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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>).

October 2017 through November 2018

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
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
34:19	April 25, 2018	May 14, 2018
34:20	May 9, 2018	May 28, 2018
34:21	May 23, 2018	June 11, 2018
34:22	June 6, 2018	June 25, 2018
34:23	June 20, 2018	July 9, 2018
34:24	July 3, 2018 (Tuesday)	July 23, 2018
34:25	July 18, 2018	August 6, 2018
34:26	August 1, 2018	August 20, 2018
35:1	August 15, 2018	September 3, 2018
35:2	August 29, 2018	September 17, 2018
35:3	September 12, 2018	October 1, 2018
35:4	September 26, 2018	October 15, 2018
35:5	October 10, 2018	October 29, 2018
35:6	October 24, 2018	November 12, 2018
35:7	November 7, 2018	November 26, 2018

*Filing deadlines are Wednesdays unless otherwise specified.

PETITIONS FOR RULEMAKING

TITLE 9. ENVIRONMENT STATE AIR POLLUTION CONTROL BOARD

Agency Decision

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 Decision: Request denied.

Statement of Reason for Decision: In light of Executive Directive 11 and the ongoing rulemaking associated with that directive, the board, at its meeting on September 21, 2017, approved the staff's recommendation to deny the petitioner's request to initiate a rulemaking. The board considered the material provided in the board book, which included a summary of comments received on the petition and the draft responses to the comments in addition to the following basis of the staff's recommendation: Governor McAuliffe issued

Petitions for Rulemaking

Executive Order 57 (EO 57) on June 28, 2016. Under EO 57, he directed the Secretary of Natural Resources to convene a work group to study and recommend methods to reduce CO₂ emissions from electric power facilities and grow the clean energy economy within existing state authority. The group consisted of the Secretary of Natural Resources, the Secretary of Commerce and Trade, the Director of Department of Environmental Quality (DEQ), the Director of the Virginia Department of Mines, Minerals and Energy, and the Deputy Attorney General for Commerce, Environment, and Technology. The group facilitated extensive stakeholder engagement over the last year, including six monthly meetings that began on August 31, 2016, and ended on February 28, 2017. Each public meeting lasted between two and three hours, and the meetings consisted of presentations from members of the public. The presentations were voluntary, and all members of the public were invited to send suggested topics and present information to the Secretary of Natural Resources' office. In total, the work group received over 40 presentations. In addition to the public meetings, the group also facilitated a three-month public comment period from February 1 to April 30, 2017. In total, the group received over 8,000 written comments. The work group compiled its recommendations and submitted a final report to the Governor on May 12, 2017. The first recommendation of the "Report and Final Recommendations to the Governor" was that the Governor consider taking action via a regulatory process to establish a "trading-ready" carbon emissions reduction program for fossil fuel-fired electric generating facilities that will enable participation in a broader, multi-state carbon market. Subsequently, Governor McAuliffe issued Executive Directive 11 (ED 11), "Reducing Carbon Dioxide Emissions from the Electric Power Sector and Growing Virginia's Clean Energy Economy" on May 16, 2017. ED 11 directs the Director of DEQ, in coordination with the Secretary of Natural Resources, to take the following actions in accordance with the provisions and requirements of §§ 10.1-1300 et seq., and 2.2-4000 et seq. of the Code of Virginia:

1. Develop a proposed regulation for the State Air Pollution Control Board's consideration to abate, control, or limit CO₂ from electric power facilities that:
 - a. Includes provisions to ensure that Virginia's regulation is "trading-ready" to allow for the use of market-based mechanisms and the trading of CO₂ allowances through a multi-state trading program; and
 - b. Establishes abatement mechanisms providing for a corresponding level of stringency to limits on CO₂ emissions imposed in other states with such limits.
2. By no later than December 31, 2017, present the proposed regulation to the State Air Pollution Control Board for consideration for approval for public comment in accordance with the board's authority pursuant to § 10.1-1308 of the Code of Virginia.

In order to meet the Governor's directive in a manner that affords the public the maximum opportunity for participation, the department has initiated a regulatory development process in accordance with the Administrative Process Act that will meet the Governor's stated deadline of December 2017. As part of this process, DEQ established and convened a regulatory advisory panel (RAP) representing interests from a cross-section of stakeholders to solicit input and provide assistance to the department in the development of proposed regulations. Once the RAP has completed its work, and a proposal is available for public comment, a clearer picture of the best path forward will emerge and inform the details of any final decisions.

Agency Contact: Karen G. Sabastanski, 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 September 25, 2017, 2:53 p.m.

◆ ————— ◆

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING BOARD OF VETERINARY MEDICINE

Initial Agency Notice

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

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

Name of Petitioner: Claire Webster.

Nature of Petitioner's Request: To authorize the delegation of administration of Schedule VI drugs by any route to an unlicensed assistant under the direction and supervision of a veterinarian or a veterinary technician.

Agency Plan for Disposition of Request: The petition will be published on October 16, 2017, in the Register of Regulations and also posted on the Virginia Regulatory Town Hall at www.townhall.virginia.gov to receive public comment ending November 15, 2017. Following receipt of all comments on the petition to amend regulations, the board will decide whether to make any changes to the regulatory language. This matter will be on the board's agenda for its first meeting after the comment period, which is scheduled for February 8, 2018.

Public Comment Deadline: November 15, 2017.

Agency Contact: Leslie L. Knachel, Executive Director, Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4468, or email leslie.knachel@dhp.virginia.gov.

VA.R. Doc. No. R18-07; Filed September 19, 2017, 2:10 p.m.

NOTICES OF INTENDED REGULATORY ACTION

TITLE 9. ENVIRONMENT

STATE WATER CONTROL BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Water Control Board intends to consider amending **9VAC25-880, General VPDES Permit for Discharges of Stormwater from Construction Activities** (formerly Part XIV (4VAC50-60-1100 et seq.) of 4VAC50-60). The purpose of the proposed action is to amend and reissue the existing general permit that expires on June 30, 2019. The general permit governs the discharge of stormwater from construction activities equal to or greater than one acre of land disturbance or less than one acre within a common plan of development. This regulatory action is necessary for existing and new construction activity projects to be covered under this general permit regulation.

In addition, pursuant to Executive Order 17 (2014) and § 2.2-4007.1 of the Code of Virginia, the agency is conducting a periodic review and small business impact review of this regulation to determine whether this regulation should be terminated, 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; (iii) is designed to achieve its intended objective in the most efficient, cost-effective manner; (iv) is clearly written and easily understandable; (v) overlaps, duplicates, or conflicts with federal or state law or regulation; and (vi) is based on technology, economic conditions, or other factors have changed in the area affected by the regulation since the last review.

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

Statutory Authority: § 62.1-44.15:25 of the Code of Virginia.

Public Comment Deadline: November 15, 2017.

Agency Contact: Jaime Bauer, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4416, FAX (804) 698-4032, or email jaime.bauer@deq.virginia.gov.

VA.R. Doc. No. R18-5296; Filed September 27, 2017, 9:35 a.m.



TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD FOR BARBERS AND COSMETOLOGY

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board for Barbers and Cosmetology intends to consider amending **18VAC41-50, Tattooing Regulations**, and **18VAC41-60, Body-Piercing Regulations**. The purpose of the proposed action is to ensure that current regulations are the least intrusive and burdensome as possible, while still protecting the health, safety, and welfare of the public. Changes in the body art industry and the time elapsed since the last regulatory action warrant a general review of the tattooing and body-piercing regulations to make sure that they accurately reflect current professional and industry standards and are consistent, clearly written, and easily understandable. The board will consider allowing tattooing and body-piercing apprenticeships to be administered by the Virginia Department of Labor and Industry and may make other changes identified as necessary during the regulatory review process.

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

Statutory Authority: § 54.1-201 of the Code of Virginia.

Public Comment Deadline: November 15, 2017.

Agency Contact: Demetrios J. Melis, Executive Director, Board for Barbers and Cosmetology, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8590, FAX (804) 527-4295, or email barbercosmo@dpor.virginia.gov.

VA.R. Doc. No. R18-5125; Filed September 15, 2017, 11:37 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 2. AGRICULTURE

BOARD OF AGRICULTURE AND CONSUMER SERVICES

Fast-Track Regulation

Title of Regulation: 2VAC5-317. Regulations for the Enforcement of the Noxious Weeds Law (amending 2VAC5-317-10 through 2VAC5-317-60, 2VAC5-317-80, 2VAC5-317-100).

Statutory Authority: § 3.2-802 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: November 15, 2017.

Effective Date: November 30, 2017.

Agency Contact: Debra Martin, Program Manager, Office of Plant Industry Services, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-3515, FAX (804) 371-7793, TTY (800) 828-1120, or email debra.martin@dacs.virginia.gov.

Basis: Section 3.2-109 of the Code of Virginia establishes the Board of Agriculture and Consumer Services as a policy board. Section 3.2-802 of the Code of Virginia authorizes the board to establish regulations under which certain plants can be listed as noxious weeds. Moreover, the board may adopt regulations pertaining to regulated articles and conditions for their movement, under which the Commissioner of the Department of Agriculture and Consumer Services may proceed to conduct eradication or suppression activities to prevent the dissemination of noxious weeds in the Commonwealth. The board may also adopt regulations governing the movement of regulated articles entering the Commonwealth from other locations.

Purpose: The proposed amendments to 2VAC5-317 are necessary in order to align the language of the regulation with changes enacted in the 2016 Session of the General Assembly and to clarify some of the existing regulatory language. This regulation assists in protecting the Commonwealth's agricultural and natural resources from the detrimental impact of noxious weeds. As the establishment of a noxious weed can lead to significant economic losses due to associated eradication and control costs, this regulation also assists in protecting the economic welfare of citizens.

Rationale for Using Fast-Track Rulemaking Process: The proposed changes to the regulation are intended to align the

regulation with changes enacted in the 2016 Session of the General Assembly and to clarify some of the existing regulatory language. The Noxious Weeds Advisory Committee, which the existing regulation establishes, has discussed and reached consensus on the proposed changes to the regulation.

Substance: Prior to the 2016 Session of the General Assembly, the Noxious Weeds Law defined "noxious weed" as "any living plant, not widely disseminated, or part thereof, declared by the Board through regulations under this chapter, to be detrimental to crops, surface waters, including lakes, or other desirable plants, livestock, land, or other property, or to be injurious to public health." Chapter 171 of the 2016 Acts of Assembly amended the definition of "noxious weed" by removing the "not widely disseminated" condition and excluding from eligibility for declaration as a noxious weed those living plants or parts thereof for which in-state production is commercially viable or that are commercially propagated in Virginia. In response to the new statutory definition for "noxious weed," the agency proposes to amend the definitions for "Tier 1 noxious weed" and "Tier 2 noxious weed" in the regulation. The proposed amendments also move two weeds from Tier 1 to Tier 2 as a result of the change in definitions. Tier 1 noxious weeds are those noxious weeds not known to be present in the Commonwealth; therefore, the agency proposes to move Beach vitex and Wavyleaf basketgrass from Tier 1 to Tier 2, which is defined as any noxious weed that is present in the Commonwealth and for which successful eradication or suppression is feasible. Additionally, the proposed amendments establish a definition for "Tier 3 noxious weed," but the agency is not prepared to declare any Tier 3 noxious weeds in this regulatory action.

To address the concerns that nurseries and landscapers expressed regarding their ability to continue selling commercially viable plants already in the trade, the General Assembly, in 2016, also added the following requirement to § 3.2-802 of the Code of Virginia, which establishes the board's authority to declare a weed noxious: "Prior to designating a living plant or part thereof as a noxious weed, the board shall review the recommendations of an advisory committee established by the commissioner to conduct a scientific risk assessment of the proposed plant. The assessment shall include the degree to which the plant is detrimental to crops; surface water, including lakes; other desirable plants; livestock; land or other property; public health; the environment; and the economy. The advisory committee shall also include in its recommendations to the

Board an analysis of the current and potential in-state commercial viability of the specific plant species and the economic impact on industries affected by the designation of the plant as a noxious weed." The proposed amendments to the regulation will add the items that the law requires the advisory committee to assess to the regulation. The advisory committee is currently working on completing the scientific risk assessment process for plants to be proposed for listing as noxious weeds.

Issues: Aligning the language of the regulation with the Code of Virginia and clarifying existing provisions make the regulation easier to understand and interpret. Additionally, the proposed changes allow for more flexibility in enforcement, which will benefit the agency and the public. There are no disadvantages to the public or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Agriculture and Consumer Services (Board) proposes to amend this regulation to conform to Chapter 171 of the 2016 Acts of Assembly (Chapter 171)¹ concerning the designation of plants as noxious weeds.

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

Estimated Economic Impact. Prior to the 2016 Session of the General Assembly, the Noxious Weeds Law² defined "noxious weed" as "any living plant, not widely disseminated, or part thereof, declared by the Board through regulations under this chapter, to be detrimental to crops, surface waters, including lakes, or other desirable plants, livestock, land, or other property, or to be injurious to public health." Chapter 171 of the 2016 Acts of Assembly (Chapter 171) amended the definition of "noxious weed" by removing the "not widely disseminated" condition and excluding from eligibility for declaration as a noxious weed those living plants or parts thereof for which in-state production is commercially viable or that are commercially propagated in Virginia. In response to the new statutory definition for "noxious weed," the Board proposes to amend the definitions for "Tier 1 noxious weed" and "Tier 2 noxious weed" in the regulation. The Board also proposes to move two weeds from Tier 1 to Tier 2 as a result of the change in definitions. Under the new definition, Tier 1 noxious weeds are those noxious weeds not known to be present in the Commonwealth; therefore, the Board proposes to move beach vitex and wavyleaf basketgrass, which are in Virginia, from Tier 1 to Tier 2, which is defined as any noxious weed that is present in the Commonwealth and for which successful eradication or suppression is feasible.

