



VIRGINIA

REGISTER OF REGULATIONS

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VIRGINIA REGISTER INFORMATION PAGE

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

ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

An agency wishing to adopt, amend, or repeal regulations must first publish in the *Virginia Register* a notice of intended regulatory action; a basis, purpose, substance and issues statement; an economic impact analysis prepared by the Department of Planning and Budget; the agency's response to the economic impact analysis; a summary; a notice giving the public an opportunity to comment on the proposal; and the text of the proposed regulation.

Following publication of the proposal in the *Virginia Register*, the promulgating agency receives public comments for a minimum of 60 days. The Governor reviews the proposed regulation to determine if it is necessary to protect the public health, safety and welfare, and if it is clearly written and easily understandable. If the Governor chooses to comment on the proposed regulation, his comments must be transmitted to the agency and the Registrar no later than 15 days following the completion of the 60-day public comment period. The Governor's comments, if any, will be published in the *Virginia Register*. Not less than 15 days following the completion of the 60-day public comment period, the agency may adopt the proposed regulation.

The Joint Commission on Administrative Rules (JCAR) or the appropriate standing committee of each house of the General Assembly may meet during the promulgation or final adoption process and file an objection with the Registrar and the promulgating agency. The objection will be published in the *Virginia Register*. Within 21 days after receipt by the agency of a legislative objection, the agency shall file a response with the Registrar, the objecting legislative body, and the Governor.

When final action is taken, the agency again publishes the text of the regulation as adopted, highlighting all changes made to the proposed regulation and explaining any substantial changes made since publication of the proposal. A 30-day final adoption period begins upon final publication in the *Virginia Register*.

The Governor may review the final regulation during this time and, if he objects, forward his objection to the Registrar and the agency. In addition to or in lieu of filing a formal objection, the Governor may suspend the effective date of a portion or all of a regulation until the end of the next regular General Assembly session by issuing a directive signed by a majority of the members of the appropriate legislative body and the Governor. The Governor's objection or suspension of the regulation, or both, will be published in the *Virginia Register*. If the Governor finds that changes made to the proposed regulation have substantial impact, he may require the agency to provide an additional 30-day public comment period on the changes. Notice of the additional public comment period required by the Governor will be published in the *Virginia Register*.

The agency shall suspend the regulatory process for 30 days when it receives requests from 25 or more individuals to solicit additional public comment, unless the agency determines that the changes have minor or inconsequential impact.

A regulation becomes effective at the conclusion of the 30-day final adoption period, or at any other later date specified by the promulgating agency, unless (i) a legislative objection has been filed, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the 21-day objection period; (ii) the Governor exercises his authority to require the agency to provide for additional public comment, in which event the regulation,

unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the period for which the Governor has provided for additional public comment; (iii) the Governor and the General Assembly exercise their authority to suspend the effective date of a regulation until the end of the next regular legislative session; or (iv) the agency suspends the regulatory process, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the 30-day public comment period and no earlier than 15 days from publication of the readopted action.

A regulatory action may be withdrawn by the promulgating agency at any time before the regulation becomes final.

FAST-TRACK RULEMAKING PROCESS

Section 2.2-4012.1 of the Code of Virginia provides an exemption from certain provisions of the Administrative Process Act for agency regulations deemed by the Governor to be noncontroversial. To use this process, Governor's concurrence is required and advance notice must be provided to certain legislative committees. Fast-track regulations will become effective on the date noted in the regulatory action if no objections to using the process are filed in accordance with § 2.2-4012.1.

EMERGENCY REGULATIONS

Pursuant to § 2.2-4011 of the Code of Virginia, an agency, upon consultation with the Attorney General, and at the discretion of the Governor, may adopt emergency regulations that are necessitated by an emergency situation. An agency may also adopt an emergency regulation when Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment. The emergency regulation becomes operative upon its adoption and filing with the Registrar of Regulations, unless a later date is specified. Emergency regulations are limited to no more than 18 months in duration; however, may be extended for six months under certain circumstances as provided for in § 2.2-4011 D. Emergency regulations are published as soon as possible in the *Register*. During the time the emergency status is in effect, the agency may proceed with the adoption of permanent regulations through the usual procedures. To begin promulgating the replacement regulation, the agency must (i) file the Notice of Intended Regulatory Action with the Registrar within 60 days of the effective date of the emergency regulation and (ii) file the proposed regulation with the Registrar within 180 days of the effective date of the emergency regulation. If the agency chooses not to adopt the regulations, the emergency status ends when the prescribed time limit expires.

STATEMENT

The foregoing constitutes a generalized statement of the procedures to be followed. For specific statutory language, it is suggested that Article 2 (§ 2.2-4006 et seq.) of Chapter 40 of Title 2.2 of the Code of Virginia be examined carefully.

CITATION TO THE VIRGINIA REGISTER

The *Virginia Register* is cited by volume, issue, page number, and date. **34:8 VA.R. 763-832 December 11, 2017**, refers to Volume 34, Issue 8, pages 763 through 832 of the *Virginia Register* issued on December 11, 2017.

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

Members of the Virginia Code Commission: **John S. Edwards**, Chair; **Gregory D. Habeeb**; **Ryan T. McDougle**; **Robert L. Calhoun**; **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: **Karen Perrine**, Acting Registrar of Regulations; **Anne Bloomsburg**, Assistant Registrar; **Alexandra Stewart**, Regulations Analyst; **Rhonda Dyer**, Publications Assistant; **Terri Edwards**, Operations Staff Assistant.

PUBLICATION SCHEDULE AND DEADLINES

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

April 2018 through April 2019

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
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
35:8	November 19, 2018 (Monday)	December 10, 2018
35:9	December 5, 2018	December 24, 2018
35:10	December 14, 2018 (Friday)	January 7, 2019
35:11	January 2, 2019	January 21, 2019
35:12	January 16, 2019	February 4, 2019
35:13	January 30, 2019	February 18, 2019
35:14	February 13, 2019	March 4, 2019
35:15	February 27, 2019	March 18, 2019
35:16	March 13, 2019	April 1, 2019
35:17	March 27, 2019	April 15, 2019
35:18	April 10, 2019	April 29, 2019

*Filing deadlines are Wednesdays unless otherwise specified.

PETITIONS FOR RULEMAKING

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF OPTOMETRY

Agency Decision

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

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

Name of Petitioner: Jena Jung, O.D.

Nature of Petitioner's Request: To amend regulations to allow a practitioner to request inactive licensure. The petitioner would also like for the board to reactivate an inactive license for military persons or spouses at no additional cost.

Agency Decision: Request granted.

Statement of Reason for Decision: The board discussed the request to amend regulations in order to institute an inactive license and decided to begin the process of amending its regulations. Other boards at the Department of Health Professions allow practitioners to put their licenses in an inactive status at half the cost of an active license. The inactive license may then be reactivated by payment of the difference between the inactive and active license and evidence of continued competency. The board did not agree to waive the reactivation fee for military personnel or their spouses, as that is not the policy for any other board.

