Act, 15 USC § 1692 et seq., regarding harassment or abuse; false, misleading or deceptive statements or representations; and unfair practices in collections. A motor vehicle title lender is also prohibited from threatening or beginning criminal proceedings against you if you fail to pay any amount owed in accordance with your loan agreement.

Repossession and Sale of your Motor Vehicle: If you do not repay your motor vehicle title loan in accordance with your loan agreement, the motor vehicle title lender may repossess and sell your motor vehicle in order to recover any outstanding amounts that you owe.

If a motor vehicle title lender repossesses your motor vehicle, the motor vehicle title lender must send you a written notice at least 15 days prior to the sale of your motor vehicle. The notice will contain (i) the date and time after which your motor vehicle may be sold; and (ii) a written accounting of the outstanding balance on your motor vehicle title loan, the amount of interest accrued through the date the motor vehicle title lender took possession of your motor vehicle, and any reasonable costs incurred to date by the motor vehicle title lender in connection with repossessing, preparing for sale, and selling your motor vehicle. At any time prior to the sale of your motor vehicle, you may obtain your motor vehicle by paying the motor vehicle title lender the total amount specified in the notice. Payment must be made in cash or by certified check, cashier's check, money order or, if the motor vehicle title lender is equipped to handle and willing to accept such payments, by using a credit card, prepaid card, or debit card.

Within 30 days of a motor vehicle title lender receiving funds from the sale of your motor vehicle, you are entitled to receive any surplus from the sale in excess of the sum of the

following: (i) the outstanding balance on your motor vehicle title loan; (ii) the amount of interest accrued on your motor vehicle title loan through the date the motor vehicle title lender repossessed your motor vehicle; and (iii) any reasonable costs incurred by the motor vehicle title lender in repossessing, preparing for sale, and selling your motor vehicle.

See section above on "Costs of Repossession and Sale" for additional information regarding the conditions that must be met in order for a motor vehicle title lender to collect the reasonable costs of repossessing, preparing for sale, and selling your motor vehicle.

Violation of the Virginia Consumer Protection Act: Losses suffered as the result of a motor vehicle title lender's violation of Chapter 22 (§ 6.2-2200 et seq.) of Title 6.2 of the Code of Virginia may be pursued under the Virginia Consumer Protection Act (§ 59.1-196 et seq. of the Code of Virginia), which in some cases permits consumers to recover actual and punitive damages.

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

10VAC5-210-50. Additional business requirements and restrictions.

A. Each original license shall be prominently posted in each place of business of the licensee.

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

C. A licensee shall endeavor to provide the loan documents, printed notice, and pamphlet required by 10VAC5-210-30, in a language other than English when a prospective borrower is unable to read the materials printed in English.

D. A licensee shall not knowingly make a motor vehicle title loan to (i) a person who has an outstanding motor vehicle title loan from the same licensee or another licensee; (ii) a covered member of the armed forces; or (iii) a dependent of a covered member of the armed forces. To enable a licensee to make these determinations and the determination in subsection F of this section, a licensee shall clearly and conspicuously include the following questions in its written loan application, which the licensee shall require each applicant to answer before obtaining a motor vehicle title loan. A licensee shall not make a motor vehicle title loan to an applicant unless the applicant answers "no" to all of these questions:

1. Do you currently have a motor vehicle title loan from any motor vehicle title lender?

2. At any time today, did you repay or satisfy in full a motor vehicle title loan from any motor vehicle title lender?

3. Are you (i) on active duty in the armed forces under a call or order that does not specify a period of 30 days or less, or (ii) on active guard and reserve duty?

4. Are you married to an individual who is either (i) on active duty in the armed forces under a call or order that does not specify a period of 30 days or less, or (ii) on active guard and reserve duty?

5. Are you the child, as defined in 38 USC § 101(4), of an individual who is either (i) on active duty in the armed forces under a call or order that does not specify a period of 30 days or less, or (ii) on active guard and reserve duty?

6. Was more than one-half of your support during the past 180 days provided by an individual who is either (i) on active duty in the armed forces under a call or order that does not specify a period of 30 days or less, or (ii) on active guard and reserve duty?

E. A licensee shall not require a borrower to purchase or maintain property insurance for a motor vehicle from or through a particular provider or list of providers.

F. A licensee shall not knowingly make a motor vehicle title loan to a borrower on the same day that the borrower repaid or satisfied in full a motor vehicle title loan from the same licensee or another licensee. Any motor vehicle title loan made in violation of this subsection shall for purposes of subdivision 17 of § 6.2-2215 of the Code of Virginia be deemed an evasion of the prohibition on refinancing a motor vehicle title loan agreement set forth in § 6.2-2216 F of the Code of Virginia.

G. The maturity date of a motor vehicle title loan shall not be earlier than 120 days from the date a motor vehicle title loan agreement is executed by a borrower or later than 12 months from the date a motor vehicle title loan agreement is executed by a borrower.

H. A licensee shall not (i) electronically debit a borrower's deposit account or otherwise obtain any funds from a borrower by electronic means, including the use of the Automated Clearing House network, electronic funds transfers, electronic check conversions, or re-presented check entries; or (ii) obtain any agreement from a borrower that gives the licensee or a third party the authority to create or otherwise prepare a check that is drawn upon the borrower's account at a depository institution. This subsection shall not be construed to prohibit a licensee from accepting a payment made by good funds instrument.

I. If a licensee disburses loan proceeds by means of a check, the licensee shall not (i) charge the borrower a fee for cashing the check or (ii) permit either a check casher located in the

same office as the licensee or any affiliated check casher to charge the borrower a fee for cashing the check.

J. A borrower shall have the right to cancel a motor vehicle title loan agreement at any time before the close of business on the next business day following the date that the loan agreement is executed by the borrower by returning the original loan proceeds check or paying to the licensee, in the form of cash or good funds instrument, the principal amount advanced to the borrower. If a borrower cancels a loan agreement in accordance with this subsection, the licensee shall upon receipt of the loan proceeds check, cash, or good funds instrument (i) mark the original loan agreement with the word "canceled," return it to the borrower, and retain a copy in its records; and (ii) return the certificate of title to the borrower. Furthermore, the licensee shall not be entitled to charge, contract for, collect, receive, recover, or require a borrower to pay any interest, fees, or other amounts otherwise permitted by § 6.2-2216 of the Code of Virginia.

K. A licensee shall give a borrower a signed, dated receipt for each cash payment made in person, which shall state the balance due on the loan.

L. A borrower shall be permitted to prepay a motor vehicle title loan either in whole or in part without charge. Partial prepayments shall reduce the outstanding loan balance upon which interest is calculated. A licensee may apply a payment first to any amounts that are due and unpaid at the time of such payment.

M. A licensee shall release its security interest and perform the following acts within 10 days after the date that a borrower's obligations under a motor vehicle title loan agreement are satisfied in full: (i) mark the original loan agreement with the word "paid" or "canceled," return it to the borrower, and retain a copy in its records; (ii) take any action necessary to reflect the termination of its lien on the motor vehicle's certificate of title; and (iii) return the certificate of title to the borrower.

N. When sending the written notices and accounting specified by § 6.2-2217 of the Code of Virginia, a licensee shall obtain proof of mailing from the United States Postal Service or other common carrier.