Section 80 of the current regulation³ states that "The commissioner may conduct eradication or suppression activities to prevent the dissemination of a Tier 1⁴ noxious weed. Eradication or suppression activities may include, but

are not limited to, the following: destruction, seizure, stop sale, stop delivery, treatment, or ordering the regulated article to be returned to its point of origin." The Board proposes to amend "Tier 1" to "Tier 1 or Tier 2." Thus, this proposed amendment would keep beach vitex and wavyleaf basketgrass among the plants that could be subject to eradication or suppression activities. Effectively, this would also newly allow eradication or suppression activities of the plants that are currently in Tier 2 and would remain in Tier 2 under the proposed regulation. Those plants are cogon grass, purple loosestrife, and water spinach. The Department of Agriculture and Consumer Services (Department) does not anticipate that this change will affect eradication or suppression activities for those three plants in practice, as these activities are dependent on funding. The Department believes that if funding is made available it is likely that the funds would only be used to eradicate Tier 1 noxious weeds.

To address the concerns that nurseries and landscapers expressed regarding their ability to continue selling commercially viable plants already in the trade, Chapter 171 also added the following requirement to Code of Virginia section § 3.2-802 of the Noxious Weeds Law, which establishes the Board's authority to declare a weed noxious: "Prior to designating a living plant or part thereof as a noxious weed, the Board shall review the recommendations of an advisory committee established by the Commissioner to conduct a scientific risk assessment of the proposed plant. The assessment shall include the degree to which the plant is detrimental to crops; surface water, including lakes; other desirable plants; livestock; land or other property; public health; the environment; and the economy. The advisory committee shall also include in its recommendations to the Board an analysis of the current and potential in-state commercial viability of the specific plant species and the economic impact on industries affected by the designation of the plant as a noxious weed." There already exists a Noxious Weeds Advisory Committee for the purpose of assisting the Department in the evaluation and risk-assessment of plants that may be declared noxious weeds. The Board proposes to add the items described above in the legislation to what should be considered by the committee.

Thus the proposals to: 1) amend the definitions of "Tier 1 noxious weed" and "Tier 2 noxious weed", 2) move beach vitex and wavyleaf basketgrass from Tier 1 to Tier 2, 3) add Tier 2 to those noxious weeds upon which the commissioner may conduct eradication or suppression activities, and 4) add items to be considered when deciding whether a plant is to be designated a noxious weed, will clarify what is effectively required by statute and effectively newly allow eradication or suppression of cogon grass, purple loosestrife, and water spinach. The clarification and avoiding inconsistency with the Code of Virginia is beneficial in that it reduces potential confusion and unintentional actions that may violate the law. As discussed above, the effectively newly allowing

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eradication or suppression of cogon grass, purple loosestrife, and water spinach will likely have no impact, but does add flexibility.

Businesses and Entities Affected. The proposed amendments will not likely have a large impact on any businesses or other entities. The subject matter concerns nurseries, landscapers, farmers, agribusinesses, various landowners including local governments, conservation organizations, soil and water conservation districts, and weed management businesses and cooperatives.

Localities Particularly Affected. The proposed amendments do not disproportionately affect particular localities.

Projected Impact on Employment. The proposed amendments do not significantly affect employment.

Effects on the Use and Value of Private Property. The proposed amendments do not significantly affect the use and value of private property.

Real Estate Development Costs. The proposed amendments do not significantly affect real estate development costs.

Small Businesses:

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

Costs and Other Effects. The proposed amendments do not significantly affect costs for small businesses.

Alternative Method that Minimizes Adverse Impact. The proposed amendments do not adversely affect small businesses.

Adverse Impacts:

Businesses. The proposed amendments do not adversely affect businesses.

Localities. The proposed amendments do not adversely affect localities.

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

¹ See <http://leg1.state.va.us/cgi-bin/legp504.exe?161+ful+CHAP0171>

² See <https://law.lis.virginia.gov/vacode/title3.2/chapter8/>

³ See <https://law.lis.virginia.gov/admincode/title2/agency5/chapter317/section80/>

⁴ The bold is for emphasis and is not part of the regulatory text.

Agency's Response to Economic Impact Analysis: The agency concurs with the analysis of the Department of Planning and Budget.

Summary:

The amendments align the regulation with Chapter 171 of the 2016 Acts of Assembly regarding the designation of plants as noxious weeds and clarify existing regulatory language.

2VAC5-317-10. Definitions.

The following words and terms shall have the following meanings unless the context clearly indicates otherwise:

"Board" means the Virginia Board of Agriculture and Consumer Services.

"Business day" means a day that is not a Saturday, Sunday, or legal holiday, or a day on which state government offices are closed.

"Certificate" means a document issued ~~by an inspector or by a person operating in accordance with a compliance agreement to allow the movement of regulated articles to any destination or authorized by the commissioner indicating that a regulated article is not contaminated with a noxious weed.~~

"Commissioner" means the Commissioner of the Virginia Department of Agriculture and Consumer Services.

"Committee" means the Noxious Weeds Advisory Committee established pursuant to 2VAC5-317-100.

"Compliance agreement" means a written agreement between a person engaged in handling, receiving, or moving regulated articles and the Virginia Department of Agriculture and Consumer Services or the ~~United States U.S.~~ Department of Agriculture, or both, wherein the former agrees to fulfill the requirements of the compliance agreement and comply with the provisions of this chapter.

"Consignee" means any person to whom any regulated article is shipped for handling, sale, resale, or any other purpose.

"Department" means the Virginia Department of Agriculture and Consumer Services.

"Infested" or "infestation" means the presence of a listed noxious weed or the existence of circumstances that make it reasonable to believe that life stages of a listed noxious weed are present.

"Inspector" means an employee of the Virginia Department of Agriculture and Consumer Services or other person authorized by the Commissioner of the Virginia Department of Agriculture and Consumer Services to enforce the provisions of this chapter.

~~"Limited permit" means a document issued by an inspector to allow the movement of regulated articles to a specific destination.~~

"Listed noxious weed" means any plant listed in this chapter as either a Tier 1 ~~or~~ Tier 2, or Tier 3 noxious weed.

"Move," "moved," or "movement" means ~~shipped, offered for shipment, received for transportation, transported, carried, or allowed to be moved, shipped, transported, or carried to ship, offer for shipment, receive for transportation, carry, or otherwise transport, move, or allow to be moved.~~

"Noxious weed" means the term as defined in § 3.2-800 of the Code of Virginia.

"Noxious Weeds Law" means the statute set forth in Chapter 8 (§ 3.2-800 et seq.) of Title 3.2 of the Code of Virginia.

"Permit" means a document issued by the commissioner to provide for movement of regulated articles to restricted destinations for limited handling, utilization, processing, or scientific purposes.

"Person" means the term as defined in § 1-230 of the Code of Virginia.

"Regulated article" means any listed noxious weed or any article ~~or means of conveyance known to be infested or determined by an inspector to present a risk of spreading a listed noxious weed~~ carrying or capable of carrying a listed noxious weed.

"Tier 1 noxious weed" means any noxious weed that is not ~~native to~~ known to be present in the Commonwealth ~~that (i) has no known populations present in the Commonwealth or (ii) is not widely disseminated in the Commonwealth and for which successful eradication or suppression is likely.~~

"Tier 2 noxious weed" means any noxious weed that ~~(i) is not native to~~ is present in the Commonwealth, ~~(ii) is not widely disseminated in the Commonwealth, and (iii) and~~ and for which successful eradication or suppression is feasible ~~but eradication is unlikely.~~

"Tier 3 noxious weed" means any noxious weed that is present in the Commonwealth and not listed as a Tier 1 or Tier 2 noxious weed.

"Waybill" means a document containing the details of a shipment of goods.

2VAC5-317-20. Tier 1 ~~and~~, Tier 2, and Tier 3 noxious weeds.

A. The following plants are hereby declared Tier 1 noxious weeds:

1. ~~Vitex rotundifolia, Beach vitex.~~
2. Salvinia molesta, Giant salvinia.
3. 2. Solanum viarum, Tropical soda apple.
4. 3. Heracleum mantegazzianum, Giant hogweed.
5. ~~Oplismenus hirtellus spp. undulatifolius, Wavyleaf basketgrass.~~

B. The following plants are hereby declared Tier 2 noxious weeds:

1. Imperata cylindrica, Cogon grass.
2. Lythrum salicaria, Purple loosestrife.
3. Ipomoea aquatica, Water spinach.
4. Vitex rotundifolia, Beach vitex.
5. Oplismenus hirtellus spp. undulatifolius, Wavyleaf basketgrass.

C. No plant is hereby declared a Tier 3 noxious weed.

2VAC5-317-30. Conditions governing the intrastate movement of regulated articles.

The movement of a regulated article is prohibited unless accompanied by a valid certificate or ~~limited~~ permit.

2VAC5-317-40. Issuance and cancellation of certificates and limited permits.

A. A certificate or a ~~limited~~ permit may be issued by ~~an inspector~~ the commissioner for the movement of a regulated article into, within, or out of the Commonwealth when the regulated article meets the following three conditions:

1. The regulated article is to be moved:
 - a. ~~Intrastate to~~ To a specified destination under conditions that specify the limited handling, utilization, processing, or treatment of the article when the ~~inspector~~ commissioner determines that such movement will not result in the spread of the noxious weed; or
 - b. By a state or federal agency, or person authorized by the department, for experimental or scientific purposes;
2. The regulated article is to be moved in compliance with all additional conditions deemed necessary under the Noxious Weeds Law to prevent the spread of the noxious weed; and
3. The regulated article is eligible for ~~unrestricted~~ movement under all other domestic plant quarantines and regulations applicable to the regulated article.

B. Any certificate or ~~limited~~ permit that has been issued or authorized may be withdrawn by the ~~inspector~~ commissioner orally or in writing if the ~~inspector~~ commissioner determines that the holder of the certificate or ~~limited~~ permit has not complied with all conditions for the use of the certificate or ~~limited~~ permit, or with any applicable compliance agreement. If the withdrawal is oral, the withdrawal and the reasons for the withdrawal shall be confirmed in writing and communicated to the certificate or ~~limited~~ permit holder as promptly as circumstances allow.

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2VAC5-317-50. Assembly and inspection of regulated articles.

A. Any person who desires to move a regulated article and who is required to have a ~~limited~~ permit for such movement shall apply for a ~~limited~~ permit as far in advance as practical but no fewer than five business days before the regulated article is to be moved.

B. The regulated article must be assembled at the place and in the manner the inspector designates as necessary to facilitate inspection and shall be safeguarded to prevent infestation.

2VAC5-317-60. Attachment and disposition of certificates and ~~limited~~ permits.

A. A certificate or ~~limited~~ permit required for the movement of a regulated article into, within, or out of the Commonwealth must be attached at all times during the ~~intrastate~~ movement to the outside of the container that contains the regulated article or to the regulated article itself. The requirements of this section may also be met by attaching the certificate or ~~limited~~ permit to the consignee's copy of the waybill, provided the regulated article is sufficiently described on the certificate or ~~limited~~ permit and on the waybill to facilitate the identification of the regulated article.

B. The certificate or ~~limited~~ permit for the ~~intrastate~~ movement of a regulated article must be furnished by the carrier to the consignee at the destination of the regulated article. A copy of the certificate or the ~~limited~~ permit must be retained by the sender of the regulated article at the place of shipment.

2VAC5-317-80. Eradication and suppression activities for Tier 1 or Tier 2 noxious weeds.

The commissioner may conduct eradication or suppression activities to prevent the dissemination of a Tier 1 or Tier 2 noxious weed. Eradication or suppression activities may include, ~~but are not limited to~~, the following: destruction, seizure, stop sale, stop delivery, treatment, or ordering the regulated article to be returned to its point of origin.

2VAC5-317-100. Noxious Weeds Advisory Committee.

A. The commissioner shall establish a Noxious Weeds Advisory Committee for the purpose of assisting the department in the evaluation and risk-assessment of plants that may be declared noxious weeds in 2VAC5-317-20. The committee may also consider the delisting of plants that were previously declared noxious weeds.

B. The committee shall present recommendations to the commissioner regarding the listing or delisting of plants as noxious weeds. The committee shall consider the ~~protection of Virginia's natural resources and the environment, as well as the economic impact on nurseries, landscapers, agricultural producers, and other affected industries in the formulation of~~

~~its recommendations~~ degree to which the plant is detrimental to crops; surface waters, including lakes; other desirable plants; livestock; land or other property; public health; the environment; and the economy. The committee's recommendation shall include an analysis of the current and potential in-state commercial viability of the specific plant species and the economic impact on industries affected by the designation of the plant as a noxious weed.

C. The commissioner shall convene a meeting of the committee at least once annually, and may convene additional meetings at his discretion. Department staff will coordinate the scheduling and logistics of the meetings, including the posting of meeting notices on the Virginia Regulatory Town Hall and the Commonwealth Calendar.

D. Committee members shall serve at the invitation of the commissioner. For every meeting of the committee, the commissioner shall invite representatives of Virginia's agricultural, horticultural, and environmental industries as well as representatives of Virginia's land grant universities and relevant executive branch agencies, to include ~~but not be limited to~~:

1. A conservation representative or organization;₂
2. An agribusiness representative or organization;₂
3. A local government representative or organization;₂
4. Virginia Cooperative Extension;₂
5. Virginia Department of Conservation and Recreation;₂
6. Virginia Department of Forestry;₂
7. Virginia Department of Game and Inland Fisheries;₂
8. Virginia Department of Transportation;₂
9. A farming representative or organization;₂
10. A forage-based agriculture representative or organization;₂
11. A native plant conservation representative or organization;₂
12. A nursery and landscaping representative or organization;₂
13. Virginia Polytechnic Institute and State University; ~~and;~~
14. Virginia State University;
15. A cooperative weed management area representative or organization; and
16. Virginia soil and water conservation districts.