Agency Contact: Leslie L. Knachel, Executive Director, Board of Optometry, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4508, or email leslie.knachel@dhp.virginia.gov

VA.R. Doc. No. R18-13; Filed March 6, 2018, 11:15 a.m.

Agency Decision

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

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

Name of Petitioner: Janet Swartz, National Glaucoma Society.

Nature of Petitioner's Request: To amend 18VAC105-20-70 to add the National Glaucoma Society to the list of approved providers of continuing education or to include a new category for nonprofit optometric organizations.

Agency Decision: Request denied.

Statement of Reason for Decision: The board decided to take no action on the petition for rulemaking at this time. In reviewing the information and the current provisions in 18VAC105-20-70 of its regulations, board members determined that an overall review of continuing education providers was warranted before there were any additions to or

subtractions from the list. In the meantime, if courses offered by the National Glaucoma Society are approved by one of the entities currently on the list of approval bodies, those courses would be accepted for continuing education in Virginia.

Agency Contact: Leslie L. Knachel, Executive Director, Board of Optometry, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4508, or email leslie.knachel@dhp.virginia.gov.

VA.R. Doc. No. R18-09; Filed March 6, 2018, 11:17 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 14. INSURANCE

STATE CORPORATION COMMISSION

Final Regulation

<p>REGISTRAR'S NOTICE: The State Corporation Commission is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency that by the Constitution is expressly granted any of the powers of a court of record.</p>
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Title of Regulation: 14VAC5-335. Rules Governing Claims-Made Liability Insurance Policies (amending 14VAC5-335-10 through 14VAC5-335-60; adding 14VAC5-335-23, 14VAC5-335-27, 14VAC5-335-45).

Statutory Authority: §§ 12.1-13 and 38.2-223 of the Code of Virginia.

Effective Date: October 1, 2018.

Agency Contact: Eric Lowe, Policy Advisor, Bureau of Insurance, State Corporation Commission, P.O. Box 1157, Richmond, VA 23218, telephone (804) 371-9628, FAX (804) 371-9873, or email eric.lowe@scc.virginia.gov.

Summary:

The amendments update the rules to reflect current positions and practices for filing and approval, establish greater clarity for ease of application, and modernize the rules to create more consistency with the regulatory requirements of other states. The amendments (i) clarify that the rules do not apply to incidental claims-made liability insurance, (ii) make a distinction between a basic extended reporting period and a supplemental reporting period and identify clear standards for each, (iii) change the required consumer notice provided with a claims-made insurance policy, (iv) clarify and simplify the extended reporting period requirements upon policy termination, (v) reduce the period of time for the mandatory offer of a supplemental extended reporting period, (vi) add a requirement for the insurer to provide loss information to the insured, and (vii) clarify certain prohibitions and minimum standards.

In response to comments regarding the proposed changes to the regulation, additional amendments (i) clarify that the rules do not apply to nonadmitted insurers; (ii) adjust definitions; (iii) clarify requirements for a basic extended

reporting period, eliminating the time limitation; (iv) clarify offer and effective date provisions for any supplemental extended reporting period; and (v) more clearly define requirements to provide loss information.

AT RICHMOND, MARCH 13, 2018

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. INS-2017-00202

Ex Parte: In the matter of
Amending the Rules Governing
Claims-Made Liability Insurance Policies

ORDER ADOPTING AMENDMENTS TO RULES

By Order to Take Notice ("Order") entered October 2, 2017, insurers and interested persons were ordered to take notice that subsequent to November 30, 2017, the State Corporation Commission ("Commission") would consider the entry of an order adopting amendments to rules set forth in Chapter 335 of Title 14 of the Virginia Administrative Code, entitled "Rules Governing Claims-Made Liability Insurance Policies" ("Rules"), which amend the Rules at 14 VAC 5-335-10 through 14 VAC 5-335-60 and add new Rules at 14 VAC 5-335-23, 14 VAC 5-335-27 and 14 VAC 5-335-45, unless on or before November 30, 2017, any person objecting to the adoption of the amendments to the Rules filed a request for a hearing with the Clerk of the Commission ("Clerk").

The Order also required insurers and interested persons to file their comments in support of or in opposition to the proposed amendments to the Rules with the Clerk on or before November 30, 2017.

The Bureau of Insurance ("Bureau") held a meeting on November 2, 2017 to allow for insurers and interested persons to discuss and address questions about the proposed Rules with Bureau staff. In addition to comments and questions that the Bureau received during this meeting, the Commission received timely filed comments from the American Insurance Association, Insurance Services Office, Inc., Markel Corporation, National Risk Retention Association and the Physician Insurers Association of America. No request for a hearing was filed.

The Bureau considered the comments received and responded to them in its Statement of Position in Response to Comments ("Response to Comments"), which the Bureau filed with the Clerk on March 1, 2018. In its Response to Comments, the Bureau recommended numerous revisions to

the proposed amendments that address many of the comments received.

The amendments to Chapter 335 are necessary to update the Rules to reflect current positions and practices for filing and approval, establish greater clarity for ease of application and modernize the Rules to create more consistency with the regulatory requirements of other states. The proposed amendments and revisions as a result of the comments clarify and further define that the Rules do not apply to non-admitted insurers or to incidental claims-made liability insurance, make a distinction between a basic extended reporting period and a supplemental reporting period and identify clear standards for each, clarify and simplify provisions to offer a supplemental extended reporting period and the effective date for such period, add requirements for the insurer to provide loss information to the insured, and clarify certain prohibitions and minimum standards.

NOW THE COMMISSION, having considered the proposed amendments, the comments filed, the Bureau's Response to Comments and all the amendments to the Rules, is of the opinion that the attached amendments to the Rules should be adopted as amended, effective October 1, 2018.

Accordingly, IT IS ORDERED THAT:

(1) The amendments to the Rules Governing Claims-Made Liability Insurance Policies at Chapter 335 of Title 14 of the Virginia Administrative Code, which amend the Rules at 14 VAC 5-335-10 through 14 VAC 5-335-60 and add new Rules at 14 VAC 5-335-23, 14 VAC 5-335-27 and 14 VAC 5-335-45, which are attached hereto and made a part hereof, are hereby ADOPTED effective October 1, 2018.

(2) The Bureau shall provide notice of the adoption of the amendments to the Rules to all insurers licensed by the Commission to write insurance as defined in §§ 38.2-117, 38.2-118 and 38.2-111 B of the Code, as well as all interested persons.

(3) The Commission's Division of Information Resources shall cause a copy of this Order, together with the final amended Rules, to be forwarded to the Virginia Registrar of Regulations for appropriate publication in the Virginia Register of Regulations.