O. A licensee may impose a late charge for failure to make timely payment of any amount due under a motor vehicle title loan agreement provided that (i) the late charge is specified in the loan agreement and (ii) the amount of the late charge does not exceed 5.0% of the amount of the payment. A payment shall be considered to be timely if it is made no later than seven calendar days after the due date specified in the loan agreement.

P. Nothing in the Act or this chapter shall be construed to prohibit a licensee from (i) voluntarily accepting a payment on an outstanding motor vehicle title loan from a borrower after the date that such payment was due to the licensee or (ii) considering a payment to be timely if it is made more than seven calendar days after its due date. However, except as

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otherwise permitted by the Act and this chapter, the licensee shall not charge, contract for, collect, receive, recover, or require a borrower to pay any additional interest, fees, or other amounts.

Q. Pursuant to subdivision 2 of § 6.2-2201 of the Code of Virginia and subdivision 17 of § 6.2-2215 of the Code of Virginia, a licensee shall not make a motor vehicle title loan that has been arranged or brokered by another person. This provision shall not be construed to prohibit a licensee from originating motor vehicle title loans through its own employees.

R. A licensee shall not obtain or receive a personal identification number (PIN) for a credit card, prepaid card, debit card, or any other type of card in connection with a motor vehicle title loan transaction.

S. A licensee shall comply with all federal laws and regulations applicable to the conduct of its business, including the Truth in Lending Act (15 USC § 1601 et seq.), Regulation Z (12 CFR Part 1026), the Equal Credit Opportunity Act (15 USC §1691 et seq.), Regulation B (12 CFR Part 1002), and the Standards for Safeguarding Customer Information (16 CFR Part 314).

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

U. A licensee shall not engage in any business or activity that directly or indirectly results in an evasion of the provisions of this chapter.

V.A.R. Doc. No. R17-5062; Filed March 27, 2017, 2:00 p.m.

◆ ————— ◆

TITLE 14. INSURANCE

STATE CORPORATION COMMISSION

Proposed Regulation

<p>REGISTRAR'S NOTICE: The State Corporation Commission is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency that by the Constitution is expressly granted any of the powers of a court of record.</p>
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Title of Regulation: 14VAC5-120. **Rules Governing the Implementation of the Individual Accident and Sickness Insurance Minimum Standards Act with Respect to Specified Disease Policies (amending 14VAC5-120-70).**

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

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

Public Comment Deadline: May 5, 2017.

Agency Contact: Elsie Andy, Principal Insurance Market Examiner, Life and Health Division, Bureau of Insurance, State Corporation Commission, P.O. Box 1157, Richmond, VA 23218, telephone (804) 371-9072, FAX (804) 371-9944, or email elsie.andy@scc.virginia.gov.

Summary:

The proposed amendments (i) align the indemnity coverage benefits for various types of therapies used to treat cancer with a more flexible benefit and payment structure applicable to specified disease policies and (ii) reflect more up-to-date protocols and services for cancer treatment.

AT RICHMOND, MARCH 16, 2017

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. INS-2017-00032

Ex Parte: In the matter of Amending the Rules Governing the Implementation of the Individual Accident and Sickness Insurance Minimum Standards Act with Respect to Specified Disease Policies

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, and § 38.2-223 of the Code provides that the Commission may issue any rules and regulations necessary or appropriate for the administration and enforcement of Title 38.2 of the Code.

The rules and regulations issued by the Commission pursuant to § 38.2-223 of the Code are set forth in Title 14 of the Virginia Administrative Code. A copy may also be found at the Commission's website: <http://www.scc.virginia.gov/case>.

The Bureau of Insurance ("Bureau") recently received a proposal from American Family Life Assurance Company ("Aflac"), through its counsel, requesting that the Rules Governing the Implementation of the Individual Accident and Sickness Insurance Minimum Standards Act with Respect to Specified Disease Policies ("Rules") set forth in Chapter 120 of Title 14 of the Virginia Administrative Code be amended at 14 VAC 5-120-70. The Bureau has reviewed and is in agreement with the proposal to amend the Rules in accordance with Aflac's request.

The amendments to 14 VAC 5-120-70 are necessary to align the indemnity coverage benefits for various types of therapies used to treat cancer with a more flexible benefit and payment structure. Specifically, amendments to subdivisions 2 c (1) and (2) of section 70 of the Rules will reflect more up-to-date protocols and services for cancer treatment.

NOW THE COMMISSION is of the opinion that Aflac's proposal and the Bureau's request to amend the Rules at 14 VAC 5-120-70 should be considered for adoption.

Accordingly, IT IS ORDERED THAT:

(1) The proposed amendments to the "Rules Governing the Implementation of the Individual Accident and Sickness Insurance Minimum Standards Act with Respect to Specified Disease Policies," which amend the Rules at 14 VAC 5-200-70, are attached hereto and made a part hereof.

(2) All interested persons who desire to comment in support of or in opposition to, or request a hearing to consider the proposed amendments, shall file such comments or hearing request on or before May 5, 2017, with Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218. Interested persons desiring to submit comments electronically may do so by following the instructions at the Commission's website: <http://www.scc.virginia.gov/case>. All comments shall refer to Case No. INS-2017-00032.

(3) If no written request for a hearing on the proposal to amend the Rules as outlined in this Order is received on or before May 5, 2017, the Commission, upon consideration of any comments submitted in support of or in opposition to the proposal, may adopt the Rules as submitted by the Bureau.

(4) The Bureau forthwith shall give notice of the proposal to amend the Rules to all insurers licensed by the Commission to write accident and sickness insurance in the Commonwealth of Virginia, as well as all interested persons.

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

(6) The Commission's Division of Information Resources shall make available this Order and the attached proposed amended Rules on the Commission's website: <http://www.scc.virginia.gov/case>.

14VAC5-120-70. Specified disease minimum benefit standards.

No specified disease policy shall be delivered or issued for delivery in this Commonwealth ~~which that~~ does not meet the following minimum benefit standards. If the policy does not meet the required minimum standards, it shall not be offered for sale. These are minimum benefit standards and do not preclude the inclusion of other benefits ~~which that~~ are not inconsistent with these standards.

1. Minimum benefit standards applicable to non-cancer coverage:

a. A policy must provide coverage for each person insured under the policy on an expense incurred basis for a specifically named disease(s). This coverage must be in amounts not in excess of the usual and customary charges, with a deductible amount not in excess of \$250,

an overall aggregate benefit limit of not less than \$5,000, a uniform percentage of covered expenses that the insurer will pay of not less than 20% in increments of 10%, no inside benefit limits and a benefit period of not less than two years for at least the following:

- (1) Hospital room and board and any other hospital furnished medical services or supplies;
- (2) Treatment by a legally qualified physician or surgeon;
- (3) Private duty services of a registered nurse (R.N.);
- (4) X-ray, radium and other therapy procedures used in diagnosis and treatment;
- (5) Professional ambulance for local service to or from a local hospital;
- (6) Blood transfusions, including expense incurred for blood donors;
- (7) Drugs and medicines prescribed by a physician;
- (8) The rental of an iron lung or similar mechanical apparatus;
- (9) Braces, crutches and wheel chairs as are deemed necessary by the attending physician for the treatment of the disease;
- (10) Emergency transportation if in the opinion of the attending physician it is necessary to transport the insured to another locality for treatment of the disease; and
- (11) May include coverage of any other expenses necessarily incurred in the treatment of the disease; ~~or~~

b. A policy must provide coverage for each person insured under the policy for a specifically named disease(s) with no deductible amount, and an overall aggregate benefit limit of not less than \$25,000 payable at the rate of not less than \$50 a day while confined in a hospital and a benefit period of not less than 500 days; or

c. A policy must provide lump-sum indemnity coverage of at least \$1,000. It must provide benefits ~~which that~~ are payable as a fixed, one-time payment made within 30 days of submission to the insurer of proof of diagnosis of the specified disease(s). Dollar benefits shall be offered for sale only in even increments of \$100 (i.e., \$1,100, \$1,200, \$1,300 . . .).