E. The commissioner may invite representatives of local government agencies from localities where a plant of concern has been found or from localities that could be impacted by the declaration of a plant as a noxious weed. The

commissioner may invite representatives of other organizations not listed in subsection D of this section that may have a direct interest in the declaration of a plant as a noxious weed.

F. Prior to each meeting of the committee, the commissioner or his designee shall make timely notification to committee members of any plant that the department is considering for possible listing or delisting as a noxious weed. The notification will include the scientific data and rationale for such listing or delisting. The commissioner or his designee shall survey committee members to determine if any member has identified a plant that should be considered for possible listing or delisting as a noxious weed. Any committee member who has identified a plant that should be considered for possible listing or delisting as a noxious weed shall provide department staff with relevant scientific data and the rationale to support the listing or delisting of the plant. The commissioner or his designee will distribute the scientific data and rationale to other committee members for their review and consideration prior to the meeting of the committee.

G. The committee, by majority vote of members, may develop and present to the commissioner a list of plants recommended for listing or delisting as noxious weeds.

H. The commissioner shall consider the recommendations of the committee in his preparation of the list of plants that he presents to the board for listing or delisting as noxious weeds.

I. If a regulatory action to list or delist a noxious weed is under way, the commissioner may delay the pursuit of a new regulatory action to list or delist a new noxious weed until the current action is completed.

V.A.R. Doc. No. R18-5122; Filed September 18, 2017, 4:36 p.m.



TITLE 4. CONSERVATION AND NATURAL RESOURCES

MARINE RESOURCES COMMISSION

Emergency Regulation

Title of Regulation: 4VAC20-260. Pertaining to Designation of Seed Areas and Clean Cull Areas (amending 4VAC20-260-50).

Statutory Authority: §§ 28.2-201 and 28.2-210 of the Code of Virginia.

Effective Dates: September 26, 2017, through October 25, 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.

Preamble:

The amendments establish inspection procedures for oysters kept in individual baskets and clarifies the methods police officers may use to inspect oyster harvests for conformity to culling standards.

4VAC20-260-50. Culling and inspection procedures.

A. All oysters taken from natural public beds, rocks, or shoals shall be placed on the culling board, or in only one basket upon the culling board, and culled by hand at the location of harvest.

1. Culled oysters shall be transferred immediately from the culling board to either the inside open part of the boat, and stored in either a loose pile, or baskets, ~~but only one transfer method may be used on any boat or vessel in any one day.~~

a. Oysters shall not be stored in both a loose pile and in baskets.

b. A single basket may be on board any boat during transfer of culled oysters from the culling board to the inside open part of the boat in a loose pile.

2. The entire harvest shall be subject to inspection, as provided in subsection F of this section.

B. Any oysters taken lawfully by hand from natural public beds, rocks, or shoals from the seaside of the Eastern Shore, and held in sacks, bags, or containers, shall be culled when taken and placed in those sacks, bags, or containers for inspection by any police officer as described in subsection G of this section.

C. If oysters from leased grounds and oysters from public grounds are mixed in the same cargo on a boat or motor vehicle, the entire cargo shall be subject to inspection under this chapter.

D. It shall be unlawful for any person to buy, sell, or report clean cull oysters by any measure other than those described in § 28.2-526 A of the Code of Virginia filled to level full. The container described in § 28.2-526 A 2 is a basket. It shall be unlawful for any person to sell, purchase, or report the sale or purchase of any clean cull oysters harvested from public grounds, as described in 4VAC20-720-40, in excess of the harvest limits described in 4VAC20-720-80.

E. It shall be unlawful for any person to buy, sell, or report seed oysters by any measure other than as described in § 28.2-526 of the Code of Virginia.

F. Oysters may be inspected by any police officer according to any one of the following provisions:

Regulations

1. For any oysters ~~transferred from the culling board to the inside open part of the boat, vehicle, or trailer or stored in a loose pile in a vehicle, a trailer, or the inside open part of a boat,~~ any the police officer may shall use a shovel to take at least one bushel or basket of oysters to inspect, at random, provided that the entire bushel or basket shall be taken from one place in the open pile of oysters. The officer may inspect multiple bushels or baskets by repeating this procedure for each bushel or basket of oysters shoveled from the loose pile.

2. For any oysters ~~transferred from a vessel to a motor vehicle or trailer, any stored in baskets in a vehicle, a trailer, or the inside open part of a boat,~~ the police officer may shall select one or more baskets of oysters basket and empty the contents of those baskets that basket into a bushel or basket, as described in § 28.2-526 of the Code of Virginia, or a basket for inspection. The officer may inspect multiple baskets by repeating this procedure for each basket.

G. In the inspection of oysters harvested by hand from waters of the seaside of the Eastern Shore, the police officer may select any sacks, bags, or containers at random to establish a full metallic measuring bushel or basket for purposes of inspection.

H. On the seaside of the Eastern Shore oysters may be sold without being measured if both the buyer and the seller agree to the number of bushels of oysters in the transaction.

VA.R. Doc. No. R18-5295; Filed September 26, 2017, 4:07 p.m.

Emergency Regulation

Title of Regulation: 4VAC20-510. Pertaining to Amberjack and Cobia (amending 4VAC20-510-25).

Statutory Authority: §§ 28.2-201 and 28.2-210 of the Code of Virginia.

Effective Dates: September 26, 2017, through October 25, 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.

Preamble:

The amendment establishes the closure of the commercial cobia season as September 30, 2017.

4VAC20-510-25. Commercial fishery possession limits and season closure.

A. It shall be unlawful for any person fishing commercially to possess more than two amberjack or more than two cobia at any time, except as described in 4VAC20-510-33. 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. The captain or operator of the boat or vessel shall be responsible for any boat or vessel possession limit.

B. In 2017 it shall be unlawful for any person, fishing commercially, to harvest or possess any cobia after September 30.

VA.R. Doc. No. R18-5294; Filed September 26, 2017, 3:55 p.m.

Emergency Regulation

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

Statutory Authority: §§ 28.2-201 and 28.2-210 of the Code of Virginia.

Effective Dates: October 1, 2017, through October 31, 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.

Preamble:

The amendments modify the landing period and trip limit for summer flounder harvested commercially from offshore and landed in Virginia.

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

A. It shall be unlawful for any person harvesting summer flounder outside of Virginia's waters to do any of the following, except as described in subsections B, C, D, and E of this section:

1. Possess aboard any vessel in Virginia waters any amount of summer flounder in excess of 10% by weight of Atlantic croaker or the combined landings, on board a vessel, of black sea bass, scup, squid, scallops and Atlantic mackerel.

2. Possess aboard any vessel in Virginia waters any amount of summer flounder in excess of 1,500 pounds landed in combination with Atlantic croaker.

3. Fail to sell the vessel's entire harvest of all species at the point of landing.

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

C. From March 1 through April 30, it shall be unlawful for any person harvesting summer flounder outside of Virginia waters to do any of the following:

1. Possess aboard any vessel in Virginia waters any amount of summer flounder in excess of the combined total of the Virginia landing limit described in subdivision 2 of this subsection and the amount of the legal North Carolina landing limit or trip limit.
2. Land in Virginia more than a total of 7,500 pounds of summer flounder.
3. Land in Virginia any amount of summer flounder more than once in any consecutive five-day period.

D. From ~~November 1~~ October 16 through December 31 of each year, if it has not been announced that 85% of the allowable landings have been taken, it shall be unlawful for any person harvesting summer flounder outside of Virginia waters to do any of the following:

1. Possess aboard any vessel in Virginia waters any amount of summer flounder in excess of the combined total of the Virginia landing limit described in subdivision 2 of this subsection and the amount of the legal North Carolina landing limit or trip limit.
2. Land in Virginia more than a total of ~~7,500~~ 7,000 pounds of summer flounder.
3. Land in Virginia any amount of summer flounder more than once in any consecutive five-day period.

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

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

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

buyer or processor may accept or buy summer flounder from a vessel that has secured safe harbor, provided that vessel has satisfied the requirements described in subsection J of this section.

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

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

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

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

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

Regulations

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

VA.R. Doc. No. R18-5293; Filed September 27, 2017, 10:33 a.m.

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TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

FORENSIC SCIENCE BOARD

Fast-Track Regulation

Title of Regulation: **6VAC40-11. Public Participation Guidelines (amending 6VAC40-11-50).**

Statutory Authority: §§ 2.2-4007.02 and 9.1-1110 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: November 15, 2017.

Effective Date: December 1, 2017.

Agency Contact: Amy M. Curtis, Department Counsel, Department of Forensic Science, 700 North 5th Street, Richmond, VA 23219, telephone (804) 786-6848, FAX (804) 786-6857, or email amy.curtis@dfs.virginia.gov.

Basis: Section 2.2-4007.02 of the Administrative Process Act mandates that each agency develop, adopt, and use public participation guidelines for soliciting the input of interested parties in the formation and development of its regulations. The Forensic Science Board is the promulgating entity, having been granted regulatory power under § 9.1-1110 of the Code of Virginia.

Purpose: The proposed change is to conform the agency's public participation guidelines to the change in the Administrative Process Act enacted by Chapter 795 of the 2012 Acts of the Assembly. Participation by the public in the regulatory process is essential to assist the Forensic Science Board in the promulgation of regulations that will protect the public health and safety.

Rationale for Using Fast-Track Rulemaking Process: As the proposed change merely conforms the regulation to the underlying statute, § 2.2-4007.02 B of the Code of Virginia, the rulemaking is not expected to be controversial and is, therefore, appropriate for the fast-track rulemaking process.

Substance: The proposed change conforms the agency's public participation guidelines to the current language in the Administrative Process Act, Chapter 795 of the 2012 Acts of the Assembly.

Issues: As the proposed change merely conforms the regulation to the underlying statute, the primary advantage is to ensure consistency between the regulation and the law to reduce any confusion. There are no anticipated disadvantages to the public or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Pursuant to Chapter 795 of the 2012 Acts of Assembly,¹ the Forensic Science Board (Board) proposes to specify in this regulation that interested persons shall be afforded an opportunity to be accompanied by and represented by counsel or other representative when submitting data, views, and arguments, either orally or in writing, to the agency.

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

Estimated Economic Impact. The current Public Participation Guidelines state that: "In considering any nonemergency, nonexempt regulatory action, the agency shall afford interested persons an opportunity to submit data, views, and arguments, either orally or in writing, to the agency." The Board proposes to append "and (ii) be accompanied by and represented by counsel or other representative."

Chapter 795 of the 2012 Acts of Assembly added to the Code of Virginia § 2.2-4007.02. "Public participation guidelines" that interested persons also be afforded an opportunity to be accompanied by and represented by counsel or other representative. Since the Code of Virginia already specifies that interested persons shall be afforded an opportunity to be accompanied by and represented by counsel or other representative, the Board's proposal to add this language to the regulation will not change the law in effect, but will be beneficial in that it will inform interested parties who read this regulation but not the statute of their legal rights concerning representation.

Businesses and Entities Affected. The proposed amendment potentially affects all individuals who comment on pending regulatory changes.

Localities Particularly Affected. The proposed amendment does not disproportionately affect particular localities.

Projected Impact on Employment. The proposed amendment does not significantly affect employment.

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

Real Estate Development Costs. The proposed amendment does not affect real estate development costs.

Small Businesses:

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

Costs and Other Effects. The proposed amendment does not affect costs for small businesses.

Alternative Method that Minimizes Adverse Impact. The proposed amendment does not adversely affect small businesses.

Adverse Impacts:

Businesses. The proposed amendment does not adversely affect businesses.

Localities. The proposed amendment does not adversely affect localities.

Other Entities. The proposed amendment does not adversely affect other entities.

¹ See <http://leg1.state.va.us/cgi-bin/legp504.exe?121+ful+CHAP0795+hil>

Agency's Response to Economic Impact Analysis: The agency has no comment on the economic impact analysis.

Summary:

Pursuant to § 2.2-4007.02 of the Code of Virginia, the amendment provides that interested persons submitting data, views, and arguments on a regulatory action may be accompanied by and represented by counsel or another representative.

Part III
Public Participation Procedures

6VAC40-11-50. Public comment.

A. In considering any nonemergency, nonexempt regulatory action, the agency shall afford interested persons an opportunity to (i) submit data, views, and arguments, either orally or in writing, to the agency; and (ii) be accompanied by and represented by counsel or other representative. Such opportunity to comment shall include an online public comment forum on the Town Hall.

1. To any requesting person, the agency shall provide copies of the statement of basis, purpose, substance, and issues; the economic impact analysis of the proposed or fast-track regulatory action; and the agency's response to public comments received.

2. The agency may begin crafting a regulatory action prior to or during any opportunities it provides to the public to submit comments.

B. The agency shall accept public comments in writing after the publication of a regulatory action in the Virginia Register as follows:

1. For a minimum of 30 calendar days following the publication of the notice of intended regulatory action (NOIRA).
2. For a minimum of 60 calendar days following the publication of a proposed regulation.
3. For a minimum of 30 calendar days following the publication of a repropoed regulation.
4. For a minimum of 30 calendar days following the publication of a final adopted regulation.
5. For a minimum of 30 calendar days following the publication of a fast-track regulation.
6. For a minimum of 21 calendar days following the publication of a notice of periodic review.
7. Not later than 21 calendar days following the publication of a petition for rulemaking.