(4) The Commission's Division of Information Resources shall make available this Order and the attached amendments to the Rules on the Commission's website: <http://www.scc.virginia.gov/case>.

(5) The Bureau shall file with the Clerk of the Commission an affidavit of compliance with the notice requirements of Ordering Paragraph (2) above.

(6) This case is dismissed, and the papers herein shall be placed in the file for ended causes.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to: Office of the Attorney General, Division of Consumer Counsel, 202 N. 9th Street, 8th Floor, Richmond, Virginia 23219-3424; and a copy hereof shall be delivered to the Commission's Office of General Counsel and the Bureau of Insurance in care of Deputy Commissioner Rebecca Nichols.

14VAC5-335-10. Scope.

The provisions of this chapter shall apply to all policies of liability insurance, as defined in §§ 38.2-117, 38.2-118, and subsection B of § 38.2-111 of the Code of Virginia, that limit the time allowed for reporting claims arising out of injury, damage, or wrongful act or omission covered by the policy. Any such policy shall be deemed to be a claims-made liability insurance policy for purposes of this chapter. The provisions of this chapter shall apply to ~~all~~ claims-made liability insurance policies delivered or issued for delivery in the Commonwealth [by an admitted insurer] to become effective on or after ~~January 1, 2005~~ [July October] 1, 2018.

This chapter shall not apply to incidental claims-made liability insurance.

14VAC5-335-20. Definitions.

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

["Admitted insurer" means an insurer licensed in the Commonwealth to engage in the business of insurance. An admitted insurer does not include any surplus lines insurer.]

"Basic extended reporting period" means an [~~extension of the time allowed for reporting claims, after termination of any claims-made liability coverage, for injury, damage, or wrongful act or omission that occurred prior to termination of the coverage and that, except for the requirement to report claims during the policy period, was otherwise covered by the policy~~ automatic extended reporting period provided at no additional premium charge].

"Claims-made liability insurance—policy" means an insurance policy ~~or endorsement~~ providing coverage for the insured's liability for injury, damage, or wrongful act or omission occurring prior to the termination of coverage but subsequent to any applicable retroactive date, provided the claim for such injury, damage, or wrongful act or omission is first made during the policy period or any extended reporting period.

["Extended reporting period" means an extension of the time allowed for reporting claims, after termination of any claims-made liability] ~~coverage~~, [policy for injury, damage, or wrongful act or omission that occurred prior to termination of the] ~~coverage~~ [policy and that, except for the requirement to report claims during the policy period, was otherwise covered by the policy.]

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"Incidental claims-made liability insurance" means any claims-made liability [~~insurance that is~~ coverage] contained in [~~any or attached to a~~] policy [~~of insurance in which the coverage is provided with either no separate or identifiable charge or with a premium amount that does not exceed 10% of the total premium charged for the policy providing liability insurance on other than a claims-made basis~~].

"Medical [~~malpractice~~ professional liability] insurance" means insurance coverage against the legal liability of the insured and against loss, damage, or expense incident to a claim arising out of the death or injury of any person as the result of [~~actual or alleged~~] negligence in rendering or failing to render professional service by any provider of health care.

"Policy" means a coverage part, form, or endorsement that is contained in a contract of insurance.

"Retroactive date" means the date on or after which injury, damage, or wrongful act or omission may occur and be covered under a claims-made liability insurance policy.

"Supplemental extended reporting period" means an extended reporting period that is available for the insured to purchase.

["Unimpaired limit of liability" means a limit equal to the dollar amount shown as the aggregate limit in the declarations (i) at the inception of the policy period or (ii) as amended in the policy thereafter, and in force at the time of the termination of the policy.]

14VAC5-335-23. Required notice.

The following notice, or a notice that is substantially similar, shall be provided in writing with each new and renewal claims-made liability insurance policy [~~issued or delivered in this Commonwealth~~]:

You have purchased claims-made liability insurance. When this insurance terminates, the insurer will send an offer with the available options for purchasing the supplemental extended reporting period. You may be entitled to receive information on claims under this policy. If you have any questions regarding your claims-made coverage or the importance of purchasing the supplemental extended reporting period, please contact your insurance company or your insurance agent.

14VAC5-335-27. Standards for basic extended reporting period.

An insurer may offer a basic extended reporting period [~~that is included in the policy and incurs no additional charge. The basic extended reporting period shall not be longer than 12 months.~~ If a basic extended reporting period is offered, it shall be included in the policy].

14VAC5-335-30. Insurers Requirement to offer supplemental extended reporting period coverage.

A. Every claims-made liability insurance policy [~~issued or delivered in this Commonwealth~~] shall include a provision which shall offer to that the named insured ~~extended reporting period coverage upon termination of claims made coverage may purchase a supplemental extended reporting period in accordance with the provisions of 14VAC5-335-40 upon policy termination.~~ To the extent that policy limits apply separately to each named insured, each named insured shall be separately entitled to purchase ~~an~~ a supplemental extended reporting period. ~~Termination~~ Policy termination of claims-made coverage shall include:

1. Cancellation or nonrenewal of the policy by the insurer or the insured;
2. Advancement of any applicable retroactive date; or
3. Renewal of the ~~coverage~~ policy on other than a claims-made basis.

~~B. The insured shall be allowed at least 30 days after termination in which to purchase the extended reporting period coverage.~~

~~C. Notwithstanding the foregoing, B. No offer of a supplemental extended reporting period coverage does not have to be offered is required~~ if cancellation or nonrenewal of a claims-made liability insurance policy is due to:

1. Nonpayment of premium;
2. Failure to comply with terms or conditions of the policy; or
3. Fraud.

C. Each claims-made liability insurance policy shall contain provisions that clearly state when the supplemental extended reporting period will and will not be offered.

~~D. No insurer shall deliver or issue for delivery a claims-made liability insurance policy in this Commonwealth unless such policy contains the provisions set forth in subsections A, B and C of this section~~ Upon a policy termination [~~in accordance with~~ as set forth in] subsection A of this section, the insurer shall offer in writing to the named insured a supplemental extended reporting period. The offer shall include the duration and premium of the [~~minimum~~] required supplemental extended reporting period coverage in 14VAC5-335-40 and [~~at any~~] other available duration and premium options. The offer shall be sent no earlier than the date of notification of termination of the policy and not later than 15 days after the termination of the policy. The named insured shall have a minimum of 30 days from [~~the termination of the~~] policy [~~termination~~] to purchase the supplemental extended reporting period.

~~E. The following notice, or a notice that is substantially similar, shall be provided in writing with each new and renewal claims made liability insurance policy issued or delivered in this Commonwealth:~~

~~You have purchased a claims made liability insurance policy. Please read this policy carefully to understand your coverage. There are certain circumstances in which you must be provided the opportunity to purchase an extended reporting period for reporting claims. These are explained in your policy. If you have any questions regarding the cost of an extended reporting period or the available options under the extended reporting period, please contact your insurance company or your insurance agent.~~

14VAC5-335-40. Extended Supplemental extended reporting period requirements.