Where coverage is advertised or otherwise represented to offer generic coverage of a disease(s) (e.g., "heart disease insurance"), the same dollar amounts must be payable regardless of the particular subtype of the disease. However, in the case of clearly identifiable subtypes with significantly lower treatment costs, lesser amounts may be payable so long as the policy clearly differentiates that subtype and its benefits.

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2. Minimum benefit standards applicable to cancer only or cancer combination coverage:

a. A policy must provide coverage for each person ensured under the policy for cancer-only coverage or in combination with one or more other specified diseases on an expense incurred basis for services, supplies, care and treatment that are ordered or are prescribed by a physician as necessary for the treatment of cancer. This coverage must be in amounts not in excess of the usual and customary charges, with a deductible amount not in excess of \$250, an overall aggregate benefit limit of not less than \$10,000, a uniform percentage of covered expenses that the insurer will pay of not less than 20% in increments of 10%, no inside benefit limits and a benefit period of not less than three years for at least the following:

- (1) Treatment by, or under the direction of, a legally qualified physician or surgeon;
- (2) X-ray, radium, chemotherapy and other therapy procedures used in diagnosis and treatment;
- (3) Hospital room and board and any other hospital furnished medical services or supplies;
- (4) Blood transfusions, and the administration thereof, including expense incurred for blood donors;
- (5) Drugs and medicines prescribed by a physician;
- (6) Professional ambulance for local service to or from a local hospital;
- (7) Private duty services of a registered nurse (R.N.) provided in a hospital; and
- (8) May include coverage of any other expenses necessarily incurred in the treatment of the disease; ~~or~~

b. A policy must provide benefits for each person insured under the policy for the following:

- (1) Hospital confinement in an amount of at least \$100 per day for at least 500 days;
- (2) Surgical expenses not to exceed an overall lifetime maximum of \$3,500; and
- (3) Radium, cobalt, chemotherapy, or ~~X-ray~~ x-ray therapy expenses as an outpatient to at least \$1,000. Such therapy benefit shall be restored after an insured is treatment or hospitalization free for at least 12 months; ~~or~~

c. A policy must provide ~~per diem~~ indemnity coverage.

- (1) Such coverage must provide covered persons:
 - (a) A fixed-sum payment of at least \$100 for each day of hospital confinement for at least 365 days; ~~and~~
 - (b) A fixed-sum payment ~~equal to at least 1/2 the hospital inpatient benefit for each day of hospital or non-hospital inpatient or outpatient surgery, chemotherapy and radiation therapy for at least 365 days of treatment; and~~

(c) A fixed-sum payment made on the basis of a specified period of time for any chemotherapy, radiation therapy, or other similar therapy used to treat the disease.

(2) Benefits tied to confinement in a skilled nursing ~~home facility~~ or to receipt of home health care are optional. If a policy offers these benefits, ~~they~~ it must ~~equal the following~~ provide:

(a) A fixed-sum payment ~~equal to at least 1/4 the hospital inpatient benefit~~ for each day of skilled nursing home facility confinement for at least 100 days; and

(b) A fixed-sum payment ~~equal to at least 1/4 the hospital inpatient benefit~~ for each day of home health care for at least 100 days;

~~(e)~~ (e) Notwithstanding any other provision of this chapter, any restriction or limitation applied to the benefits in subdivisions ~~2e(2)(a) 2 c (2) (a) and 2e(2)(b) above 2 c (2) (b)~~, whether by definition or otherwise, shall be no more restrictive than those under Medicare; or

d. A policy must provide lump-sum indemnity coverage of at least \$1,000. It must provide benefits ~~which that~~ that are payable as a fixed, one-time payment made within 30 days of submission to the insurer of proof of diagnosis of the specified disease(s). Dollar benefits shall be offered for sale only in even increments of \$100 (i.e., \$1,100, \$1,200, \$1,300 . . .).

Where coverage is advertised or otherwise represented to offer generic coverage of a disease(s) (e.g., "cancer insurance"), the same dollar amounts must be payable regardless of the particular subtype of the disease (e.g., lung or bone cancer). However, in the case of clearly identifiable subtypes with significantly lower treatment costs (e.g., skin cancer), lesser amounts may be payable so long as the policy clearly differentiates that subtype and its benefits.

VA.R. Doc. No. R17-5058; Filed March 16, 2017, 11:50 a.m.

Reproposed Regulation

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

Title of Regulation: 14VAC5-400. Rules Governing Unfair Claim Settlement Practices (amending 14VAC5-400-10 through 14VAC5-400-80; adding 14VAC5-400-25, 14VAC5-400-90 through 14VAC5-400-110).

Statutory Authority: §§ 12.1-13, 38.2-223, and 38.2-510 of the Code of Virginia.

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

Public Comment Deadline: May 1, 2017.

Agency Contact: Katie Johnson, Policy Advisor, Policy, Compliance, and Administration Division, Bureau of Insurance, State Corporation Commission, P.O. Box 1157, Richmond, VA 23218, telephone (804) 371-9688, FAX (804) 371-9873, or email katie.johnson@scc.virginia.gov.

Summary:

The proposed amendments closely follow the National Association of Insurance Commissioners' Unfair Claims Settlement Practices Act, Unfair Property/Casualty Claims Settlement Practices Model Regulation, and Unfair Life, Accident and Health Claims Settlement Practices Model Regulation. The proposed amendments (i) set forth claims settlement standards that are specific to automobile insurance, property policies, accident and sickness insurance, life insurance, and annuities; (ii) include clear compliance standards for all insurers and claim settlement standards that are applicable specifically to property policies, accident and sickness insurance, life insurance, and annuities; and (iii) clarify that 14VAC5-400 applies to all insurance policies issued in Virginia, except workers' compensation, title insurance, and fidelity and surety insurance.

In response to comments received, the repropoed amendments (i) clarify the definitions of "insured," "insurer," and "provider"; (ii) include an exception for claims-made policies; (iii) limit the requirement that a signed release indicating payment is final or indicating a settlement has been reached may be obtained from a first party claimant; (iv) limit the release language to the insurer or its insured; (v) change some of the timeframes; (vi) create an exception to the notification requirement if a provider submits a claim; (vii) remove the requirement pertaining to language translations; (viii) add a requirement that a total loss valuation be provided to a claimant upon request; (ix) separate provisions for auto storage and towing; (x) specifically address prescription drug claims; and (xi) allow an insurer to provide to a policyholder a summary of prescription drug claims through an insurer's electronic portal, by telephone, or via written summary upon request.