C. The agency may determine if any of the comment periods listed in subsection B of this section shall be extended.

D. If the Governor finds that one or more changes with substantial impact have been made to a proposed regulation, he may require the agency to provide an additional 30 calendar days to solicit additional public comment on the changes in accordance with § 2.2-4013 C of the Code of Virginia.

E. The agency shall send a draft of the agency's summary description of public comment to all public commenters on the proposed regulation at least five days before final adoption of the regulation pursuant to § 2.2-4012 E of the Code of Virginia.

VA.R. Doc. No. R18-5147; Filed September 26, 2017, 11:37 a.m.

**TITLE 21. SECURITIES AND RETAIL
FRANCHISING**

STATE CORPORATION COMMISSION

Proposed Regulation

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

Regulations

Titles of Regulations: 21VAC5-20. Broker-Dealers, Broker-Dealer Agents and Agents of the Issuer (amending 21VAC5-20-90, 21VAC5-20-110, 21VAC5-20-155, 21VAC5-20-160, 21VAC5-20-180).

21VAC5-30. Securities Registration (amending 21VAC5-30-80).

21VAC5-40. Exempt Securities and Transactions (repealing 21VAC5-40-30).

21VAC5-45. Federal Covered Securities (adding 21VAC5-45-40).

21VAC5-80. Investment Advisors (amending 21VAC5-80-70, 21VAC5-80-90).

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

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

Public Comment Deadline: November 1, 2017.

Agency Contact: Jude C. Richnafsky, Senior Examiner, Division of Securities and Retail Franchising, State Corporation Commission, 1300 East Main Street, 9th Floor, Richmond, VA 23219, mailing address: P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9415, FAX (804) 371-9911, or email jude.richnafsky@scc.virginia.gov.

Summary:

The proposed regulatory action pertains to the administration and enforcement of the Virginia Securities Act and affects several regulatory chapters. Proposed amendments to 21VAC5-20, Broker-dealers, Broker-dealer Agents and Agents of the Issuer, and 21VAC5-80, Investment Advisors, increase the registration and annual renewal filing fee to \$40 for broker-dealer agents, agents of the issuer, and investment advisor representatives. Proposed amendments to 21VAC5-30, Securities Registration, update the Oil and Gas Programs statements of policy and add four statements of policy of the North American Securities Administrators Association, as follows: Promotional Shares, Loans & Other Material Transactions, Impoundment of Proceeds, and Electronic Offering Documents and Electronic Signatures. The proposed action repeals the section of 21VAC5-40, Exempt Securities and Transactions, regarding the Regulation D, Rule 505 exemption due to the repeal of Rule 505 by the U.S. Securities and Exchange Commission (SEC) in October 2016. A new section is proposed in 21VAC5-45, Federal Covered Securities, to establish a notice filing requirement for issuers conducting a federal crowdfunding securities offering. In May of 2016, the SEC adopted the final rules for federal crowdfunding that preempted the requirement of the registration of these offerings. However, a state that is home to the principal place of

business of the issuer or in which residents have purchased 50% or more of the offering amount may require a notice filing that contains all documents filed with the SEC together with a consent to service of process.

AT RICHMOND, SEPTEMBER 26, 2017

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. SEC-2017-00034

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

ORDER TO TAKE NOTICE

Section 12.1-13 of the Code of Virginia ("Code") provides that the State Corporation Commission ("Commission") shall have the power to promulgate rules and regulations in the enforcement and administration of all laws within its jurisdiction. Section 13.1-523 of the Virginia Securities Act ("Act"), § 13.1-501 et seq. of the Code provides that the Commission may issue any rules and regulations necessary or appropriate for the administration and enforcement of the Act.

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

Proposed Revision to Chapter 20. Registration and Renewal Filing Fees for Agents: The proposed amendment to Chapter 20 provides for an increase in the registration and annual renewal filing fee for broker-dealer agents (including Canadian agents) and agents of the issuer from \$30 to \$40. The fee has not been raised since it was adopted by rule in 1981. From that time to the present, the number and complexity of audits of these registrants' offices has increased, necessitating the increase in the registration fee. The Division of Securities and Retail Franchising ("Division") will apply the additional fees towards the cost to conduct audits.

Proposed Revision to Chapter 30. Adoption of Statements of Policy: The Division is a member of the North American Securities Administrators Association ("NASAA"), a trade association of state regulators. As a member of NASAA, the Division participates in a nationwide effort to use a uniform approach to the review of offerings registered in the states. From time to time, NASAA revises and adds to the list of standard policies applicable to certain offerings. The Division is updating and revising its list of these statements to add four additional items: Promotional Shares, Loans and Other Material Transactions, Impoundment of Proceeds, and Electronic Offering Documents and Electronic Signatures. The last item, Electronic Offering Documents and Electronic Signatures, will allow issuers to move away from providing

investors with large cumbersome prospectuses and provide for the electronic delivery and signatures.

Proposed Revision to Chapter 40. Repeal of Regulation D, Rule 505: In 1983, the Division adopted by rule (as amended) an exemption promulgated by the United States Securities and Exchange Commission ("SEC") known as Regulation D that provided for an exemption for offerings of up to \$5 million of securities in any 12-month period to an unlimited number of accredited investors and up to 35 non-accredited but sophisticated investors, as long as non-accredited investors are provided certain prescribed information about the issuer and the securities. Regulation D, Rule 505 of Section 3(a)(11) of the Securities Act of 1933 ("1933 Act"), and Rule 147 thereunder provide an exemption from the 1933 Act registration for offerings within a single state by issuers incorporated or organized, having their principal office and doing business in such state. In October 2016, the SEC repealed Rule 505, making the companion subsection under the current Commission regulations unnecessary. The Division proposes that the section be repealed.

Revision to Chapter 45. Adoption of Federal Crowdfunding: In 2015, the Division proposed an exemption from registration for certain intrastate offerings known as crowdfunding. The Virginia Intrastate Crowdfunding Exemption was adopted by the Commission in July 2015 under Commission Rule 21VAC5-40-190. At the time that the Commission developed the intrastate crowdfunding exemption, the SEC was working on a crowdfunding proposal for interstate offerings. In May 2016, the SEC adopted the final rules for federal crowdfunding. The final rule can be found at <https://www.sec.gov/rules/final/2015/33-9974.pdf>.

When the SEC adopted the final rules governing interstate crowdfunding, the states were preempted from requiring the registration of such offerings. However, a state that is home to the principal place of business of the issuer, or in which residents have purchased 50% or greater of the aggregate offering amount, may require a notice filing that contains all documents filed with the SEC together with a consent to service of process.

In order to facilitate that process, NASAA developed a model notice filing so that the states could adopt the notice filing in a consistent manner. This will allow interstate offerings to comply with the federal crowdfunding rule and make the appropriate state notice filings.

The Division proposes that the Commission adopt the notice filing requirement for federal crowdfunding offerings to include the Form U-CF for notice filing.

Proposed Revision to Chapter 80. Registration and Renewal Filing Fees for Investment Advisor Representatives: The proposed amendment to Chapter 80 provides for an increase in the registration and annual renewal filing fee for

investment advisor representatives from \$30 to \$40. The fee has not been raised since it was adopted by rule in 1981. From that time to the present, the number and complexity of audits of these registrants' offices has increased, necessitating the increase in the registration fee. The Division will apply the additional fees to the cost to conduct audits.

The Division recommended to the Commission that the proposed revisions should be considered for adoption. The Division also has recommended to the Commission that a hearing should be held only if requested by those interested parties who specifically indicate that a hearing is necessary and the reasons therefore.

A copy of the proposed revisions may be requested by interested parties from the Division by telephone, regular mail or email request, and also can be found at the Division's website: <http://www.scc.virginia.gov/srf>. Any comments to the proposed rules must be received by November 1, 2017.

Accordingly, IT IS ORDERED THAT:

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

(2) On or before November 1, 2017, comments or request for hearing on the proposed revisions 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. Requests for hearing shall state why a hearing is necessary and why the issues cannot be adequately addressed in written comments. All correspondence shall reference Case No. SEC-2017-00034. Interested persons desiring to submit comments electronically may do so by following the instructions available at the Commission's website: <http://www.scc.virginia.gov/case>.

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

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

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

Regulations

Part II Broker-Dealer Agents

21VAC5-20-90. Application for registration as a broker-dealer agent.

A. Application for registration as an agent of a FINRA member shall be filed on and in compliance with all requirements of CRD and in full compliance with the forms and regulations prescribed by the commission. The application shall include all information required by such forms.

An application shall be deemed incomplete for registration as a broker-dealer agent unless the applicant submits the following executed forms, fee, and information:

1. Form U4.
2. The statutory fee made payable to FINRA in the amount of ~~\$30~~ \$40.
3. Evidence in the form of a FINRA exam report of passing within the two-year period immediately preceding the date of the application: (i) the Uniform Securities Agent State Law Examination, Series 63; (ii) the Uniform Combined State Law Examination, Series 66; or (iii) a similar examination in general use by securities administrators which, after reasonable notice and subject to review by the commission, the Director of the Division of Securities and Retail Franchising designates.
4. Any other information the commission may require.

B. Application for registration for non-FINRA member broker-dealer agents shall be filed on and in compliance with all requirements and forms prescribed by the commission.

An application shall be deemed incomplete for registration as a broker-dealer agent unless the applicant submits the following executed forms, fee, and information:

1. Form U4.
2. The statutory fee in the amount of ~~\$30~~ \$40. The check must be made payable to the Treasurer of Virginia.
3. Evidence in the form of a FINRA exam report of passing within the two-year period immediately preceding the date of the application: (i) the Uniform Securities Agent State Law Examination, Series 63; (ii) the Uniform Combined State Law Examination, Series 66; or (iii) a similar examination in general use by securities administrators which, after reasonable notice and subject to review by the commission, the Director of the Division of Securities and Retail Franchising designates.
4. Any other information the commission may require.

C. The commission shall either grant or deny each application for registration within 30 days after it is filed. However, if additional time is needed to obtain or verify

information regarding the application, the commission may extend such period as much as 90 days by giving written notice to the applicant. No more than three such extensions may be made by the commission on any one application. An extension of the initial 30-day period, not to exceed 90 days, shall be granted upon written request of the applicant.

21VAC5-20-110. Renewals.

A. To renew the registration or registrations of its broker-dealer agent or agents, a FINRA member broker-dealer will be billed by CRD the statutory fee of ~~\$30~~ \$40 per broker-dealer agent. A renewal of registration or registrations shall be granted as a matter of course upon payment of the proper fee or fees unless the registration was, or the renewal would be, subject to revocation under § 13.1-506 of the Code of Virginia.

B. A non-FINRA member broker-dealer shall file with the commission at its Division of Securities and Retail Franchising the following items at least 30 days prior to the expiration of registration.

1. Agents to be Renewed (Form S.D.4.A) accompanied by the statutory fee of ~~\$30~~ \$40 for each agent whose registration is to be renewed. The check must be made payable to the Treasurer of Virginia.
2. If applicable, Agents to be Canceled with clear records (Form S.D.4.B).
3. If applicable, Agents to be Canceled without clear records (Form S.D.4.C).

21VAC5-20-155. Limited Canadian broker-dealer agent registration.

A. An agent of a Canadian broker-dealer who has no office or other physical presence in the Commonwealth of Virginia may, provided the broker-dealer agent is registered under this section, effect transactions in securities as permitted for a broker-dealer registered under 21VAC5-20-85.

B. Application for registration as a broker-dealer agent under this section shall be filed with the commission at its Division of Securities and Retail Franchising or such other entity designated by the commission on and in full compliance with forms prescribed by the commission and shall include all information required by such forms.

C. An application for registration as a broker-dealer agent under this section shall be deemed incomplete for purposes of applying for registration unless the following executed forms, fee, and information are submitted to the commission:

1. An application in the form required by the jurisdiction in which the broker-dealer maintains its principal place of business.

2. Statutory fee payable to the Treasurer of Virginia in the amount of ~~\$30~~ \$40 United States currency pursuant to § 13.1-505 G of the Act.

3. Evidence that the applicant is registered as a broker-dealer agent in the jurisdiction from which it is effecting the transactions.

4. Any other information the commission may require.

D. A broker-dealer agent registered under this section shall:

1. Maintain his provincial or territorial registration in good standing;

2. Immediately notify the commission of any criminal action taken against him or of any finding or sanction imposed on him as a result of any self-regulatory or regulatory action involving fraud, theft, deceit, misrepresentation or similar conduct.

E. A broker-dealer agent's registration under this section, and any renewal thereof, shall expire annually at midnight on the 31st day of December unless renewed in accordance with subsection F of this section.

F. To renew the registrations of its agents, a broker-dealer registered under this section shall file with the commission at its division the most recent renewal application, if any, filed in the jurisdiction in which the broker-dealer maintains its principal place of business, or if no such renewal application is required, the most recent application filed pursuant to subdivision C 1 of this section along with the statutory fee in the amount of ~~\$30~~ \$40 United States currency pursuant to § 13.1-505 G of the Act.

G. A Canadian broker-dealer agent registered under this section and acting in accordance with the limitations set out in this section is exempt from all other rules applicable to a broker-dealer agent except the anti-fraud provisions of the Act and the requirements set out in this section.

Part III
Agents of the Issuer

21VAC5-20-160. Application for registration as an agent of the issuer.

A. Application for registration as an agent of the issuer shall be filed on and in compliance with all requirements and forms prescribed by the commission.

B. An application shall be deemed incomplete for registration as an agent of the issuer unless the following executed forms, fee, and information are submitted:

1. Form U4.
2. The statutory fee in the amount of ~~\$30~~ \$40. The check must be made payable to the Treasurer of Virginia.
3. Evidence in the form of a FINRA exam report of passing within the two-year period immediately preceding the date

of the application: (i) the Uniform Securities Agent State Law Examination, Series 63; (ii) the Uniform Combined State Law Examination, Series 66; or (iii) a similar examination in general use by securities administrators which, after reasonable notice and subject to review by the commission, the Director of the Division of Securities and Retail Franchising designates.