~~A. Each insurer shall offer a supplemental extended reporting period to allow an extension of the time [allowed] to report claims as follows:~~

~~1. For medical [professional liability ~~malpractice~~] insurance, an unlimited [supplemental] extended reporting period shall be offered with unimpaired limits of liability and shall be effective the same day as the termination of the policy; or~~

~~2. For all other claims-made liability insurance policies, a ~~two-year~~ [~~one-year supplemental~~] extended reporting period [of at least one year] shall be offered.~~

~~However, this shall not prohibit In addition, the insurer from may also offering offer greater or more limited extensions of time in which to report claims. ~~No insurer shall deliver or issue for delivery a claims made liability insurance policy in this Commonwealth unless such policy contains the applicable provisions set forth in this subsection.~~~~

~~B. Each insurer shall offer an extended reporting period that includes unimpaired limits of liability equal to the limits of the policy being extended. However, this shall not prohibit the insurer from also offering higher or lower limits of liability applicable to the extended reporting period. No insurer shall deliver or issue for delivery a claims made liability insurance policy in this Commonwealth unless such policy contains the applicable provisions set forth in this subsection. This subsection shall not apply to excess or umbrella liability coverage, or environmental impairment or pollution liability coverage, or to a limited extended reporting period of 60 days or less provided automatically without an additional premium charge; nor shall this subsection apply to any class, line, subclassification, or market segment exempted from this requirement by order of the commission [In the event the policy contains no basic extended reporting period or the insured purchases reinstated limits A supplemental extended reporting period purchased with unimpaired limits of liability] in whole or in part [~~the supplemental extended reporting period~~] shall be effective the same day as the~~

~~termination of the policy. [In all other instances, the policy provisions shall establish the effective date of the supplemental extended reporting period as (i) the same day as the termination of the policy if no basic extended reporting period applies, or (ii) the same day the basic extended reporting period expires if a basic extended reporting period applies.]~~

~~C. When an insurer excludes any existing coverage from a claims made liability insurance policy and the policy remains in effect or is renewed, the insurer shall offer an extended reporting period for such coverage on the same basis that the extended reporting period would be offered if the entire policy were being terminated. For purposes of this subsection, the exclusion of any existing coverage shall not include changes in policy limits or deductibles.~~

14VAC5-335-45. Requirement to provide loss information.

~~[A.] If the policy is issued with an aggregate limit [~~the~~:~~

~~1. The] insurer shall provide loss information to the named insured with the notice of cancellation or nonrenewal of the [~~claims made~~] policy [;] or~~

~~[2. The named insured may request loss information within 120 days from the date of policy renewal. The insurer shall provide such loss information] within 15 calendar days of the insured's request.~~

~~[B.] The loss information shall [include the aggregate amount of payments and reserves subject to the aggregate limit for any closed claims, open claims, or notices of occurrence for the period to which the aggregate applies be sufficient to inform the named insured regarding the remaining or potentially remaining limits of coverage available under the terminating policy.~~

~~C. This section shall apply to medical professional liability insurance only if the insurer offers an extended reporting period with other than unimpaired limits of liability].~~

14VAC5-335-50. Prohibitions.

~~A. Once purchased by the insured, The supplemental extended reporting period coverage shall not be eancelled canceled by the insurer without the consent of the insured except for nonpayment of premium or fraud. ~~No extended reporting endorsement shall be delivered or issued for delivery in this Commonwealth unless it contains this provision.~~~~

~~B. Except with respect to a limited extended reporting period of 60 days or less provided automatically without an additional premium charge, an insurer shall be prohibited from voiding No insurer shall deny coverage under a supplemental extended reporting period coverage on the basis that other applicable insurance coverage is in effect. ~~However, this shall not prohibit an An insurer from applying~~~~

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may apply the supplemental extended reporting period coverage as excess over such other insurance.

14VAC5-335-60. Severability.

If any provision of this chapter or the its application thereof to any person or circumstance is for any reason held to be invalid by a court, the remainder of the this chapter and the application of such provision the provisions to other persons or circumstances shall not be affected thereby.

V.A.R. Doc. No. R18-5289; Filed March 14, 2018, 11:02 a.m.

◆ ————— ◆

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY

Final Regulation

REGISTRAR'S NOTICE: The Board of Audiology and Speech-Language Pathology is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 6 of the Code of Virginia, which excludes regulations of the regulatory boards served by the Department of Health Professions pursuant to Title 54.1 of the Code of Virginia that are limited to reducing fees charged to regulants and applicants. The Board of Audiology and Speech-Language Pathology will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: 18VAC30-21. Regulations Governing Audiology and Speech-Language Pathology (amending 18VAC30-21-40, 18VAC30-21-90, 18VAC30-21-100).

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

Effective Date: May 2, 2018.

Agency Contact: Leslie L. Knachel, Executive Director, Board of Audiology and Speech-Language Pathology, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4630, FAX (804) 527-4471, or email audbd@dhp.virginia.gov.

Summary:

The amendments (i) establish a one-time reduction in renewal fees in 2018, (ii) eliminate renewal fees for 2019, and (iii) change the renewal deadline from December 31 to June 30 beginning in the year 2020.

18VAC30-21-40. Fees required.

A. The following fees shall be paid as applicable for licensure:

1. Application for audiology or speech-language pathology license	\$135
2. Application for school speech-language pathology license	\$70
3. Verification of licensure requests from other states	\$20
4. Annual renewal of audiology or speech-language pathology license	\$75
5. Late renewal of audiology or speech-language pathology license	\$25
6. Annual renewal of school speech-language pathology license	\$40
7. Late renewal of school speech-language pathology license	\$15
8. Reinstatement of audiology or speech-language pathology license	\$135
9. Reinstatement of school speech-language pathology license	\$70
10. Duplicate wall certificate	\$25
11. Duplicate license	\$5
12. Returned check	\$35
13. Inactive license renewal for audiology or speech-language pathology	\$40
14. Inactive license renewal for school speech-language pathology	\$20
15. Application for provisional license	\$50
16. Renewal of provisional license	\$25

B. Fees shall be made payable to the Treasurer of Virginia and shall not be refunded once submitted.

C. The renewal fees due by December 31, 2018, shall be as follows:

<u>1. Annual renewal of audiology or speech-language pathology license</u>	<u>\$55</u>
<u>2. Annual renewal of school speech-language pathology license</u>	<u>\$30</u>

Part III

Renewal and Continuing Education

18VAC30-21-90. Renewal requirements.