AT RICHMOND, MARCH 20, 2017

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. INS-2016-00265

Ex Parte: In the matter of
Amending the Rules Governing
Unfair Claim Settlement Practices

ORDER TO TAKE NOTICE OF REVISED PROPOSED
RULES

By Order to Take Notice ("Order") entered November 14, 2016, insurers and interested persons were ordered to take notice that subsequent to January 31, 2017, the State Corporation Commission ("Commission") would consider the

entry of an order adopting amendments to rules set forth in Chapter 400 of Title 14 of the Virginia Administrative Code, entitled "Rules Governing Unfair Claim Settlement Practices" ("Rules"), which amend the Rules at 14 VAC 5-400-10 through 14 VAC 5-400-80, and add new Rules at 14 VAC 5-400-25 and 14 VAC 5-400-90 through 14 VAC 5-400-110, unless on or before January 31, 2017, any person objecting to the adoption of the amendments to the Rules filed a request for a hearing with the Clerk of the Commission ("Clerk").

The Order also required insurers and interested persons to file their comments in support of or in opposition to the proposed amendments to the Rules with the Clerk on or before January 31, 2017.

The Bureau of Insurance ("Bureau") held meetings on January 10, 2017, and January 12, 2017, to allow for insurers and interested persons to discuss and address questions about the proposed Rules with Bureau staff. In addition to comments and questions that the Bureau received during these meetings, the Commission received timely filed comments from the American Council of Life Insurers (ACL), the National Risk Retention Association, Allstate Insurance Company, the American Insurance Association, CareFirst BlueCross BlueShield, ProAssurance Corporation, America's Health Insurance Plans (AHIP), the Property Casualty Insurers Association, PIAA, the Virginia Association of Health Plans (VAHP), and the National Association of Mutual Insurance Companies.

The Bureau considered the comments received and responded to them in its Response to Comments, which the Bureau filed with the Clerk on March 15, 2017. In its Response to Comments, the Bureau recommended numerous revisions to the proposed amendments that address many of the comments received.

The Bureau recommends that the proposed amendments to the Rules and the revisions to these proposed amendments be exposed for an additional comment period expiring May 1, 2017.

NOW THE COMMISSION, having considered the comments, the Bureau's Response to Comments and recommendations, and the proposed amendments to the Rules, is of the opinion that interested persons should have an opportunity to comment on the revised proposed Rules by May 1, 2017.

Accordingly, IT IS ORDERED THAT:

(1) The revised proposed Rules, which amend the Rules at 14 VAC 5-400-10 through 14 VAC 5-400-80, and add new Rules at 14 VAC 5-400-25 and 14 VAC 5-400-90 through 14 VAC 5-400-110, are attached hereto and made a part hereof.

(2) All interested persons who desire to comment in support of or in opposition to, or request a hearing to consider the revised proposed Rules, shall file such comments or hearing request on or before May 1, 2017, with Joel H. Peck, Clerk,

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State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218. Interested persons desiring to submit comments electronically may do so by following the instructions at the Commission's website: <http://www.scc.virginia.gov/case>. All comments shall refer to Case No. INS-2016-00265.

(3) If no written request for a hearing on the revised proposed Rules is received on or before May 1, 2017, the Commission, upon consideration of any comments submitted in support of or in opposition to the revised proposed Rules, may adopt the revised Rules as proposed by the Bureau.

(4) The Bureau forthwith shall provide notice of the revised proposed Rules to all insurers licensed by the Commission to operate in the Commonwealth of Virginia, except for insurers licensed exclusively to write workers' compensation insurance, title insurance, or fidelity and surety insurance, as well as all interested persons.

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

(6) The Commission's Division of Information Resources shall make available this Order and the attached proposed amendment to the Rules on the Commission's website: <http://www.scc.virginia.gov/case>.

(7) The Bureau shall file with the Clerk of the Commission an affidavit of compliance with the notice requirements of Ordering Paragraph (4) above.

(8) This matter is continued.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to: Kiva B. Pierce, Assistant Attorney General, Division of Consumer Counsel, Office of the Attorney General, 202 N 9th Street, 8th Floor, Richmond, Virginia 23219-3424; and a copy hereof shall be delivered to the Commission's Office of General Counsel and the Bureau of Insurance in care of Deputy Commissioner Althelia P. Battle and Deputy Commissioner Rebecca Nichols.

14VAC5-400-10. Scope Purpose and scope.

~~This~~ The purpose of this chapter defines certain is to set forth minimum standards which, if violated with such frequency as to indicate a general business practice, will be deemed to constitute unfair claim settlement practices for the acknowledgment, investigation, and disposition of claims arising under insurance policies issued pursuant to the laws of the Commonwealth of Virginia. This chapter applies to all persons as hereinafter defined in 14VAC5-400-20 and to all insurance policies and insurance contracts except policies of workers' compensation insurance, title insurance, and fidelity and surety insurance and contracts or plans for future hospitalization, medical, surgical, dental, optometric or legal services. This chapter is not exclusive, and other acts, not herein specified, may also be deemed to be a violation of the

~~Unfair Trade Practices Act (§ 38.2-500 et seq. of the Code of Virginia).~~

14VAC5-400-20. Definitions.

~~The definition of "person" contained in § 38.2-501 of the Code of Virginia shall apply to this chapter and, in addition, where used in this chapter following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:~~

~~"Agent" means any individual, corporation, association, partnership or other legal entity person~~ authorized to represent an insurer with respect to a claim;.

~~"Claim" means a demand for payment by a claimant and does not mean an inquiry concerning coverage;.~~

~~"Claimant" means either a first party claimant, a third party claimant, or both, and includes such claimant's a designated legal representative and includes a member of the claimant's immediate family, or any other representative designated by the claimant;.~~

~~"Commission" means the State Corporation Commission of the Commonwealth of Virginia;.~~

~~"Documentation" includes all pertinent communications, including electronic communications and transactions, data, notes, work papers, claim forms, bills, and explanation of benefits forms relative to the claim.~~

~~"Estimate" means a written statement of the cost of repairs to an automobile or to property, including any supplements.~~

~~"Explanation of benefits" means any form provided by any insurer that explains the amounts covered under a policy or plan and shows the amounts payable by a covered person to a health care provider.~~

~~"First party claimant" means an individual, corporation, association, partnership or other legal entity asserting insured, a beneficiary, a policy owner, or an annuitant who asserts a right to payment under an insurance policy or insurance contract issued to such individual, corporation, association, partnership or other legal entity arising out of the occurrence of the contingency or loss covered by such policy or contract;.~~

~~"Insured" means a person covered by an insurance policy [with legal rights to the benefits provided by the policy].~~

~~"Insurer" means a person licensed to issue or who that issues any insurance policy or insurance contract in this Commonwealth and [or any third party acting on its behalf]. Insurer shall also include surplus lines brokers;.~~

~~"Investigation" means all activities of an insurer directly or indirectly related to the determination of liability and extent of loss under coverages afforded by an insurance policy or insurance contract; used to make a determination that the claim should be paid, denied, or closed.~~

~~"Notification of claim" means any notification, whether in writing or other means acceptable under the terms of the insurance policy or insurance contract, to an insurer or its~~

agent, by a claimant, which reasonably apprises the insurer of the facts pertinent to a claim;

"Person" has the same meaning as defined in § 38.2-501 of the Code of Virginia.