4. Any individual who meets the qualifications set forth in subdivision B 3 of this section and has been registered in any state jurisdiction requiring registration within the two-year period immediately preceding the date of the filing of an application shall not be required to comply with the examination requirement set forth in subdivision B 3 of this section, except that the Director of Securities and Retail Franchising may require additional examinations for any individual found to have violated any federal or state securities laws.

5. Any other information the commission may require.

C. The commission shall either grant or deny each application for registration within 30 days after it is filed. However, if additional time is needed to obtain or verify information regarding the application, the commission may extend such period as much as 90 days by giving written notice to the applicant. No more than three such extensions may be made by the commission on any one application. An extension of the initial 30-day period, not to exceed 90 days, shall be granted upon written request of the applicant.

21VAC5-20-180. Renewals.

An issuer, on behalf of its agent or agents, shall file with the commission at its Division of Securities and Retail Franchising at least 30 days prior to the expiration of registration a registration renewal form (Form S.D.4) accompanied by the statutory fee of ~~\$30~~ \$40 for each agent whose registration is to be renewed. The check must be made payable to the Treasurer of Virginia.

21VAC5-30-80. Adoption of NASAA North American Securities Administration Association, Inc. statements of policy.

The commission adopts the following NASAA North American Securities Administration Association, Inc. (NASAA) statements of policy that shall apply to the registration of securities in the Commonwealth. It will be considered a basis for denial of an application if an offering fails to comply with an applicable statement of policy. While applications not conforming to a statement of policy shall be looked upon with disfavor, where good cause is shown, certain provisions may be modified or waived by the commission.

1. Options and Warrants, as amended March 31, 2008.

Regulations

2. Underwriting Expenses, Underwriter's Warrants, Selling Expenses and Selling Security Holders, as amended March 31, 2008.
3. Real Estate Programs, as amended May 7, 2007.
4. Oil and Gas Programs, as amended May 7, 2007 6, 2012.
5. Cattle-Feeding Programs, as adopted September 17, 1980.
6. Unsound Financial Condition, as amended March 31, 2008.
7. Real Estate Investment Trusts, as amended May 7, 2007.
8. Church Bonds, as adopted April 29, 1981.
9. Small Company Offering Registrations, as adopted April 28, 1996.
10. NASAA Guidelines Regarding Viatical Investment, as adopted October 1, 2002.
11. Corporate Securities Definitions, as amended March 31, 2008.
12. Church Extension Fund Securities, as amended April 18, 2004.
13. Promotional Shares, as amended March 31, 2008.
14. Loans and Other Material Transactions, as amended March 31, 2008.
15. Impoundment of Proceeds, as amended March 31, 2008.
16. Electronic Offering Documents and Electronic Signatures, as adopted May 8, 2017.

21VAC5-40-30. Uniform limited offering exemption. (Repealed.)

~~A. Nothing in this exemption is intended to relieve, or should be construed as in any way relieving, issuers or persons acting on their behalf from providing disclosure to prospective investors adequate to satisfy the anti fraud provisions of the Act.~~

~~In view of the objective of this section and the purpose and policies underlying the Act, this exemption is not available to an issuer with respect to a transaction which, although in technical compliance with this section, is part of a plan or scheme to evade registration or the conditions or limitations explicitly stated in this section.~~

~~Nothing in this section is intended to exempt registered broker-dealers or agents from the due diligence standards otherwise applicable to such registered persons.~~

~~Nothing in this section is intended to exempt a person from the broker-dealer or agent registration requirements of Article 3 (§ 13.1-504 et seq.) of Chapter 5 of Title 13.1 of the Code~~

~~of Virginia, except in the case of an agent of the issuer who receives no sales commission directly or indirectly for offering or selling the securities and who is not subject to subdivision B 2 of this section.~~

~~B. For the purpose of the limited offering exemption referred to in § 13.1-514 B 13 of the Act, the following securities are determined to be exempt from the securities registration requirements of Article 4 (§ 13.1-507 et seq.) of Chapter 5 of Title 13.1 of the Code of Virginia:~~

~~Any securities offered or sold in compliance with the Securities Act of 1933, Regulation D (Reg. D), Rules 230.501-230.503 and 230.505 and which satisfy the following further conditions and limitations:~~

~~1. The issuer and persons acting on its behalf shall have reasonable grounds to believe, and after making reasonable inquiry shall believe, that all persons who offer or sell securities subject to this section are registered in accordance with § 13.1-505 of the Act except in the case of an agent of the issuer who receives no sales commission directly or indirectly for offering or selling the securities and who is not subject to subdivision 2 of this subsection.~~

~~2. No exemption under this section shall be available for the securities of any issuer if any of the persons described in the Securities Act of 1933, Regulation A, Rule 230.262(a), (b), or (c) (17 CFR 230.262):~~

~~a. Has filed a registration statement which is the subject of a currently effective stop order entered pursuant to any state's securities law within five years prior to the beginning of the offering.~~

~~b. Has been convicted within five years prior to the beginning of the offering of a felony or misdemeanor in connection with the purchase or sale of a security or a felony involving fraud or deceit, including but not limited to forgery, embezzlement, obtaining money under false pretenses, larceny or conspiracy to defraud.~~

~~c. Is currently subject to a state's administrative order or judgment entered by that state's securities administrator within five years prior to the beginning of the offering or is subject to a state's administrative order or judgment in which fraud or deceit, including but not limited to making untrue statements of material facts or omitting to state material facts, was found and the order or judgment was entered within five years prior to the beginning of the offering.~~

~~d. Is currently subject to a state's administrative order or judgment which prohibits the use of any exemption from registration in connection with the purchase or sale of securities.~~

~~e. Is currently subject to an order, judgment, or decree of a court of competent jurisdiction temporarily or preliminarily restraining or enjoining, or is subject to an~~

~~order, judgment or decree of any court of competent jurisdiction, entered within five years prior to the beginning of the offering, permanently restraining or enjoining such person from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security or involving the making of a false filing with a state.~~

~~f. The prohibitions of subdivisions a, b, c and e of this subdivision shall not apply if the party subject to the disqualifying order, judgment or decree is duly licensed or registered to conduct securities related business in the state in which the administrative order, judgment or decree was entered against such party.~~

~~g. A disqualification caused by this subsection is automatically waived if the state securities administrator or agency of the state which created the basis for disqualification, or the State Corporation Commission, determines upon a showing of good cause that it is not necessary under the circumstances that the exemption under this section be denied.~~

~~3. The issuer shall file with the commission no later than 15 days after the first sale in this state from an offering being made in reliance upon this exemption:~~

~~a. A notice on Form D (17 CFR 239.500), as filed with the SEC.~~

~~b. A filing fee of \$250 payable to the Treasurer of Virginia.~~

~~4. In sales to nonaccredited investors, the issuer and persons acting on its behalf shall have reasonable grounds to believe, and after making reasonable inquiry shall believe, that the investment is suitable for the purchaser as to the purchaser's other security holdings and financial situation and needs.~~

~~5. Offers and sales of securities which are exempted by this section shall not be combined with offers and sales of securities exempted by another regulation or section of the Act; however, nothing in this limitation shall act as an election. The issuer may claim the availability of another applicable exemption should, for any reason, the securities or persons fail to comply with the conditions and limitations of this exemption.~~

~~6. In any proceeding involving this section, the burden of proving the exemption or an exception from a definition or condition is upon the person claiming it.~~

~~C. The exemption authorized by this section shall be known and may be cited as the "Uniform Limited Offering Exemption."~~

21VAC5-45-40. Federal crowdfunding offerings.

A. An issuer that offers and sells securities in the Commonwealth in an offering exempt under federal

Regulation Crowdfunding (17 CFR 227.100 through 17 CFR 227.503) and §§ 4(a)(6) and 18(b)(4)(c) of the Securities Act of 1933 (15 USC § 77a), and that either (i) has its principal place of business in the Commonwealth or (ii) sells 50% or greater of the aggregate amount of the offering to residents of the Commonwealth, shall file the following with the commission:

1. A completed Uniform Notice of Federal Crowdfunding Offering form or copies of all documents filed with the Securities and Exchange Commission (SEC); and

2. A consent to service of process on Form U-2 if not filing on the Uniform Notice of Federal Crowdfunding form.

B. If the issuer has its principal place of business in the Commonwealth, the filing required under subsection A of this section shall be filed with the commission when the issuer makes its initial Form C filing concerning the offering with the SEC. If the issuer does not have its principal place of business in the Commonwealth but residents of the Commonwealth have purchased 50% or greater of the aggregate amount of the offering, the filing required under subsection A of this section shall be filed when the issuer becomes aware that such purchases have met this threshold and in no event later than 30 days from the date of completion of the offering.

C. The initial notice filing is effective for 12 months from the date of the filing with the commission.

D. For each additional 12-month period in which the same offering is continued, an issuer conducting an offering under federal Regulation Crowdfunding may renew its notice filing by filing on or before the expiration of the notice filing a completed Uniform Notice of Federal Crowdfunding Offering form marked "renewal" or a cover letter or other document requesting renewal.

E. An issuer may increase the amount of securities offered in the Commonwealth by submitting a completed Uniform Notice of Federal Crowdfunding Offering form marked "amendment" or other document describing the transaction.

NOTICE: The following forms used in administering the regulation were filed by the agency. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name of a form with a hyperlink to access it. The forms are also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, 900 East Main Street, 11th Floor, Richmond, Virginia 23219.

FORMS (21VAC5-45)

[Form D, Notice of Exempt Offering of Securities, U.S. Securities and Exchange Commission, SEC1972 \(rev. 2/2012\)](#)

[Uniform Consent to Service of Process, Form U-2 \(7/1981\)](#)

Regulations

[Uniform Notice of Regulation A - Tier 2 Offering \(undated, filed 10/2016\)](#)

[Uniform Notice of Federal Crowdfunding Offering. Form U-CF \(undated, filed 9/2017\)](#)

Part II

Investment Advisor Representative Registration, Expiration, Updates and Amendments, Termination, and Changing Connection from One Investment Advisor to Another

21VAC5-80-70. Application for registration as an investment advisor representative.

A. Application for registration as an investment advisor representative shall be filed in compliance with all requirements of CRD and in full compliance with forms and regulations prescribed by the commission. The application shall include all information required by such forms.

B. An application shall be deemed incomplete for registration as an investment advisor representative unless the following executed forms, fee, and information are submitted:

1. Form U4.
2. The statutory fee made payable to FINRA in the amount of ~~\$30~~ \$40.
3. Evidence of passing: (i) the Uniform Investment Adviser Law Examination, Series 65; (ii) the Uniform Combined State Law Examination, Series 66, and the General Securities Representative Examination, Series 7; or (iii) a similar examination in general use by securities administrators which, after reasonable notice and subject to review by the commission, the Director of the Division of Securities and Retail Franchising designates.
4. All individuals listed on Part 1 of Form ADV in Schedule A and Item 2. A. of Part 1B as having supervisory responsibilities of the investment advisor shall take and pass the examinations as required in subdivision 3 of this subsection, and register as a representative of the investment advisor.
5. Any other information the commission may require.

C. The commission shall either grant or deny each application for registration within 30 days after it is filed. However, if additional time is needed to obtain or verify information regarding the application, the commission may extend such period as much as 90 days by giving written notice to the applicant. No more than three such extensions may be made by the commission on any one application. An extension of the initial 30-day period, not to exceed 90 days, shall be granted upon written request of the applicant.

21VAC5-80-90. Renewals.

To renew the registration of its investment advisor representatives, an investment advisor or federal covered advisor will be billed by IARD the statutory fee of ~~\$30~~ \$40

per investment advisor representative. A renewal of registration shall be granted as a matter of course upon payment of the proper fee or fees unless the registration was, or the renewal would be, subject to revocation under § 13.1-506 of the Act.

VA.R. Doc. No. R18-5046; Filed September 26, 2017, 11:48 a.m.

GENERAL NOTICES/ERRATA

STATE AIR POLLUTION CONTROL BOARD

Proposed State Implementation Plan Revision - Northern Virginia Ozone Redesignation Request, Maintenance Plan/Mobile Budget

Notice of action: The Department of Environmental Quality (DEQ) is seeking comments and announcing a public hearing on a proposed plan to maintain compliance with the 2008 ozone national ambient air quality standard (NAAQS) in the Northern Virginia Ozone Nonattainment Area. The Commonwealth intends to submit the plan as a revision to the Commonwealth of Virginia State Implementation Plan (SIP) in accordance with the requirements of § 110(a) of the federal Clean Air Act. The SIP is the plan developed by the Commonwealth in order to fulfill its responsibilities under the Act to attain and maintain the ambient air quality standards promulgated by the U.S. Environmental Protection Agency (EPA) under the Act.

Purpose of notice: DEQ is seeking comments on the overall plan and on the issue of whether the plan enables the Northern Virginia Ozone Nonattainment Area to maintain compliance with the 2008 ozone NAAQS until at least 2030.

Public comment period: October 16, 2017, to November 15, 2017.

Public hearing: A public hearing will be conducted at the Department of Environmental Quality, Northern Regional Office, Conference Room 1, at 11 a.m. on November 6, 2017. The Northern Regional Office is located at 13901 Crown Court, Woodbridge, VA 22193. A map and directions maybe found at <http://www.deq.virginia.gov/Locations/NorthernRegionalOffice.aspx>.