A. A person who desires to renew his license shall, not later than December 31 of ~~each year~~ 2018, submit the renewal notice and applicable renewal fee. Beginning with calendar year 2020, the renewal of licensure deadline shall be June 30 of each year. For calendar year 2019, no renewal is required. A licensee who fails to renew his license by the expiration

date shall have a lapsed license, and practice with a lapsed license may constitute grounds for disciplinary action by the board.

B. A person who fails to renew his license by the expiration date may renew at any time within one year of expiration by submission of a renewal notice, the renewal fee and late fee, and statement of compliance with continuing education requirements.

18VAC30-21-100. Continuing education requirements for renewal of an active license.

A. In order to renew an active license, a licensee shall complete at least 10 contact hours of continuing education prior to ~~December 31 of the renewal date~~ each year. Up to 10 contact hours of continuing education in excess of the number required for renewal may be transferred or credited to the next renewal year. One hour of the 10 hours required for annual renewal may be satisfied through delivery of professional services, without compensation, to low-income individuals receiving health services through a local health department or a free clinic organized in whole or primarily for the delivery of those services. One hour of continuing education may be credited for three hours of providing such volunteer services, as documented by the health department or free clinic.

B. Continuing education shall be activities, programs, or courses related to audiology or speech-language pathology, depending on the license held, and offered or approved by one of the following accredited sponsors or organizations sanctioned by the profession:

1. The Speech-Language-Hearing Association of Virginia or a similar state speech-language-hearing association of another state;
2. The American Academy of Audiology;
3. The American Speech-Language-Hearing Association;
4. The Accreditation Council on Continuing Medical Education of the American Medical Association offering Category I continuing medical education;
5. Local, state, or federal government agencies;
6. Colleges and universities;
7. International Association of Continuing Education and Training; or
8. Health care organizations accredited by the Joint Commission on Accreditation of Healthcare Organizations.

C. If the licensee is dually licensed by this board as an audiologist and speech-language pathologist, a total of no more than 15 hours of continuing education are required for renewal of both licenses with a minimum of 7.5 contact hours in each profession.

D. A licensee shall be exempt from the continuing education requirements for the first renewal following the date of initial licensure in Virginia under 18VAC30-21-60.

E. The licensee shall retain all continuing education documentation for a period of three years following the renewal of an active license. Documentation from the sponsor or organization shall include the title of the course, the name of the sponsoring organization, the date of the course, and the number of hours credited.

F. The board may grant an extension of the deadline for continuing education requirements, for up to one year, for good cause shown upon a written request from the licensee prior to the renewal date of ~~December 31~~ each year.

G. The board may grant an exemption for all or part of the requirements for circumstances beyond the control of the licensee, such as temporary disability, mandatory military service, or officially declared disasters.

H. The board shall periodically conduct an audit for compliance with continuing education requirements. Licensees selected for an audit conducted by the board shall complete the Continuing Education ~~Activity and Assessment~~ Form and provide all supporting documentation within 30 days of receiving notification of the audit.

I. Failure to comply with these requirements may subject the licensee to disciplinary action by the board.

VA.R. Doc. No. R18-5419; Filed March 5, 2018, 9:53 a.m.

BOARD OF MEDICINE

Final Regulation

REGISTRAR'S NOTICE: The Board of Medicine is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 6 of the Code of Virginia, which excludes regulations of the regulatory boards served by the Department of Health Professions pursuant to Title 54.1 of the Code of Virginia that are limited to reducing fees charged to regulants and applicants. The Board of Medicine will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: 18VAC85-20. Regulations Governing the Practice of Medicine, Osteopathic Medicine, Podiatry, and Chiropractic (amending 18VAC85-20-22).

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

Effective Date: May 2, 2018.

Agency Contact: William L. Harp, M.D., Executive Director, Board of Medicine, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4621, FAX (804) 527-4429, or email william.harp@dhp.virginia.gov.

Regulations

Summary:

The amendments establish a one-time fee reduction for limited and restricted licenses applicable to the renewal cycle for 2018.

18VAC85-20-22. Required fees.

A. Unless otherwise provided, fees established by the board shall not be refundable.

B. All examination fees shall be determined by and made payable as designated by the board.

C. The application fee for licensure in medicine, osteopathic medicine, and podiatry shall be \$302, and the fee for licensure in chiropractic shall be \$277.

D. The fee for a temporary authorization to practice medicine pursuant to clauses (i) and (ii) of § 54.1-2927 B of the Code of Virginia shall be \$25.

E. The application fee for a limited professorial or fellow license issued pursuant to 18VAC85-20-210 shall be \$55. The annual renewal fee shall be \$35. For renewal of a limited professorial or fellow license in ~~2016~~ 2018, the fee shall be \$30. An additional fee for late renewal of licensure shall be \$15.

F. The application fee for a limited license to interns and residents pursuant to 18VAC85-20-220 shall be \$55. The annual renewal fee shall be \$35. For renewal of a limited license to interns and residents in ~~2016~~ 2018, the fee shall be \$30. An additional fee for late renewal of licensure shall be \$15.

G. The fee for a duplicate wall certificate shall be \$15; the fee for a duplicate license shall be \$5.00.

H. The fee for biennial renewal shall be \$337 for licensure in medicine, osteopathic medicine, and podiatry and \$312 for licensure in chiropractic, due in each even-numbered year in the licensee's birth month. An additional fee for processing a late renewal application within one renewal cycle shall be \$115 for licensure in medicine, osteopathic medicine, and podiatry and \$105 for licensure in chiropractic. For renewal of licensure in 2018, the fee shall be \$270 for licensure in medicine, osteopathic medicine, and podiatry and \$250 for licensure in chiropractic.

I. The fee for requesting reinstatement of licensure or certification pursuant to § 54.1-2408.2 of the Code of Virginia or for requesting reinstatement after any petition to reinstate the certificate or license of any person has been denied shall be \$2,000.

J. The fee for reinstatement of a license issued by the Board of Medicine pursuant to § 54.1-2904 of the Code of Virginia that has expired for a period of two years or more shall be \$497 for licensure in medicine, osteopathic medicine, and podiatry (\$382 for reinstatement application in addition to the

late fee of \$115) and \$472 for licensure in chiropractic (\$367 for reinstatement application in addition to the late fee of \$105). The fee shall be submitted with an application for licensure reinstatement.

K. The fee for a letter of verification of licensure shall be \$10, and the fee for certification of grades to another jurisdiction by the board shall be \$25.

L. The fee for biennial renewal of an inactive license shall be \$168, due in the licensee's birth month. An additional fee for late renewal of licensure shall be \$55 for each renewal cycle.

M. The fee for an application or for the biennial renewal of a restricted volunteer license shall be \$75, due in the licensee's birth month. An additional fee for late renewal of licensure shall be \$25 for each renewal cycle. For renewal of a restricted volunteer license in ~~2016~~ 2018, the fee shall be \$65.