"Policy" means insurance policy, contract, certificate of insurance, evidence of coverage, or annuity.

"Proof of loss" means all necessary documentation reasonably required by the insurer to make a determination of benefit or coverage.

"Provider" means any person providing [~~health care~~] services [pursuant to any accident and sickness policy].

"Third party claimant" means any ~~individual, corporation, association, partnership or other legal entity~~ person asserting a claim against any ~~individual, corporation, association, partnership or other legal entity~~ an insured or a provider filing a claim on behalf of an insured under an insurance policy or insurance contract of an insurer;

"Workers' Compensation insurance" includes, but is not limited to, Longshoremen's and Harbor Workers' Compensation.

14VAC5-400-25. Compliance standards.

It shall be a violation of this chapter if any person:

1. Willfully violates any provision of this chapter; or
2. Commits a violation of any provision of this chapter with such frequency as to indicate a general business practice.

14VAC5-400-30. File and record documentation.

~~The~~ A. An insurer's claim files shall be subject to examination by the Commission or by its duly appointed designees commission. Such files shall contain all notes and work papers pertaining to the claim in such detail that pertinent events and the dates of such events can be reconstructed.

B. An insurer shall maintain [~~all~~] claim data so that it is accessible and retrievable for examination. Claim data includes the claim number, line of coverage, date of loss and date received, as well as date of payment of the claim, date of denial, or date closed without payment.

C. Detailed documentation shall be maintained for each claim file in order to permit reconstruction of all transactions relating to each claim.

D. Each document within the claim file shall be noted as to date received, date processed, or date mailed.

E. All data and documentation shall be maintained for all open and closed files for the current year and, at a minimum, the three preceding calendar years.

14VAC5-400-40. Misrepresentation of policy provisions.

A. No person shall knowingly obscure or conceal from first party claimants, either directly or by omission, benefits, coverages or other provisions of any insurance policy or insurance contract when such insurer shall fail to fully

disclose to a first party claimant all pertinent benefits, coverages, or other provisions are pertinent to a claim of an insurance policy under which a claim is presented and document the claim file accordingly.

B. No person shall misrepresent benefits, coverages, or other provisions of any insurance policy when such benefits, coverages, or other provisions are pertinent to a claim.

C. No insurer shall deny a claim for failure of a first party claimant to submit to physical examination or for failure of a the first party claimant to exhibit the property which is the subject of the claim without proof of demand by such insurer and unfounded refusal by a claimant to do so unless there is documentation of breach of the policy provisions in the claim file.

~~C. D.~~ D. No insurer shall, except where there is a time limit specified in the policy, make statements, written or otherwise, requiring a deny a claim based on the failure of a claimant to give written notice of loss or proof of loss within a specified time limit and which seek to relieve the company of its obligations if such a time limit is not complied with [required by the or give notice of loss within a specified period of time unless either or both requirements are] policy [provisions conditions. An insurer shall not be relieved of its obligations under the policy] unless the failure [of a claimant] to [~~comply with~~ give either written notice of loss or meet time limit requirements for notice] such time limit in fact [the notice requirements] prejudices the insurer's rights [in accordance with the policy].

~~D. E.~~ E. No insurer shall [request a first party claimant to sign a release that extends beyond the subject matter that gave rise to the claim] payment [. An insurer shall not] include with any payment or in any accompanying correspondence [an indication] that payment is "final" or "a release" of any claim unless the policy limit has been paid or a compromise settlement has been agreed to by the [first party] claimant.

~~E. F.~~ F. No insurer shall issue checks or drafts a payment in partial settlement of a loss or claim under for a specific coverage which contain that contains language that purports purporting to release the insurer or its insured [the first party claimant its insured] from its total liability.

14VAC5-400-50. Failure to acknowledge Acknowledgment of pertinent communications.

A. Every An insurer, upon receiving notification of a claim shall, within [~~10~~ 15] working calendar days, acknowledge the receipt of such notice to the [first party] claimant unless payment is made within such period of time [- Acknowledgment may be sent to a provider claimant, except that if a provider submits a claim, acknowledgment of the claim is satisfied if payment or denial of the claim is made to the provider within 21 calendar days]. If an acknowledgement acknowledgment is made by means other than writing, an appropriate notation of such acknowledgement acknowledgment shall be made in the claim file of the insurer and dated. Notification given by a

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claimant to an agent of an insurer shall be notification to the insurer.

B. ~~Every insurer, upon~~ Upon receipt of any inquiry from the ~~Commission~~ commission respecting a claim, an insurer shall, ~~within 15 working days of receipt of such inquiry,~~ furnish an adequate a complete response to the inquiry within [14 15] calendar days of receipt.

C. An appropriate reply shall be made within ~~[40 15] working~~ calendar days on all other pertinent communications from a claimant ~~which that~~ reasonably suggest that a response is expected.

D. ~~Every insurer, upon~~ Upon receiving notification of a ~~first party~~ claim, an insurer shall promptly provide necessary claim forms, instructions, and reasonable assistance ~~so that first party claimants can [including language translations,] in order for the claimant to~~ comply with the policy conditions and the insurer's reasonable requirements; ~~provided, however, every insurer, upon receiving notification of a third party claim, shall promptly provide the third party claimant with all necessary claim forms.~~ Compliance with this subdivision subsection within ~~[40 15] working~~ calendar days of notification of a claim shall constitute compliance with subsection A of this section.

14VAC5-400-60. Standards for prompt investigation of claims.

A. ~~Unless otherwise specified in the policy, within 15 working~~ Within [10 15] calendar days after receipt by the insurer of ~~[any required properly executed] proofs~~ proof of loss, a first party claimant shall be advised of the acceptance or denial of the claim by the insurer. If the insurer needs more time to determine whether a ~~first party~~ claim should be accepted or denied, it shall notify the first party claimant within ~~[15] working [10] calendar~~ days after receipt of the ~~proofs~~ proof of loss giving the reasons more time is needed.

B. ~~Unless otherwise specified in the policy, if~~ If an investigation of a first party claim has not been completed, ~~every an~~ insurer shall, within 45 calendar days from the date of the notification of a first party claim and every 45 calendar days thereafter, send to the first party claimant a ~~letter~~ written notice setting forth the reasons additional time is needed for investigation.

14VAC5-400-70. Standards for prompt, fair and equitable settlement of claims Claims settlement standards applicable to all insurers.

A. Any denial of a claim ~~must [including a partial denial,]~~ shall be given to a claimant in writing and the claim file of the insurer shall contain a copy of the denial.

B. ~~No~~ An insurer shall ~~deny a claim unless provide a reasonable~~ written explanation of the basis for ~~such any claim~~ denial is included in the written denial. Specific The written explanation shall provide a specific reference to a policy provision, condition, or exclusion ~~shall be made when a~~

~~denial is based on such provision, condition or exclusion [, if any].~~

C. ~~Insurers~~ An insurer shall not ~~fail to settle first party claims~~ deny a [first party] claim on the basis that responsibility for payment should be assumed by others except as may otherwise be provided by policy provisions.

D. In any case where there is no dispute as to coverage or liability, ~~every an~~ insurer ~~must shall~~ offer to a first party claimant, ~~or to a first party claimant's authorized representative,~~ an amount ~~which that~~ is fair and reasonable as shown by the investigation of the claim, provided the amount so offered is within policy limits and in accordance with policy provisions.