Description of proposal: The proposal consists of the following:

1. Air quality maintenance plan in support of a concurrent request to redesignate the Northern Virginia ozone nonattainment area (Counties of Arlington, Fairfax, Loudoun, and Prince William; Cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park) to attainment: The purpose of the plan is to ensure that emissions of nitrogen oxides (NO_x), volatile organic compounds (VOC), and carbon monoxide (CO) do not exceed the 2014 attainment year levels through 2030, enabling the area to continue meeting the 2008 ozone NAAQS. The plan contains control measures that are currently in place and will be continued in order to maintain emissions at or below the 2014 levels. These measures include federal control programs for on-road and non-road engines as well as limitations on local power plants. The plan also contains a program of contingency measures to be implemented if the air quality monitoring stations in the area record a violation of the 2008 ozone NAAQS or if emissions in the area increase above the 2014

levels, as well as information concerning emissions estimates, growth assumptions, emission factors, and reduction assumptions.

2. Motor vehicle emissions budgets for the years 2014, 2025, and 2030: The purpose of the motor vehicle emissions budgets is to ensure that transportation emissions conform to the requirements of the proposed plan for maintaining compliance with the 2008 ozone NAAQS (transportation conformity).

The proposed ozone redesignation request and maintenance plan were prepared by the Metropolitan Washington Air Quality Committee, which consists of elected officials from the affected localities and representatives of state transportation and air quality planning agencies.

The maintenance plan, which contains the motor vehicle emissions budgets, will be submitted as a SIP revision in conjunction with a request to EPA from the Commonwealth to redesignate the Northern Virginia Ozone Nonattainment Area as attainment/maintenance. DEQ is accepting comments on both the redesignation request and maintenance plan, but the redesignation request will not be submitted as part of the SIP revision.

Federal information: This notice is being given to satisfy the public participation requirements of federal regulations (40 CFR 51.102). The proposed maintenance plan and supporting technical documents will be submitted as a revision to the Commonwealth of Virginia SIP under § 110(a) of the federal Clean Air Act in accordance with 40 CFR 51.104.

How to comment: DEQ accepts written comments by email, fax, and postal mail. In order to be considered, comments must include the full name, address, and telephone number of the person commenting and be received by DEQ no later than the last day of the comment period. Both oral and written comments are accepted at the public hearing. DEQ prefers that comments be in writing, along with any supporting documents or exhibits. Comments on the redesignation request and maintenance plan must be submitted to the contact person below.

To review the proposal: The proposal and any supporting documents are available on the DEQ Air Public Notices for Plans website at <http://www.deq.virginia.gov/Programs/Air/PublicNotices/airplansandprograms.aspx>. The documents may also be obtained by contacting the DEQ representative named above. The public may review the documents between 8:30 a.m. and 4:30 p.m. of each business day until the close of the public comment period at the following DEQ locations:

- 1) Main Street Office, 8th Floor, 629 East Main Street, Richmond, VA, telephone (804) 698-4070 and
- 2) Northern Regional Office, 13901 Crown Court, Woodbridge, VA, telephone (703) 583-3800.

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Contact Information: Doris A. McLeod, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4197, FAX (804) 698-4510, or email doris.mcleod@deq.virginia.gov.

Proposed State Implementation Plan Revision - Northern Virginia Reasonably Available Control Technology Plan

Notice of action: The Department of Environmental Quality (DEQ) is seeking comments and announcing a public hearing on a proposed plan to implement reasonably available control technology (RACT) in support of the 2008 ozone national ambient air quality standard (NAAQS) in the Northern Virginia Emissions Control Area. The Commonwealth intends to submit the plan as a revision to the Commonwealth of Virginia State Implementation Plan (SIP) in accordance with the requirements of § 110(a) of the federal Clean Air Act. The SIP is the plan developed by the Commonwealth in order to fulfill its responsibilities under the Act to attain and maintain the ambient air quality standards promulgated by the U.S. Environmental Protection Agency under the Act.

Purpose of notice: DEQ is seeking comments on the overall plan and on the issue of whether the plan meets RACT requirements for the Northern Virginia Emissions Control Area in support of the 2008 ozone NAAQS.

Public comment period: October 16, 2017, to November 15, 2017.

Public hearing: A public hearing will be conducted at the Department of Environmental Quality, Northern Regional Office, Conference Room 1, at 11 a.m. on Monday, November 13, 2017. The Northern Regional Office is located at 13901 Crown Court, Woodbridge, VA 22193. A map and directions maybe found at <http://www.deq.virginia.gov/Locations/NorthernRegionalOffice.aspx>.

Description of proposal: The proposal consists of the following:

1. An analysis of the regulatory underpinnings of RACT for the Northern Virginia Emissions Control Area, which consists of the Counties of Stafford, Arlington, Loudoun, Prince William, and Fairfax and the Cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park.
2. Certification of the implementation of the control technique guidelines (CTGs) and alternative control techniques within Virginia's SIP for the Northern Virginia Emissions Control Area.
3. Negative declaration for the 2016 CTG for the Oil and Natural Gas Industry in the Northern Virginia Emissions Control Area.

4. Recertification of certain RACT analyses previously submitted in Virginia's SIP, where review of available data show that no additional controls are necessary.

5. A commitment to submit as SIP revisions source specific RACT determinations for those facilities where recertification of previous RACT requirements was not appropriate.

Federal information: This notice is being given to satisfy the public participation requirements of federal regulations (40 CFR 51.102). The proposed RACT implementation document will be submitted as a revision to the Commonwealth of Virginia SIP under § 110(a) of the federal Clean Air Act in accordance with 40 CFR 51.104.

How to comment: DEQ accepts written comments by email, fax, and postal mail. In order to be considered, comments must include the full name, address, and telephone number of the person commenting and be received by DEQ no later than the last day of the comment period. Both oral and written comments are accepted at the public hearing. DEQ prefers that comments be provided in writing, along with any supporting documents or exhibits. Comments on the RACT implementation document must be submitted to the contact person below. All materials received are part of the public record.

To review the proposal: The proposal and any supporting documents are available on the DEQ Air Public Notices for Plans website at <http://www.deq.virginia.gov/Programs/Air/PublicNotices/airplansandprograms.aspx>. The documents may also be obtained by contacting the DEQ representative named above. The public may review the documents between 8:30 am and 4:30 pm of each business day until the close of the public comment period at the following DEQ locations:

- 1) Main Street Office, 8th Floor, 629 East Main Street, Richmond, VA, telephone (804) 698-4070 and
- 2) Northern Regional Office, 13901 Crown Court, Woodbridge, VA, telephone (703) 583-3800.

Contact Information: Doris A. McLeod, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4197, FAX (804) 698-4510, or email doris.mcleod@deq.virginia.gov.

BOARD FOR THE BLIND AND VISION IMPAIRED

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Board for the Blind and Vision Impaired conducted a small business impact review of **22VAC45-12, Public Participation Guidelines**, and determined that this regulation should be retained in its current form. The Board for the Blind and Vision Impaired is publishing its report of findings dated

September 24, 2017, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

The Board for the Blind and Vision Impaired has determined that 22VAC45-12 continues to be relevant because the agency administers workforce and independent living programs and services in the workforce and in the community that impact the lives of individuals who are blind, vision impaired, and deafblind. Providing these individuals, along with the general public, with the opportunity to make comment regarding agency regulations is in line with the federal regulations pertaining to the provision of vocational rehabilitation services and requirements set forth in §§ 2.2-4007.02 of the Code of Virginia. These regulations do not conflict with state or federal law or regulation and have little to no economic impact on small business. There have not been any substantial changes in technology, economic conditions, or other factors that impact the importance or implementation of the regulation.

Contact Information: Susan Davis Payne, Policy and Training Coordinator, Department for the Blind and Vision Impaired, 397 Azalea Avenue, Richmond, VA 23227, telephone (804) 371-3184, FAX (804) 371-3351, or email susan.payne@dbvi.virginia.gov.

STATE CORPORATION COMMISSION

Bureau of Insurance

September 15, 2017

Administrative Letter 2017-03

TO: All Insurers, Rate Service Organizations, and Interested Persons

RE: Appraisal and Arbitration Provisions in Insurance Policies; Withdrawal of Administrative Letter 1998-12

This administrative letter withdraws and replaces Administrative Letter 1998-12.

The Bureau of Insurance ("Bureau") issued Administrative Letter 1998-12 prohibiting binding arbitration provisions and binding appraisal conditions in insurance contracts pursuant to Code of Virginia § 38.2-312¹ that prohibits provisions in insurance policies that deprive the courts of jurisdiction in actions against an insurer.

Further review of appraisal conditions led to a change in the Bureau's position that was outlined in a letter dated August 29, 2014, Appraisal Condition Letter.² This letter provides that any appraisal conditions in property insurance policies must be binding on both parties.

The Bureau recently conducted a legal and regulatory review of arbitration provisions in insurance policies. The Bureau confirms its previous position that mandatory binding

arbitration provisions are not permitted in Virginia insurance policies.

Nothing in this letter should be construed to apply to an agreement in which both the insured and insurer consent to post-dispute arbitration.

/s/ Jacqueline K. Cunningham
Commissioner of Insurance

¹ Section 38.2-312 applies to insurance contracts "delivered or issued for delivery in this Commonwealth and covering subjects which are located or residing in this Commonwealth, or which are performed in this Commonwealth...."

² This letter may be found on the Bureau's website at http://scc.virginia.gov/boi/co/pc/files/appr_cond.pdf.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Revised - Core Solar SPV XIII, LLC Notice of Intent for Small Renewable Energy (Solar) Project Permit by Rule - Chesapeake

Core Solar SPV XIII, LLC has provided the Department of Environmental Quality with a revised notice of intent to submit the necessary documentation for a permit by rule for a small renewable energy project (solar) in Chesapeake pursuant to 9VAC15-60. The project will be located on 908 acres across multiple parcels off Shillelagh Road, approximately five miles south of Chesapeake. The proposed solar project is now anticipated to have a nameplate capacity of 150 megawatts and will be comprised of approximately 525,000 solar panels. A general notice for the project was previously published in the Virginia Register of Regulations on June 26, 2017, at a size of 100 megawatts and approximately 350,000 solar panels.

Contact Information: Mary E. Major, Department of Environmental Quality, 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 State Board of Health is currently reviewing each of the regulations listed below to determine whether the regulation should be repealed, amended, or retained in its current form. The review of each regulation will be guided by the principles in Executive Order 17 (2014). Public comment is sought on the review of any issue relating to each 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

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economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

12VAC5-371, Regulations for the Licensure of Nursing Facilities

Contact Information: Erik Bodin, Director, Virginia Department of Health, Office of Licensure and Certification, 9960 Mayland Drive, Suite 401, Henrico, VA 23233, telephone (804) 367-2102, FAX (804) 527-4502, or email erik.bodin@vdh.virginia.gov.

12VAC5-542, Rules and Regulations Governing the Virginia Nurse Practitioner/Nurse Midwife Scholarship Program

Contact Information: Heather Anderson, Director, Virginia Department of Health, Division of Primary Care and Rural Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7426, FAX (804) 864-7440, or email heather.anderson@vdh.virginia.gov.

The comment period begins October 16, 2017, and ends November 6, 2017.

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.

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the State Board of Health conducted a small business impact review of **12VAC5-431, Sanitary Regulations for Hotels**, and determined that this regulation should be retained in its current form. The State Board of Health is publishing its report of findings dated August 28, 2017, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

Section 35.1-11 of the Code of Virginia gives authority to the board to promulgate regulations for hotels. The continued need for the regulations is established in statute. To repeal the regulations would remove certain public protections provided in the regulation. No complaints or comments were received from the public concerning the regulations. The regulations are clearly written, easily understandable, and do not overlap, duplicate, or conflict with any known federal or state law or regulation. The most recent evaluation of the regulations occurred in May of 2013. There are no known changes in technology, economic conditions, or other factors that necessitate amendments to the regulations within the authority established by Title 35.1 of the Code of Virginia. Retaining the regulations in their current form does not

appear to cause an adverse economic impact on small business in the Commonwealth of Virginia; the regulations provide specific minimum requirements that maintain a safe and healthy environment at hotels and other transient lodging establishments, allowing tourism and other travel to continue to contribute to the Commonwealth's economy.

Contact Information: Olivia McCormick, Program Manager, Tourist Establishment Services, Virginia Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-8146, FAX (804) 864-7475, or email olivia.mccormick@vdh.virginia.gov.

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the State Board of Health conducted a small business impact review of **12VAC5-501, Rules and Regulations Governing the Construction and Maintenance of Migrant Labor Camps**, and determined that this regulation should be retained in its current form. The State Board of Health is publishing its report of findings dated July 26, 2017, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

Sections 32.1-12 and 32.1-211 B of the Code of Virginia give authority to the board to promulgate regulations pertaining to migrant labor camps. The continued need for the regulations is established in statute. To repeal the regulations would remove certain public protections provided in the regulations. No complaints or comments were received from the public concerning the regulations. The regulations are clearly written, easily understandable, and do not overlap, duplicate, or conflict with any known federal or state law or regulation. The most recent evaluation of the regulations occurred in May of 2009. There are no known changes in technology, economic conditions, or other factors that would be affected by the regulations. Retaining the regulations in their current form does not appear to cause an adverse economic impact on small business in the Commonwealth of Virginia, rather the regulations provided specific minimum requirements to maintain a safe and health working environment for migrant laborers allowing businesses to continue to contribute to the Commonwealth's economy.

Contact Information: Allen Knapp, Director Office of Environmental Health Services, Virginia Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7458, email allen.knapp@vdh.virginia.gov.