N. The fee for a returned check shall be \$35.

VA.R. Doc. No. R18-5418; Filed March 5, 2018, 8:34 a.m.

BOARD OF NURSING

Final Regulation

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

Title of Regulation: **18VAC90-19. Regulations Governing the Practice of Nursing (amending 18VAC90-19-80; repealing 18VAC90-19-90, 18VAC90-19-100).**

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

Effective Date: May 2, 2018.

Agency Contact: Jay P. Douglas, R.N., Executive Director, Board of Nursing, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4520, FAX (804) 527-4455, or email jay.douglas@dhp.virginia.gov.

Summary:

Pursuant to Chapter 108 of the 2016 Acts of Assembly, the amendments conform Virginia's rules for the issuance of a multistate licensure privilege to the rules of the Nurse Licensure Compact.

Part II
Multistate Licensure Privilege

18VAC90-19-80. Issuance of a license with a multistate licensure privilege.

A. To be issued a license with a multistate licensure privilege by the board or to change the primary state of residency, a nurse currently licensed in Virginia or a person applying for licensure in Virginia shall submit a declaration stating that his primary residence is in Virginia. Evidence of a primary state of residence may be required to include:

1. A driver's license with a home address;
2. A voter registration card displaying a home address;
3. A federal or state tax return declaring the primary state of residence;
4. A Military Form No. 2058—state of legal residence; or
5. A W 2 from the United States government or any bureau, division, or agency thereof indicating the declared state of residence.

~~B. A nurse on a visa from another country applying for licensure in Virginia may declare either the country of origin or Virginia as the primary state of residence. If the foreign country is declared as the primary state of residence, a single state license shall be issued by Virginia.~~

~~C. A nurse changing the primary state of residence from another party state to Virginia may continue to practice under the former party state license and multistate licensure privilege during the processing of the nurse's licensure application by the board for a period not to exceed 90 days.~~

1. ~~If a nurse is under a pending investigation by a former home state, the licensure application in Virginia shall be held in abeyance and the 90 day authorization to practice stayed until resolution of the pending investigation.~~
2. ~~A license issued by a former party state shall no longer be valid upon issuance of a license by the board.~~
3. ~~If the board denies licensure to an applicant from another party state, it shall notify the former home state within 10 business days, and the former home state may take action in accordance with the laws and regulations of that state~~

~~D. A license issued by a party state is valid for practice in all other party states, unless clearly designated as valid only in the state that issued the license. When a party state issues a license authorizing practice only in that state and not authorizing practice in other party states, the license shall be clearly marked with words indicating that it is valid only in the state of issuance shall comply with the regulations adopted by the Interstate Commission of Nurse Licensure Compact Administrators (<https://www.ncsbn.org/enlcrules.htm>) and provisions of Article 6.1 (§ 54.1-3040.1~~

~~et seq.) of Chapter 30 of Title 54.1 of the Code of Virginia in effect at the time of the application.~~

18VAC90-19-90. Limitations of a multistate licensure privilege. (Repealed.)

~~A. The board shall include in all disciplinary orders that limit practice or require monitoring the requirement that the licensee subject to the order shall agree to limit practice to Virginia during the period in which the order is in effect. A nurse may be allowed to practice in other party states while an order is in effect with prior written authorization from both the board and boards of other party states.~~

~~B. An individual who had a license that was surrendered, revoked, or suspended or an application denied for cause in a prior state of primary residence may be issued a single state license in a new primary state of residence until such time as the individual would be eligible for an unrestricted license by the prior state of adverse action. Once eligible for licensure in the prior state, a multistate license may be issued.~~

18VAC90-19-100. Access to information in the coordinated licensure information system. (Repealed.)

~~A licensee may submit a request in writing to the board to review the public data relating to the licensee maintained in the coordinated licensure information system. In the event a licensee asserts that any related data is inaccurate, the burden of proof shall be upon the licensee to provide evidence that substantiates such claim. The board shall verify and correct inaccurate data in the information system within 10 business days.~~

VA.R. Doc. No. R18-5400; Filed March 5, 2018, 2:11 p.m.

**BOARD OF OPTOMETRY
Final Regulation**

REGISTRAR'S NOTICE: The Board of Optometry is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 6 of the Code of Virginia, which excludes regulations of the regulatory boards served by the Department of Health Professions pursuant to Title 54.1 of the Code of Virginia that are limited to reducing fees charged to regulants and applicants. The Board of Optometry will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: 18VAC105-20. Regulations Governing the Practice of Optometry (amending 18VAC105-20-20, 18VAC105-20-60, 18VAC105-20-70).

Statutory Authority: §§ 54.1-2400 and 54.1-3223 of the Code of Virginia.

Effective Date: May 2, 2018.

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Agency Contact: Leslie L. Knachel, Executive Director, Board of Optometry, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4508, FAX (804) 527-4471, or email leslie.knachel@dhp.virginia.gov.

Summary:

The amendments (i) provide a one-time reduction in renewal fees in 2018, (ii) eliminate renewal fees for 2019, and (iii) change the renewal fees deadline from December 31 to March 31 beginning in the year 2020.

18VAC105-20-20. Fees.

A. Required fees.

Initial application and licensure (including TPA certification)	\$250
Application for TPA certification	\$200
Annual licensure renewal without TPA certification	\$150
Annual licensure renewal with TPA certification	\$200
Late renewal without TPA certification	\$50
Late renewal with TPA certification	\$65
Returned check	\$35
Professional designation application	\$100
Annual professional designation renewal (per location)	\$50
Late renewal of professional designation	\$20
Reinstatement application fee (including renewal and late fees)	\$400
Reinstatement application after disciplinary action	\$500
Duplicate wall certificate	\$25
Duplicate license	\$10
Licensure verification	\$10

B. Unless otherwise specified, all fees are nonrefundable.

C. From October 31, ~~2015~~ 2018, to December 31, ~~2015~~ 2018, the following fees shall be in effect:

Annual licensure renewal without TPA certification	\$100 <u>\$75</u>
Annual licensure renewal with TPA certification	\$135 <u>\$100</u>
Annual professional designation renewal (per location)	\$30 <u>\$25</u>

18VAC105-20-60. Renewal of licensure; reinstatement; renewal fees.

A. Every person authorized by the board to practice optometry shall, on or before December 31 of ~~every year~~ 2018, submit a completed renewal form and pay the prescribed annual licensure fee. Beginning with calendar year 2020, the renewal of licensure deadline shall be March 31 of each year. For calendar year 2019, no renewal is required.

B. It shall be the duty and responsibility of each licensee to assure that the board has the licensee's current address of record and the public address, if different from the address of record. All changes of address or name shall be furnished to the board within 30 days after the change occurs. All notices required by law or by these rules and regulations are to be deemed to be validly tendered when mailed to the address of record given and shall not relieve the licensee of the obligation to comply.