E. An insurer shall not unreasonably refuse to pay any claim in accordance with the provisions of the policy.

~~[F. An insurer shall not compel a first party claimant to institute a suit to recover amounts due under the policy by offering substantially less than the amounts ultimately recovered in a suit brought by the first party claimant.]~~

14VAC5-400-80. Standards for prompt, fair and equitable settlements Claims settlement standards applicable to automobile insurance.

A. Where liability is reasonably clear, ~~insurers~~ an insurer shall not recommend that a third party claimants claimant make ~~claims~~ a claim under ~~their its own policies~~ policy solely to avoid paying ~~claims~~ a claim under ~~such insurer's insurance~~ the insured's policy or insurance contract.

B. ~~Insurers~~ An insurer shall not require a claimant to travel unreasonably either to inspect a replacement automobile, to obtain a repair estimate, or to have the automobile repaired at a specific repair shop.

C. ~~Insurers~~ An insurer shall, ~~upon the claimant's request,~~ include the ~~first party claimant's~~ insured's deductible, if any, in subrogation demands. Subrogation recoveries shall be shared on a proportionate basis with the ~~first party claimant~~ insured, unless the deductible amount has been otherwise recovered. No deduction for expenses can be made from the deductible recovery unless an outside attorney is retained to collect such recovery. The deduction may then be for only a pro rata share of the allocated loss adjustment expense.

D. ~~If~~ When an insurer prepares an estimate of the cost of automobile repairs, ~~such the~~ estimate shall be ~~in~~ an amount for which ~~it may be reasonably expected~~ the damage [can may reasonably be expected to] be satisfactorily repaired. The insurer shall give a copy of the estimate to the claimant and may furnish to the claimant the names of one or more conveniently located qualified repair shops. [A total loss valuation shall be provided to the claimant upon request.]

E. When the amount claimed is reduced because of betterment or depreciation, all information for such reduction shall be contained in the claim file. Such deductions shall be itemized and specified as to dollar amount and shall be appropriate for the amount of deductions.

F. When an insurer elects to repair and the automobile is ~~in fact~~ repaired in a repair shop ~~selected by the insurer or~~ designated by the insurer as a repair shop that will repair the automobile for the amount offered by the insurer, the insurer shall cause the damaged automobile to be restored to its condition prior to the loss at no additional cost to the claimant other than as stated in the policy and within a reasonable period of time.

G. An insurer shall provide reasonable notice to a claimant prior to termination of payment for automobile storage charges. The insurer shall provide reasonable time for the claimant to remove the automobile from storage prior to the termination of payment.

[~~Unless~~ H. If towing is a result of a covered loss, unless] the insurer has provided a claimant with the [~~name~~ names] of [~~a~~] specific towing [~~company~~ companies] prior to the claimant's use of another towing company, the insurer shall pay all reasonable towing charges irrespective of the towing company used by the claimant.

[~~H. I.~~] Prior to termination of payment for transportation or rental reimbursement expenses, the insurer shall provide reasonable time for the claimant to receive payment for automobile repairs [~~or replacement~~]. In the event of a total loss, the insurer shall provide reasonable time for a claimant to [~~acquire~~ receive payment for] a replacement automobile.

14VAC5-400-90. Claims settlement standards applicable to property policies.

When an insurer prepares an estimate of the cost of repairs to property, the estimate shall be an amount for which the damage can be satisfactorily repaired. The insurer shall give a copy of the estimate to the claimant.

14VAC5-400-100. Claims settlement standards applicable to accident and sickness insurance, life insurance, and annuities.

A. [~~An~~ A life or annuity] insurer shall review any notice of claim or proof of loss submitted against one policy to determine if such notice of claim or proof of loss may fulfill the insured's obligation under any other policy issued by that insurer.

B. For accident and sickness claims, an insurer shall provide to a first party claimant an explanation of benefits describing the coverage for which the claim is paid or denied within [~~10~~ 15] calendar days of receipt of proof of loss, unless otherwise specified in the policy.

[C.] An insurer shall [~~provide an explanation of benefits for~~ make available a summary of] prescription drug claims [~~that may be provided in the aggregate no less frequently than quarterly~~ electronically or provide a written summary at the request of the insured. A summary of prescription drugs shall describe the amounts covered under the policy, amounts denied, and amounts payable by the insured and insurer].

[~~C. D.~~] An insurer shall not arbitrarily or unreasonably deny or delay payment of a claim in which liability has become reasonably clear.

14VAC5-400-110. Severability.

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

VA.R. Doc. No. R17-4967; Filed March 20, 2017, 1:53 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

COMMON INTEREST COMMUNITY BOARD

Final Regulation

REGISTRAR'S NOTICE: The Common Interest Community Board is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 6 of the Code of Virginia, which excludes regulations of the regulatory boards served by the Department of Professional and Occupational Regulation pursuant to Title 54.1 of the Code of Virginia that are limited to reducing fees charged to regulants and applicants. The Common Interest Community Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **18VAC48-60. Common Interest Community Board Management Information Fund Regulations (amending 18VAC48-60-60).**

Statutory Authority: § 54.1-2349 of the Code of Virginia.

Effective Date: May 17, 2017.

Agency Contact: Trisha Henshaw, Executive Director, Common Interest Community Board, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8510, FAX (866) 490-2723, or email cic@dpor.virginia.gov.

Summary:

Pursuant to § 54.1-113 of the Code of Virginia, the Common Interest Community Board has (i) reduced the application registration fee for residential common interest communities for all applications received on or before June 30, 2018 (regardless of association size), and (ii) extended for one year the current reduction in renewal fees for associations renewing on or before June 30, 2018.

18VAC48-60-60. Registration fee.

The following fee schedule is based upon the size of each residential common interest community. The application fee is different than the annual renewal fee. All fees are nonrefundable.

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Number of Lots/Units	Application Fee	Renewal Fee
1 - 50	\$45	\$30
51 - 100	\$65	\$50
101 - 200	\$100	\$80
201 - 500	\$135	\$115
501 - 1000	\$145	\$130
1001 - 5000	\$165	\$150
5001+	\$180	\$170

The application fee for registration of a residential common interest community received on or before June 30, 2018, shall be \$10 regardless of size. For annual renewal of a residential common interest community registration received on or before June 30, ~~2017~~ 2018, the fee shall be \$10 regardless of size.

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 (18VAC48-60)

~~Community Association Registration Application, A492-0550REG-v2 (eff. 3/2017)~~

~~Community Association Annual Report, A492-0550ANRPT-v4 (eff. 3/2017)~~

[Community Association Registration Application, A492-0550REG-v3 \(eff. 5/2017\)](#)

[Community Association Annual Report, A492-0550ANRPT-v5 \(eff. 5/2017\)](#)

[Community Association Governing Board Change Form, A492-0550GBCHG-v1 \(eff. 9/2013\)](#)

[Community Association Point of Contact/Management Change Form, A492-0550POCCHG-v1 \(eff. 9/2013\)](#)

V.A.R. Doc. No. R17-5043; Filed March 24, 2017, 3:06 p.m.