IDENTITY MANAGEMENT STANDARDS ADVISORY COUNCIL

Trustmarks for Digital Identity Management Guidance Document

This guidance document was developed by the Identity Management Standards Advisory Council (IMSAC) and

recommended to the Secretary of Technology to provide information or guidance of general applicability to the public for interpreting or implementing the Electronic Identity Management Act (the Act). Specifically, the document establishes minimum specifications and standards for trustmarks in digital identity systems, pursuant to the Act.

The minimum specifications and standards defined in this document have been developed to align with international standards, specifically Regulation (EU) No. 910/2014 of the European Parliament and of the Council of July 23, 2014. Reference also has been given to the trustmark framework and governance model developed by the Georgia Tech Research Institute during its pilot project under the National Strategy for Trusted Identities in Cyberspace.

The document assumes an identity trust framework will address the business, legal, and technical requirements for each distinct digital identity system. The document focuses on trustmarks for identity trust framework operators and digital identity systems. Separate IMSAC guidance documents in this series define minimum specifications for other components of a digital identity system.

The proposed guidance documents are also available with comments and proposed changes by IMSAC on the Virginia Information Technologies Agency website at <http://www.vita.virginia.gov/default.aspx?id=6442474172>.

Public hearing: A public meeting will be held on October 24, 2017, at 11 a.m. The meeting will be held at the Commonwealth Enterprise Solutions Center, 11751 Meadowville Lane, Room 1222, Chester, VA 23836.

Contact Information: Janice Akers, Virginia Information Technologies Agency, 11751 Meadowville Lane, Chester, VA 23836, telephone (804) 416-6083, or email janice.akers@vita.virginia.gov.

VIRGINIA LOTTERY

Director's Orders

The following Director's Orders of the Virginia Lottery were filed with the Virginia Registrar of Regulations on September 27, 2017. The orders may be viewed at the Virginia Lottery, 600 East Main Street, Richmond, Virginia, or at the office of the Registrar of Regulations, 900 East Main Street, 11th Floor, Richmond, Virginia.

Director's Order Number One Hundred Thirty-Four (17)

Virginia Lottery's Scratch Game 1790 "10x The Money" Final Rules For Game Operation (effective September 6, 2017)

Director's Order Number One Hundred Thirty-Five (17)

Virginia Lottery's Scratch Game 1824 "Win Either \$50 or \$100" Final Rules For Game Operation (effective September 8, 2017)

Director's Order Number One Hundred Thirty-Six (17)

Virginia Lottery's "2017 State Fair Spin For Cash Contest" Final Rules For Operation (This Director's Order becomes effective on September 29, 2017, and shall remain in full force and effect through the end Contest date unless amended or rescinded by further Director's Order)

Director's Order Number One Hundred Thirty-Eight (17)

Virginia Lottery "GPM Loyalty Card Promotion Retailer Incentive Promotion" (This Director's Order becomes effective on December 1, 2017, and shall remain in full force and effect through the end date of the incentive promotion, unless otherwise extended by the Director)

Director's Order Number One Hundred Thirty-Nine (17)

Virginia Lottery's "Social Media Contest Promotion" Final Rules For Operation (This Director's Order becomes effective on September 19, 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 One Hundred Forty (17)

Virginia Lottery's "Game Guy Player Experience Promotion" Final Rules For Operation (This Director's Order becomes effective on September 19, 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 One Hundred Forty-One (17)

Virginia Lottery's "Ride Into Fall" Promotion Final Rules For Operation (This Director's Order becomes effective on September 23, 2017, and shall remain in full force and effect through the end Promotion date unless amended or rescinded by further Director's Order)

BOARD OF MEDICAL ASSISTANCE SERVICES

Draft Physician-Practitioner (Chapter II) Provider Manual for Stakeholder Input

Comment period began September 25, 2017, and ends October 25, 2017.

The draft version of Chapter II of the Physician-Practitioner Manual is posted on the DMAS website for public comment through October 25, 2017. For convenience, the updates are marked in red and can be found on pages 16 and 17. Please see the overview below for more details.

Overview of changes: Department of Medical Assistance Services is modifying the documentation requirement in the

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"Documentation" section to allow 14 calendar days to complete the required signatures for paper charts, as well as electronic health records for providers of general physician services in medical inpatient and medical outpatient settings.

The draft manual can be viewed at http://www.dmas.virginia.gov/Content_pgs/pd-pmnl.aspx.

The finalized version will be officially posted by November 1, 2017, on the DMAS website at <https://www.virginiamedicaid.dmas.virginia.gov/wps/myportal/providermanual>.

Contact Information: Emily McClellan, Regulatory Manager, Division of Policy and Research, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-4300, FAX (804) 786-1680, TDD (800) 343-0634, or email emily.mcclellan@dmas.virginia.gov.

Rescheduling of the September 11, 2017, Medicaid Appeals Workgroup Meeting

The Department of Medical Assistance Services (DMAS) scheduled a meeting of the Medicaid Appeals Workgroup for Monday September 11, 2017. Representatives from the Virginia Bar Association requested that DMAS cancel that meeting on the morning of Monday, September 11, 2017, due to the fact that their members would not be able to attend. Without the participation of the members of the Virginia Bar Association, the workgroup would not have met its intended purpose. Therefore, DMAS has rescheduled the meeting for Wednesday, September 27, 2017.

In order to ensure the efforts of the workgroup are as productive as possible, this notice summarizes the information DMAS staff intended to present to the workgroup at the September 11, 2017, meeting. In addition, DMAS invites the workgroup and members of the public to submit comment regarding the information presented.

1. Discussion with Centers for Medicare and Medicaid Services: DMAS is required to repay to the federal Centers for Medicare and Medicaid Services (CMS) approximately 50% of all moneys that the agency retracts from providers through the audit process. Therefore, one of the primary questions for the workgroup is whether CMS would approve the implementation of a substantial compliance or material breach standard for DMAS retractions and appeals. In order to address this essential question DMAS staff held a teleconference with CMS representatives on August 31, 2017. During this call DMAS presented three separate appeal scenarios based upon actual cases. DMAS used appeals often cited as examples of unfair or inequitable cases -- those involving retractions of multiple service days for lack of a signature or incorrect documentation. DMAS also queried whether CMS would adjust their state audit pay back requirements if the Commonwealth implemented a substantial compliance or material breach review standard.

CMS responded that, with respect to state provider audit paybacks, CMS follows a strict documentation compliance standard from the federal Office of the Inspector General. These standards do not recognize substantial compliance or material breach. In applying the federal standard to the examples DMAS presented, CMS stated that they would require the full amount of the federal payback in each case regardless of any adjustments DMAS might make based upon substantial compliance or material breach. They affirmed that federal law prevails over state law, and therefore Virginia would be required to make up the difference in the payback amounts owed under federal standards, regardless of state retraction and appeal standards.

2. DMAS Addresses Requested Statistics: In order to address a question raised by the workgroup about the net results of audits through the appeal process, DMAS reviewed overpayment letters issued from January 1, 2015, through December 31, 2016. Of the approximately \$38 million of overpayments identified, \$18 million were not appealed. For the \$20 million appealed, DMAS retained close to \$12 million after the appeal process was concluded (through circuit court and removing attorney fees paid). Therefore, for the two-year period reviewed, the net result of the audits was approximately \$30 million returned to the Medicaid program.

Various members of the workgroup also asked DMAS to provide statistics about the results of informal appeals. 611 audit decisions were issued from 2014 through 2016, broken down into 293 completely upheld, 100 not timely filed, and 218 where a reduction in the overpayment occurred.

DMAS shall provide a presentation of all requested statistics at the rescheduled September 27, 2017, workgroup meeting.

3. Process Change for Consideration from Appeals: Some workgroup members expressed a desire for the ability to present a settlement offer to DMAS at the informal appeal level, rather than filing a formal appeal. DMAS is considering developing a proposal that would authorize the formal appeal representative to discuss and consider any settlement offer made at the informal appeal level, provided this process is completed in a timely fashion prior to the regulatory deadline for issuance of the informal appeal decision. The formal appeal representative would then submit the offer to DMAS management for a response and, assuming the agency wishes to settle, would obtain the Office of the Attorney General's approval. This proposal allows providers the opportunity to submit settlement offers during the informal appeal, without the need for filing a formal appeal.

4. Process Changes for Consideration from the Office of Program Integrity (PI): DMAS's Office of PI presents the following discussion topics in response to provider concerns:

- a. Potentially extending the period between the preliminary letter and the overpayment report, to an agreed upon timeframe – Currently the Office of PI allows providers 30

days to provide additional documentation that may possibly mitigate audit findings identified during the preliminary review process.

b. Shortening the audit period – DMAS shall work with providers to fully implement a change in the claims period under review from 15 to 12 months. Reducing the claims period will limit provider burden as it relates to gathering medical documentation for review and lessen any potential overpayment amounts. Also, the claims period will apply to all provider types, which will ensure consistency and fairness.

c. Including provider groups and stakeholders in error matrix process – Every year prior to the beginning of the new audit cycle, Office of PI staff meet with subject matter experts and receive suggestions and recommendations for each error code within the audit matrix. This process gives the Office of PI guidance as to what error codes are worthy of an audit. The Office of PI also uses appeals findings and provider concerns as guidance. More provider involvement in this process will allow for more expertise from the field and will provide the Office of PI a better understanding of error codes that providers feel are important and accurately reflect the care they render Medicaid recipients.

5. Medicaid Fraud Control Unit (MFCU): The MFCU appreciated the open discussion during the initial meeting and the perspective it provided on the concerns of the provider community and DMAS staff. DMAS audits are integral to the fraud detection and prevention efforts of the MFCU. MFCU investigations, prosecutions, and civil actions are primarily driven through a complaint-based system. MFCU does not conduct routine audits and relies, in part, on DMAS audits as a source of referrals. Accordingly, the first indication that there may be a concern with a provider is the DMAS audit process. MFCU routinely communicates with DMAS on a number of topics and they have developed a strong dialogue related to concerns and referrals. If an audit shows indications of fraud – billing for services not provided, upcoding, patient harm, stock notes/text, consistently misdated materials, etc. those matters may be brought to the attention of the MFCU. A number of audits have been referred from DMAS for review by MFCU – of the current 108 open investigations, 31 came from DMAS referrals. In addition, if MFCU receives a referral thorough the MFCU hotline, MFCU contacts DMAS to discuss previous audits of the provider. MFCU would need to see any proposed audit process changes to appreciate if such changes could impact the ability to detect a pattern or practice of conduct that is indicative of fraud.

DMAS has been directed by the General Assembly to convene the Medicaid Appeals Workgroup. The workgroup is mandated to develop a plan to avoid or adjust retractions for nonmaterial breaches of the provider participation agreement when the provider has substantially complied with the provider participation agreement. The plan shall include an

assessment of any administrative financial impact that implementation of such plan would have on the department and an analysis of any implications for the department's efforts to combat fraud, waste, and abuse. DMAS invites the workgroup and members of the public to submit public comment with suggestions and recommendations on how to meet the mandate of the General Assembly considering the feedback from CMS noted in this notice.

Contact Information: Susan Puglisi, Senior Policy Advisor, Department of Medical Assistance Services, 600 East Broad Street, Richmond, VA 23219, telephone (804) 225-2726, or email susie.puglisi@dmas.virginia.gov.

Draft New Opioid Treatment Services Supplement and Updates to the Addiction and Recovery Treatment Services Provider Manual and the Peer Services Supplement for Stakeholder Input

The draft Addiction and Recovery Treatment Services (ARTS) Provider Manual, Peer Services Supplement, and the new Opioid Treatment Services Supplement are posted on the DMAS website for public comment through October 15, 2017. Please see the overview and chart below for more details.

Overview of changes: The Opioid Treatment Services, including the Opioid Treatment Programs, the Preferred Office Based Opioid Treatment Programs, and the Preferred Medication Assisted Treatment have been pulled out of the ARTS Provider Manual and a new Opioid Treatment Services Supplement has been created. In addition to the new Opioid Treatment Services Supplement, there have been additional clarifications to the Peer Services Supplement and the ARTS Provider Manual (Chapters II, IV, and VI).

Manual Name	Chapter/Appendix/Supplement
Peer Services Supplement	Peer Services Supplement
ARTS	Chapter II
ARTS	Chapter IV
ARTS	Chapter VI
ARTS	Opioid Treatment Services Supplement

The draft manual may be viewed at http://www.dmas.virginia.gov/Content_pgs/pd-pmnl.aspx. The finalized versions will be officially posted by October 23, 2017, on the website at <https://www.viriniamedicaid.dmas.virginia.gov/wps/myportal/providermanual>.

Contact Information: Emily McClellan, Regulatory Manager, Division of Policy and Research, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-4300, FAX (804)

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786-1680, TDD (800) 343-0634, or email emily.mcclellan@dmas.virginia.gov.

STATE WATER CONTROL BOARD

Proposed Enforcement Action for CSX Transportation, Inc.

An enforcement action has been proposed for CSX Transportation, Inc., regarding a release of petroleum into the Jackson River in Covington, Virginia, for violations of State Water Control Law and regulations. The proposed enforcement action includes a civil charge and injunctive relief. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Robert Steele will accept comments by email at robert.steele@deq.virginia.gov, FAX at (540) 562-6725, or postal mail at Department of Environmental Quality, 3019 Peters Creek Road, Roanoke, VA 24019, from October 16, 2017, through November 15, 2017.

Proposed Consent Order for Colonial Pipeline Company

An enforcement action has been proposed for the Colonial Pipeline Company in Fairfax County. The consent order describes a settlement to resolve violations of State Water Control Law and the applicable regulations associated with the Colonial Pipeline Company - Fairfax Delivery Facility Oil Discharge. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Stephanie Bellotti will accept comments by email at stephanie.bellotti@deq.virginia.gov, or postal mail at Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, from October 17, 2017, through November 16, 2017.