C. The license of every person who does not complete the renewal form and submit the renewal fee ~~by December 31 of~~ each year may be renewed for up to one year by paying the prescribed renewal fee and late fee, provided the requirements of 18VAC105-20-70 have been met. After ~~December 31 the~~ renewal deadline, a license that has not been renewed is lapsed. Practicing optometry in Virginia with a lapsed license may subject the licensee to disciplinary action and additional fines by the board.

D. An optometrist whose license has been lapsed for more than one year and who wishes to resume practice in Virginia shall apply for reinstatement. The executive director may grant reinstatement provided that:

1. The applicant can demonstrate continuing competence;
2. The applicant has satisfied current requirements for continuing education for the period in which the license has been lapsed, not to exceed two years; and
3. The applicant has paid the prescribed reinstatement application fee.

E. The board may require an applicant who has allowed his license to expire and who cannot demonstrate continuing competency to pass all or parts of the board-approved examinations.

18VAC105-20-70. Requirements for continuing education.

A. Each license renewal shall be conditioned upon submission of evidence to the board of 20 hours of continuing education taken by the applicant during the previous license period. A licensee who completes more than 20 hours of continuing education in a year shall be allowed to carry forward up to 10 hours of continuing education for the next annual renewal cycle.

1. The 20 hours may include up to two hours of recordkeeping for patient care, including coding for

diagnostic and treatment devices and procedures or the management of an optometry practice, provided that such courses are not primarily for the purpose of augmenting the licensee's income or promoting the sale of specific instruments or products.

2. For optometrists who are certified in the use of therapeutic pharmaceutical agents, at least 10 of the required continuing education hours shall be in the areas of ocular and general pharmacology, diagnosis and treatment of the human eye and its adnexa, including treatment with new pharmaceutical agents, or new or advanced clinical devices, techniques, modalities, or procedures.

3. At least 10 hours shall be obtained through real-time, interactive activities, including in-person or electronic presentations, provided that during the course of the presentation, the licensee and the lecturer may communicate with one another.

4. A licensee may also include up to two hours of training in cardiopulmonary resuscitation (CPR).

5. Two hours of the 20 hours required for annual renewal may be satisfied through delivery of professional services, without compensation, to low-income individuals receiving health services through a local health department or a free clinic organized in whole or primarily for the delivery of those services. One hour of continuing education may be credited for three hours of providing such volunteer services, as documented by the health department or free clinic.

B. Each licensee shall attest to fulfillment of continuing education hours on the required annual renewal form. All continuing education shall be completed prior to ~~December 31~~ the renewal deadline unless an extension or waiver has been granted by the Continuing Education Committee. A request for an extension or waiver shall be received prior to ~~December 31~~ of the renewal deadline each year.

C. All continuing education courses shall be offered by an approved sponsor or accrediting body listed in subsection G of this section. Courses that are not approved by a board-recognized sponsor in advance shall not be accepted for continuing education credit. For those courses that have a post-test requirement, credit will only be given if the optometrist receives a passing grade as indicated on the certificate.

D. Licensees shall maintain continuing education documentation for a period of not less than three years. A random audit of licensees may be conducted by the board, which will require that the licensee provide evidence substantiating participation in required continuing education courses within 14 days of the renewal date.

E. Documentation of hours shall clearly indicate the name of the continuing education provider and its affiliation with an

approved sponsor or accrediting body as listed in subsection G of this section. Documents that do not have the required information shall not be accepted by the board for determining compliance. Correspondence courses shall be credited according to the date on which the post-test was graded as indicated on the continuing education certificate.

F. A licensee shall be exempt from the continuing competency requirements for the first renewal following the date of initial licensure by examination in Virginia.

G. An approved continuing education course or program, whether offered by correspondence, electronically or in person, shall be sponsored, accredited, or approved by one of the following:

1. The American Optometric Association and its constituent organizations.
2. Regional optometric organizations.
3. State optometric associations and their affiliate local societies.
4. Accredited colleges and universities providing optometric or medical courses.
5. The American Academy of Optometry and its affiliate organizations.
6. The American Academy of Ophthalmology and its affiliate organizations.
7. The Virginia Academy of Optometry.
8. Council on Optometric Practitioner Education (COPE).
9. State or federal governmental agencies.
10. College of Optometrists in Vision Development.
11. The Accreditation Council for Continuing Medical Education of the American Medical Association for Category 1 credit.
12. Providers of training in cardiopulmonary resuscitation (CPR).
13. Optometric Extension Program.

H. In order to maintain approval for continuing education courses, providers or sponsors shall:

1. Provide a certificate of attendance that shows the date, location, presenter or lecturer, content hours of the course and contact information of the provider or sponsor for verification. The certificate of attendance shall be based on verification by the sponsor of the attendee's presence throughout the course, either provided by a post-test or by a designated monitor.
2. Maintain documentation about the course and attendance for at least three years following its completion.

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I. Falsifying the attestation of compliance with continuing education on a renewal form or failure to comply with continuing education requirements may subject a licensee to disciplinary action by the board, consistent with § 54.1-3215 of the Code of Virginia.

VA.R. Doc. No. R18-5432; Filed March 14, 2018, 12:16 p.m.

◆ ————— ◆

TITLE 20. PUBLIC UTILITIES AND TELECOMMUNICATIONS

STATE CORPORATION COMMISSION

Proposed Regulation

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

Title of Regulation: **20VAC5-309. Rules for Enforcement of the Underground Utility Damage Prevention Act (amending 20VAC5-309-150).**

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

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

Public Comment Deadline: May 17, 2018.

Agency Contact: Massoud Tahamtani, Director, Utility and Railroad Safety, State Corporation Commission, P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9980, FAX (804) 371-9734, or email massoud.tahamtani@scc.virginia.gov.

Summary:

The proposed amendments allow for trenchless excavation across gravity fed sewer mains and combination storm/sanitary sewer system utility lines without exposing the facilities if (i) a video camera designed to pass through the underground facilities is able to communicate the location, depth, diameter, and condition of those facilities to the excavator and (ii) certain other safety and notification requirements are met. The State Corporation Commission initiated this proposed action in response to a petition for rulemaking.

AT RICHMOND, MARCH 5, 2018

PETITION OF

COLUMBIA GAS OF VIRGINIA, INC.