GENERAL NOTICES/ERRATA

DEPARTMENT OF ENVIRONMENTAL QUALITY

Spring Grove Solar, LLC Notice of Intent for Small Renewable Energy (Solar) Project Permit by Rule - Surry County

Spring Grove Solar, LLC has provided the Department of Environmental Quality a notice of intent to submit the necessary documentation for a permit by rule for a small renewable energy (solar) project to be located in Surry County. The proposed project will be located to the northeast of the intersection of Colonial Trail (Route 10) and Swanns Point Road (Route 610). The project will have a maximum 100 megawatts alternating current across roughly 2676 acres on multiple parcels. The project will interconnect into the transmission line that bisects the site by way of a substation built on an adjacent parcel.

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.

STATE BOARD OF HEALTH

Notice of Periodic Review and Small Business Impact Review

Pursuant to Executive Order 17 (2014) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of Health is conducting a periodic review and small business impact review of **12VAC5-71, Regulations Governing Virginia Newborn Screening Services**.

The review of this regulation will be guided by the principles in Executive Order 17 (2014). The purpose of this review is to determine whether this regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

The comment period begins April 17, 2017, and ends May 8, 2017.

Comments may be submitted online to the Virginia Regulatory Town Hall at <http://www.townhall.virginia.gov/L/Forums.cfm>. Comments may also be sent to Susan Puglisi, Policy Analyst, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7175, FAX (804) 864-7652, or email susan.puglisi@vdh.virginia.gov.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of both reviews will be posted on the Town Hall and a report of the small business impact review will be published in the Virginia Register of Regulations.

VIRGINIA LOTTERY

Director's Orders

The following Director's Orders of the Virginia Lottery were filed with the Virginia Registrar of Regulations on March 1, 2017. 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 Twenty-Five (17)

Virginia Lottery's Scratch Game 1745 "\$50 Mayhem" Final Rules for Game Operation (effective March 6, 2017)

Director's Order Number Twenty-Six (17)

Virginia Lottery's Scratch Game 1747 "\$100 Mayhem" Final Rules for Game Operation (effective March 6, 2017)

Director's Order Number Twenty-Seven (17)

Virginia Lottery's Scratch Game 1749 "\$500 Mayhem" Final Rules for Game Operation (effective March 6, 2017)

Director's Order Number Twenty-Eight (17)

Virginia Lottery's Scratch Game 1751 "\$1,000 Mayhem" Final Rules for Game Operation (effective March 6, 2017)

Director's Order Number Twenty-Nine (17)

Virginia Lottery's Scratch Game 1776 "\$50,000 Crossword Tripler" Final Rules for Game Operation (effective March 6, 2017)

Director's Order Number Thirty (17)

Virginia Lottery's Scratch Game 1765 "Virginia's \$250,000 Double Play®" Final Rules for Game Operation (effective March 6, 2017)

Director's Order Number Thirty-One (17)

Virginia Lottery's Scratch Game 1775 "Pirate's Loot" Final Rules for Game Operation (effective March 6, 2017)

Director's Order Number Thirty-Three (17)

Virginia Lottery's Scratch Game 1762 "5X The Money" Final Rules for Game Operation (effective March 6, 2017)

Director's Order Number Thirty-Five (17)

Virginia Lottery's Computer-Generated Game "Cash 5" Final Rules for Game Operation (this Director's Order becomes

General Notices/Errata

effective on March 9, 2017, fully replaces any and all prior Virginia Lottery "Cash 5" game rules, and shall remain in full force and effect unless amended or rescinded by further Director's Order)

Director's Order Number Thirty-Seven (17)

Virginia Lottery's Scratch Game 1777 "We're Game For Education" Final Rules for Game Operation (effective March 14, 2017)

Director's Order Number Thirty-Eight (17)

Virginia Lottery's Q4 FY17 eXTRA CHANCES Scratcher Promotion Final Rules for Operation (this Director's Order becomes effective on March 29, 2017, and shall remain in full force and effect through the end Promotion date unless amended or rescinded by further Director's Order)

Director's Order Number Thirty-Nine (17)

Virginia Lottery's Scratch Game 1799 "Go For The Green!" Final Rules for Game Operation (effective March 14, 2017)

Director's Order Number Forty-One (17)

Virginia's Computer-Generated Lottery Game "Pick 4" Final Rules for Game Operation (this Director's Order becomes effective on March 21, 2017, fully replaces any and all prior Virginia Lottery "Pick 4" game rules, and shall remain in full force and effect unless amended or rescinded by further Director's Order)

Director's Order Number Forty-Two (17)

Virginia's Computer-Generated Lottery Game "Pick 3" Final Rules for Game Operation (this Director's Order becomes effective on March 21, 2017, fully replaces any and all prior Virginia Lottery "Pick 3" game rules, and shall remain in full force and effect unless amended or rescinded by further Director's Order)

Director's Order Number Forty-Four (17)

Virginia's Computer-Generated Lottery Game "Bank A Million" Final Rules for Game Operation (this Director's Order becomes effective on March 21, 2017, fully replaces any and all prior Virginia Lottery "Bank A Million" game rules, and shall remain in full force and effect unless amended or rescinded by further Director's Order)

Director's Order Number Forty-Eight (17)

Virginia Lottery's "Thank A Teacher" Final Rules for Operation (effective April 3, 2017)

Director's Order Number Forty-Nine (17)

Virginia Lottery "EXTRA 1% Commissions Retailer Incentive Promotion" (effective June 1, 2017)

DEPARTMENT OF MEDICAL ASSISTANCE

Update to the Average Commercial Rate Calculation of Supplemental Payments for Physicians Affiliated with Type One Hospitals Effective April 1, 2017 - Notice of Intent to Amend the Virginia State Plan for Medical Assistance (pursuant to § 1902(a)(13) of the Social Security Act (42 USC § 1396a(a)(13)))

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

Reimbursement Changes Affecting Other Types of Care (12VAC30-80):

12VAC30-80-30 is being amended to update the average commercial rate calculation of supplemental payments for physicians affiliated with Type One Hospitals in Virginia effective April 1, 2017. The updated average commercial rate percentage of Medicare is 256% (combined).

The expected increase in annual expenditures is \$8,429,606.

This notice is intended to satisfy the requirements of 42 CFR § 447.205 and of § 1902(a)(13) of the Social Security Act, 42 USC § 1396a(a)(13). A copy of this notice is available for public review from William Lessard, Provider Reimbursement Division, Department of Medical Assistance Services, 600 Broad Street, Suite 1300, Richmond, VA 23219, or via email at william.lessard@dmas.virginia.gov.

This notice also is available for public review on the Virginia Regulatory Town Hall at www.townhall.virginia.gov, on the General Notices page at <https://townhall.virginia.gov/L/generalnotice.cfm>.

Contact Information: Emily McClellan, Regulatory Manager, Division of Policy and Research, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-4300, FAX (804) 786-1680, TDD (800) 343-0634, or email emily.mcclellan@dmas.virginia.gov.

STATE WATER CONTROL BOARD

Proposed Enforcement Action for the City of Franklin Wastewater Treatment Plant

An enforcement action has been proposed for the City of Franklin Wastewater Treatment Plant for violations of the State Water Control Law in Franklin, Virginia. 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, Esq. 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 April 17, 2017, to May 17, 2017.