Proposed Consent Order for Sussex Service Authority

An enforcement action has been proposed for the Sussex Service Authority for violations at the Spring Branch waste water treatment plant (WWTP), located at 601 Jasper Lane in Waverly, Virginia. The State Water Control Board proposes to issue a consent order to address noncompliance with its Virginia Pollutant Discharge Elimination Permit at the WWTP. A description of the proposed action is available at the Department of Environmental Quality office named below, or online at www.deq.virginia.gov. Kyle Ivar Winter, P.E., will accept comments by email at kyle.winter@deq.virginia.gov, FAX at (804) 527-5106, or postal mail Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060, from October 18, 2017, to November 17, 2017.

Public Comment Period and Public Meeting - Fiscal Year 2018 Virginia Clean Water Revolving Loan Fund Intended Use Plan and Project Priority List

Introduction: Section 606(c) of the Water Quality Act of 1987 requires the state to develop an intended use plan (IUP) that identifies the uses of its Clean Water Revolving Loan Fund and to prepare a list of projects targeted for financial assistance with those funds. Following public comment and final board action, the list of targeted projects for financial assistance becomes the state's yearly clean water revolving loan project priority list (PPL) in the IUP.

Fiscal Year 2018 Program Development: On May 30, 2017, staff solicited applications from the Commonwealth's localities and wastewater authorities as well as potential land conservation applicants and Brownfield remediation clientele. July 14, 2017, was established as the deadline for receiving applications. Based on this solicitation, the Department of Environmental Quality (DEQ) received 21 wastewater improvement applications requesting \$99,546,845, three applications for stormwater management projects (\$4,147,751), and two land conservation applications for an additional \$2,049,506, bringing the total amount requested to \$105,744,102.

All 21 wastewater applications were evaluated in accordance with the program's funding distribution criteria. In keeping with the program objectives and funding prioritization criteria, the staff reviewed project type and impact on state waters, the locality's compliance history and fiscal stress, and the projects' readiness-to-proceed. The three stormwater applications were reviewed in accordance with the board's priority ranking criteria for stormwater projects. Both land conservation applications were reviewed using the board's evaluation criteria, and the staff also received input from the Department of Conservation and Recreation in accordance with the board guidelines and state law.

The list of applications in Attachment A is shown in priority funding order based on the board's prioritization criteria for each project type. Note that each project type (wastewater, stormwater, land conservation) has a separate priority ranking point system that is not intended to be numerically compared from one type to the other. The recommended project funding list shown below and in Attachment B provides funding for all the applications received. All applications are considered to be of good quality and should provide significant water quality or environmental improvement. The staff is recommending that the list be tentatively adopted, subject to the verification of information in the loan applications and public review and comment.

The list of applications and the target funding list are available at <http://www.deq.virginia.gov/Programs/Water/CleanWaterFinancingAssistance/FY2018AnnualSolicitation.aspx>.

Public Participation: DEQ is presenting the draft list of targeted Fiscal Year 2018 loan recipients for public review and comment. A public meeting will be held at 10 a.m. on Thursday, October 26, 2017, in the 11th Floor Conference Room, 629 East Main Street, Richmond, Virginia 23219. The public review and comment period will end immediately following the public meeting. Comments or questions should be directed to DEQ staff person listed. Written comments should include the name, address, and telephone number of the presenter.

Contact Information: Walter Gills, Clean Water Financing and Assistance Program, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4133, or email walter.gills@deq.virginia.gov.

Public Meeting and Notice of Public Comment for a Water Quality Study (Total Maximum Daily Load Study) for Barbours Creek, Craig Creek, Catawba Creek, Little Patterson, Sinking Creek, Lapsley Run, and James River

Public informational meeting: A community meeting will be held on Thursday, November 2, 2017, from 6:00 - 8:00 p.m. at the Eagle Rock Library and on Thursday, November 9, 2017, from 6:00 - 8:00 p.m. at the Catawba Community Center. The addresses are: Eagle Rock Library, 55 Eagles Nest Drive, Eagle Rock, VA 24085 and Catawba Community Center, 4955 Catawba Creek Road, Catawba, VA 24070. In the case of inclement weather, the meetings will be rescheduled for November 6, 2017, from 6:00 - 8:00 p.m. at Eagle Rock Library and November 13, 2017 from 6:00 - 8:00 p.m. at the Catawba Community Center. These meetings will be open to the public and all are welcome. For more information, please contact Lucy Baker at lucy.baker@deq.virginia.gov or at telephone (540) 562-6718.

Purpose of notice: The Department of Environmental Quality (DEQ) and its contractors, Virginia Tech's Biological Systems Engineering Department, will discuss the process and data used to develop a water quality study known as a total maximum daily load (TMDL) for Barbours Creek, Craig Creek, Catawba Creek, Little Patterson Creek, Sinking Creek, Lapsley Run, and a section on the James River in Craig and Botetourt Counties. These streams are listed on the § 303(d) TMDL Priority List and Report as impaired due to violations of Virginia's water quality standards for recreational use and general standard (Benthics). This is an opportunity for local residents to learn about the condition of these streams, share information about the area, and become involved in the process of local water quality improvement. A public comment period will follow the meetings (November 2, 2017, through December 11, 2017).

Meeting description: A public informational meeting will be held to introduce the local community to the water quality improvement process in Virginia, known as the TMDL process, provide information on bacteria and biological

monitoring efforts and sources, invite participation and solicit input, review the next steps and accept volunteers to be part of a technical advisory committee. Section 303(d) of the Clean Water Act and § 62.1-44.19:7 C of the Code of Virginia requires 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: In Botetourt and Craig Counties, portions of the James River, Catawba Creek, Craig Creek, Barbours Creek, Sinking Creek, Lapsley Run, and Little Patterson Creek are impaired for the "recreational use" water quality standard, meaning there is too much E. Coli bacteria present in these waterbodies. A section of Catawba Creek does not have a healthy and diverse community of macroinvertebrates and subsequently does not meet the "aquatic life" water quality standard. Excessive bacteria levels may pose a threat to human health; therefore, a bacteria standard was established to preserve recreational uses in Virginia's waterbodies. This water quality study will report on the sources of bacteria and recommend reductions to meet total maximum daily loads (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, bacteria levels need to be reduced to the TMDL amount. Virginia agencies are working to identify sources of bacteria and determine the pollutant cause for the benthic impairment through a weight of evidence approach.

General Notices/Errata

Stream	Impairment length	Location description	County	Impairment
Craig Creek	7.91 miles	Mainstem from the mouth of Turnpike Creek extending downstream to the Rt. 311 crossing	Craig County	Bacteria
Craig Creek	11.43 miles	Craig Creek from the mouth of Johns Creek downstream to the Barbours Creek confluence	Craig County	Bacteria
Barbours Creek	7.15 miles	Barbours Creek from just downstream of the Rt. 617 and 611 junction at the mouth of Valley Branch on downstream to its mouth on Craig Creek	Craig County	Bacteria
Little Patterson	4.24 miles	Little Patterson Creek from just upstream of the Rt. 684 (Sugar Tree Hollow Rd.) crossing downstream to its confluence with Patterson Creek	Botetourt County	Bacteria
Lapsley Run	9.01 miles	Lapsley Run from its confluence with the James River upstream to its headwaters	Botetourt County	Bacteria
James River	7.63 miles	James River from the confluence of the Jackson and Cowpasture Rivers downstream to the mouth of Stull Run	Botetourt County	Bacteria
Sinking Creek	6.42 miles	Sinking Creek mainstem from its mouth on the James River upstream to the Route 697 crossing	Botetourt County	Bacteria
Catawba Creek	13.46 miles	Catawba Creek from the confluence of Little Catawba Creek downstream to the Town of Fincastle POTW	Botetourt County	Bacteria
Catawba Creek	3.23 miles	Catawba Creek from Buchanan Branch downstream to the confluence with Little Catawba Creek	Botetourt County	Aquatic Life

How to comment and participate: The meetings of the TMDL process are open to the public, and all interested parties are welcome. A technical advisory committee (TAC) will be formed to assist in the development of this TMDL. Persons interested in assisting in the development of this TMDL as a TAC member should contact Lucy Baker during the comment period, November 2, 2017, through December 11, 2017. Written comments will be accepted through December 11, 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 Lucy Baker, Department of Environmental Quality, Blue Ridge Regional Office, 3019 Peters Creek Road, Roanoke, VA 24019, telephone (540) 562-6718, FAX (540) 562-6725, or email lucy.baker@deq.virginia.gov.

VIRGINIA CODE COMMISSION

Notice to State Agencies

Contact Information: *Mailing Address:* Virginia Code Commission, Pocahontas Building, 900 East Main Street, 8th Floor, Richmond, VA 23219; *Telephone:* (804) 698-1810; *Email:* varegs@dls.virginia.gov.

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

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

STATE WATER CONTROL BOARD

Titles of Regulations: 9VAC25-580. Underground Storage Tanks: Technical Standards and Corrective Action Requirements.

9VAC25-590. Petroleum Underground Storage Tank Financial Responsibility Requirements.

Publication: 34:1 VA.R. 12-68 September 4, 2017

Correction to Final Regulations:

Page 17, 9VAC25-580-20 A 1 b, line 6, replace "(insert date three years after effective date of rule)" with "January 1, 2021"

Page 20, column 2, 9VAC25-580-50, subdivision 3 c, line 4, replace "(insert effective date of the amendment)" with "January 1, 2018"

Page 23, column 1, 9VAC25-580-60, subdivision 2 b (2), line 3, strike "subsections" and insert "subdivisions"

subdivision 2 b (3), line 4, strike "subsection" and insert "subdivision"

column 2, subdivision 4, line 5, strike "subsection" and insert "subdivision"

column 2, subdivision 5, line 2, after "Part IV" insert "(9VAC25-580-130 et seq.)"

Page 24, column 1, 9VAC25-580-70 E, line 4, strike "subsection" and insert "subdivision"

Page 25, column 1, 9VAC25-580-82 B 1, line 1, replace "(insert effective date of amendment)" with "January 1, 2018"

subdivision B 1, line 4, replace "(insert date three years after effective date of amendment)" with "January 1, 2021"

subdivision B 2, line 1, replace "(insert effective date of amendment)" with "January 1, 2018"

column 1, 9VAC25-580-85 A, line 2, replace "(insert date three years after effective date of amendment)" with "January 1, 2021."

Page 30, 9VAC25-580-130 A 3, line 1, replace "(insert date three years after effective date of amendment)" with "January 1, 2021"

Page 33, column 1, 9VAC25-580-140, subdivision 2 a (2) (e), line 3, strike "subsection" and insert "section"

column 2, 9VAC25-580-150, subdivision 5 a, line 3, strike "subsections" and insert "subdivisions"

Page 34, column 2, 9VAC25-580-160, subdivision 2 e, line 4, replace "subsection" with "subdivision"

General Notices/Errata

Page 36, 9VAC25-580-180, subdivision 1, line 7, replace "(insert date three years after effective date of amendment)" with "January 1, 2021"

Page 37, column 1, 9VAC25-580-180, subdivision 1, line 2, replace "(insert effective date of amendment)" with "January 1, 2018."

Page 38, column 1, 9VAC25-580-210, subdivision 1 b, line 5, after "Part VI" insert "of this chapter"

Page 41, column 1, 9VAC25-580-330 B, line 3, strike "subsection" and insert "subdivision"

column 2, subsection C, line 3, after "Part VI" insert "(9VAC25-580-230 et seq.)"

Page 47, 9VAC25-580-380 A 1, line 1, replace "(insert effective date of amendment)" with "January 1, 2018."

subdivision A 1, table row 2, column 2, replace "(insert date three years after effective date of amendment)" with "January 1, 2021"

subdivision A 1, table row 3, column 2, replace "(insert date three years after effective date of amendment)" with "January 1, 2021"

subdivision A 1, table row 4, column 2, replace "(insert effective date of amendment)" with "January 1, 2018"

subdivision A 2, line 1, replace "(insert effective date of amendment)" with "January 1, 2018"

subsection B, line 1, replace "(insert date three years after effective date of amendment)" with "January 1, 2021"

subsection B, line 5, replace "(insert effective date of amendment)" with "January 1, 2018."

9VAC25-580-390 B, line 1, replace "(insert date three years after effective date of amendment)" with "January 1, 2021"

subsection B, line 4, replace "(insert effective date of amendment)" with "January 1, 2018."

Page 48, column 1, 9VAC25-580-390 D, line 4, replace "(insert date three years after effective date of amendment)" with "January 1, 2021"

Page 49, column 1, 9VAC25-580-390 D 2 a (2), table row 2, column 2, replace "(insert date three years after effective date of amendment)" with "January 1, 2021"

table row 3, column 2, line 1, replace "(insert date three years after effective date of rule)" with "January 1, 2021."

table row 3, column 2, line 3, replace "(insert date six years after effective date of amendment)" with "January 1, 2024"

table row 4, column 2, line 1, replace "(insert date six years after effective date of rule)" with "January 1, 2024."

table row 4, column 2, line 3, replace "(insert date seven years after effective date of amendment)" with "January 1, 2025"

table row 5, column 2 replace "(insert date seven years after effective date of amendment)" with "January 1, 2025"

column 2, subsection E, line 4, replace "(effective date of rule)" with "January 1, 2018."

Page 51, column 1, 9VAC25-590-10, definition of "corrective action", line 10, after "Part VII" strike "(9VAC25-580-320)" and insert "(9VAC25-580-310)"

Page 57, 9VAC25-590-180, line 8, after "Part VII" strike "(9VAC25-580-320)" and insert "(9VAC25-580-310)"

VA.R. Doc. No. R18-4454; Filed September 26, 2017, 12:16 p.m.