Proposed Consent Order for Old Trail Creekside IV, LLC

An enforcement action has been proposed for Old Trail Creekside IV, LLC for violations at Old Trail Creekside Phase III in Albemarle County, Virginia. The State Water Control Board proposes to issue a consent order to Old Trail Creekside IV, LLC 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 April 17, 2017, to May 16, 2017.

Proposed Consent Order for PM Properties, Inc.

An enforcement action has been proposed for PM Properties, Inc. for violations at a facility in Verona, Virginia. The State Water Control Board proposes to issue a consent order to PM Properties, Inc. 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 April 17, 2017, to May 16, 2017.

Notice of Public Meeting on Total Maximum Daily Load for Woods Creek

Committee meeting information: A community meeting will be held Tuesday, April 18, 2017, at 6:30 p.m. at Maury River Middle School. This meeting will be open to the public, and all are welcome. In the case of inclement weather, the meeting will be postponed until Wednesday, April 19, 2017, at 6:30 p.m. For more information, please contact Tara Sieber at email tara.sieber@deq.virginia.gov or telephone at (540) 574-7870.

Purpose of notice: The Department of Environmental Quality (DEQ) and its contractors, Virginia Tech's Biological Systems Engineering Department, and the Technical Advisory Committee comprised of local landowners and interested parties will present the results of a water quality study known as a total maximum daily load (TMDL) for Woods Creek. This meeting is an opportunity for local residents to learn more about the water quality study and find out how they can assist in the process of water quality improvement.

Public comment period: April 18, 2017, through May 19, 2017.

Stakeholders are invited to comment on the draft TMDL document found at <http://www.deq.virginia.gov/Programs/Water/WaterQualityInformationTMDLs/TMDL/TMDLDevelopment/DraftTMDLReports.aspx>.

Meeting description: A public meeting will be held to introduce to the local community the water quality improvement process in Virginia, known as the TMDL process, review the work of the Technical Advisory Committee, solicit the input and involvement of the local community, and review the next steps. Section 303(d) of the Clean Water Act and § 62.1-44.19:7 C of the Code of Virginia require DEQ to develop TMDLs for pollutants responsible for each impaired water contained in Virginia's § 303(d) TMDL Priority List and Report.

Description of study: Woods Creek does not meet water quality standards for recreation due to an excess of bacteria. In addition, this stream does not host a healthy and diverse population of aquatic life and subsequently was listed as impaired for the "General Benthic (Aquatic life)" water quality standards. The bacteria standard preserves the "Primary Contact (recreational or swimming)" designated use for Virginia waterways. Excessive bacteria levels may pose a threat to human health. This water quality study reports on the sources of bacterial contamination and recommends reductions to meet TMDLs for the impaired waters. A TMDL is the total amount of a pollutant a water body can contain and still meet water quality standards. To restore water quality, bacterial levels need to be reduced to the TMDL amount. Virginia agencies are working to identify sources of bacteria and will determine the pollutant cause of the benthic impairments as well as identify sources of this pollutant through a weight of evidence approach. Reductions and a TMDL for the cause of the impairment will be developed.

Stream	Locality	Impairment
Woods Creek	Lexington and Rockbridge County	Bacteria, Aquatic Life

How to comment and participate: The meetings of the TMDL process are open to the public, and all interested parties are welcome. Written comments will accepted through May 19, 2017, and should include the name, address, and telephone number of the person submitting the comments. For more information or to submit written comments, please contact Tara Sieber, Department of Environmental Quality, Valley Regional Office, P.O. Box 3000, Harrisonburg, VA 22801, telephone (540) 574-7870, FAX (540) 574-7878, or email tara.sieber@deq.virginia.gov.

General Notices/Errata

Public Meeting on Water Quality Study

The Virginia Department of Environmental Quality (DEQ) will host a public meeting on May 10, 2017, in Radford, Virginia on a water quality study for the New River and several of its tributaries in Radford City and Tazewell, Craig, Smyth, Wythe, Bland, Giles, Montgomery, Pulaski, Radford City, Carroll, and Floyd Counties.

The meeting will start at 6 p.m. at Radford University in Heth Hall, Room 22, 801 East Main Street, Radford, VA 24142. Parking will be available in Lots DD and EE. The purpose of the meeting is to present the draft total maximum daily load (TMDL) report, gather information, and discuss the study with community members. There will be a 30-day public comment period following the meeting for interested stakeholders to comment on the draft report. Written comments will accepted through June 9, 2017. Directions for how to submit a comment are provided in this notice. The draft TMDL report can be found at <http://www.deq.virginia.gov/Programs/Water/WaterQualityInformationTMDLs/TMDL/TMDLDevelopment/DraftTMDLReports.aspx>.

DEQ is working to identify sources of polychlorinated biphenyl (PCB) pollution in the New River watershed. This pollution decreases the quality of the water, prohibiting fish consumption. PCBs are chemicals that were used in commercial and industrial applications until the late 1970s and can remain in the environment for decades.

DEQ developed a total maximum daily load, or a TMDL, for the PCB impaired waters and will present the draft study at the meeting. A TMDL is the total amount of a pollutant a water body can contain and still meet water quality standards. To restore water quality, pollutant levels have to be reduced to the TMDL amount.

Stream	County	Impairment
New River	Montgomery	PCBs in Fish Tissue
New River, Stony Creek	Giles	PCBs in Fish Tissue
Walker Creek	Giles	PCBs in Water Column
New River, Peak Creek	Pulaski	PCBs in Fish Tissue
New River, Reed Creek	Wythe	PCBs in Fish Tissue

The meetings of the TMDL process are open to the public, and all interested parties are welcome. Written comments on the draft TMDL report will be accepted through June 9, 2017, and should include the name, address, and telephone number of the person submitting the comments. To submit written comments, please contact Mark Richards, Department of

Environmental Quality, Office of Watershed Programs, 629 East Main Street, Richmond, VA 23219, telephone (804) 698-4000, ext. 4392, or toll free (800) 592- 5482, and by email at mark.richards@deq.virginia.gov.

For more information, contact Mr. Richards; Mary Dail, Department of Environmental Quality, Blue Ridge Regional Office, 3019 Peters Creek Road, Roanoke, VA 24019, telephone (540) 562-6715, FAX (540) 562-6725, or email mary.dail@deq.virginia.gov; or Martha Chapman, Department of Environmental Quality, Southwest Regional Office, 355-A Deadmore Street, Abingdon, VA 24210, telephone (276) 676-4800, FAX (276) 676-4899, or email martha.chapman@deq.virginia.gov.

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

VIRGINIA CODE COMMISSION

Notice to State Agencies

Contact Information through Thursday, June 15, 2017:
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.

New Contact Information beginning Monday, June 19, 2017: *Mailing Address:* Virginia Code Commission, Pocahontas Building, 900 East Main Street, 11th Floor, Richmond, VA 23219, *Telephone:* Voice will be available at a later date.

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

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

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

ERRATA

SAFETY AND HEALTH CODES BOARD

Title of Regulation: 16VAC25-60. Administrative Regulation for the Virginia Occupational Safety and Health Program.

Publication: 22:25 VA.R. 3877 - 3887 August 21, 2006.

Correction to Final Regulation:

Page 3884, 16VAC25-60-260 A 1 c, d, and e, in the first line of each subdivision change "*I b*" to "*I a*"

VA.R. Doc. No. R05-256; Filed April 4, 2017