CASE NO. URS-2018-00005

For rulemaking to revise requirements for trenchless excavation set forth in 20VAC5-309-150 of the Rules for Enforcement of the Underground Utility Damage Prevention Act

ORDER ESTABLISHING PROCEEDING

On January 23, 2018, Columbia Gas of Virginia, Inc. ("Petitioner"), filed a Petition for Rulemaking ("Petition") requesting that the State Corporation Commission ("Commission") initiate a rulemaking for the limited purpose of revising 20VAC5-309-150 ("Rule 150") of the Commission's Rules for Enforcement of the Underground Utility Damage Prevention Act¹ that prescribes requirements for trenchless excavation. The proposed revisions ("Proposed Rule") are attached hereto as Attachment A.²

The Petitioner states that the Proposed Rule would (1) provide for greater flexibility when conducting trenchless excavation that crosses gravity fed sewer mains and combination storm/sanitary sewer system utility lines; and (2) enhance the safety and efficiency of conducting such excavations.³ According to the Petitioner, the Proposed Rule recognizes that technology developed since the Commission's adoption of Rule 150 allows for safe trenchless excavation practices when crossing such utility lines without exposing them by hand digging.⁴

The Petitioner asserts that technological advancements have enabled the precise location of gravity fed sewer mains and storm drains without exposing those facilities, as required by Rule 150 (6).⁵ The Petition states that video cameras designed to pass through these underground facilities are able to communicate with locating equipment at ground level to provide the precise location, depth, and diameter of these utility lines. Video images also show the condition of the facilities, revealing conditions such as cross bores and root damage.⁶ According to the Petitioner, this technology enables the precise knowledge of depth, diameter, location, and condition of gravity fed sewer mains and storm drains to be known without exposing those facilities by hand digging.⁷

According to the Petitioner, the Proposed Rule offers an alternative to the current requirement to expose all utility lines in the bore path prior to conducting trenchless excavation.⁸ The Petitioner states that the Proposed Rule would allow trenchless excavation crossing gravity fed sewer mains and combination storm/sanitary sewer systems to occur without exposing those utility lines if the enumerated steps are taken to ensure proper notification, documentation, and safety precautions.⁹ The steps set forth in the Proposed Rule

include: (1) the receipt of documentation that the utility line operator has been notified of the excavation; (2) that the excavator has determined the depth, diameter, and condition of the utility lines using appropriate locating technology and a sewer system camera; (3) that a clearance of at least three feet is maintained between the bore path and the utility lines; (4) that the post-bore condition of the utility lines is reviewed using a sewer system camera; (5) that the excavator notify the utility line operator(s) of any damage found; and (6) that the excavator maintain all video documentation for 12 months and make it available to the utility line operator(s) and the Division of Utility and Railroad Safety.¹⁰

The Petitioner asserts that modifications in the Proposed Rule ensure that the use of camera technology to locate gravity fed sewer mains and combination storm/sanitary sewer systems is as safe and effective as exposing such utility lines by hand digging. It is further asserted that the use of camera technology where feasible is more efficient and allows excavators to maintain a safe distance from vehicular traffic by eliminating the need for hand digging in road ways.¹¹

NOW THE COMMISSION, upon consideration of the matter, is of the opinion and finds that a proceeding should be established to consider adopting the proposed revision to Rule 150. Attachment A to this Order contains the Proposed Rule. We will direct that notice of the Proposed Rule be given to interested persons and that interested persons and the Commission Staff ("Staff") be provided an opportunity to file written comments on, propose modifications or supplements to, or request a hearing on the Proposed Rule. We will further direct that the Petitioner serve a copy of this Order upon each member of the Commission's Underground Utility Damage Prevention Advisory Committee ("Advisory Committee") and each entity listed in Attachment B. Finally, we will direct the Petitioner to formally present the Petition at the Virginia Damage Prevention Conference scheduled to be held April 24-26, 2018.¹²

Accordingly, IT IS ORDERED THAT:

- (1) This case is docketed and assigned Case No. URS-2018-00005.
- (2) The Commission's Division of Information Resources shall forward a copy of this Order Establishing Proceeding to the Registrar of Regulations for publication in the Virginia Register of Regulations.
- (3) On or before March 23, 2018, the Commission's Division of Information Resources shall cause the following notice to be published in newspapers of general circulation throughout the Commonwealth of Virginia:

NOTICE TO THE PUBLIC OF A
PETITION FOR RULEMAKING
TO REVISE REQUIREMENTS
FOR TRENCHLESS
EXCAVATION SET FORTH IN
RULE 20VAC5-309-150 OF THE
STATE CORPORATION
COMMISSION'S RULES FOR
ENFORCEMENT OF THE
UNDERGROUND UTILITY
DAMAGE PREVENTION ACT

CASE NO. URS-2018-00005

On January 23, 2018, Columbia Gas of Virginia, Inc. ("Petitioner"), filed a Petition for Rulemaking ("Petition") requesting that the State Corporation Commission ("Commission") initiate a rulemaking for the limited purpose of revising 20VAC5-309-150 ("Rule 150") of the Commission's Rules for Enforcement of the Underground Utility Damage Prevention Act that prescribes requirements for trenchless excavation.

The Petitioner states that the proposed revisions ("Proposed Rule") would (1) provide for greater flexibility when conducting trenchless excavation that crosses gravity fed sewer mains and combination storm/sanitary sewer system utility lines; and (2) enhance the safety and efficiency of conducting such excavations.

The Petitioner asserts that technological advancements have enabled the precise location of gravity fed sewer mains and storm drains without exposing those facilities, as required by Rule 150 (6). The Petition states that video cameras designed to pass through these underground facilities are able to communicate with locating equipment at ground level to provide the precise location, depth, and diameter of these utility lines. Video images also show the condition of the facilities, revealing conditions such as cross bores and root damage. According to the Petitioner, this technology enables the precise knowledge of depth, diameter, location, and condition of gravity fed sewer mains and storm drains to be known without exposing those facilities by hand digging.

The Petitioner states that the Proposed Rule would allow trenchless excavation crossing gravity fed sewer mains and combination storm/sanitary sewer systems to occur without exposing those utility lines if the enumerated steps are taken to ensure proper notification, documentation, and safety precautions. The steps set forth in the Proposed Rule include: (1) the receipt of documentation that the utility line operator has been notified of the

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excavation; (2) that the excavator has determined the depth, diameter, and condition of the utility lines using appropriate locating technology and a sewer system camera; (3) that a clearance of at least three feet is maintained between the bore path and the utility lines; (4) that the post-bore condition of the utility lines is reviewed using a sewer system camera; (5) that the excavator notify the utility line operator(s) of any damage found; and (6) that the excavator maintain all video documentation for 12 months and make it available to the utility line operator(s) and the Division of Utility and Railroad Safety.

The Petitioner asserts that modifications in the Proposed Rule ensure that the use of camera technology to locate gravity fed sewer mains and combination storm/sanitary sewer systems is as safe and effective as exposing such utility lines by hand digging. It is further asserted that the use of camera technology where feasible is more efficient and allows excavators to maintain a safe distance from vehicular traffic by eliminating the need for hand digging in road ways.

Copies of the Petition and the Commission's Order Establishing Proceeding entered in this case may be obtained by submitting a written request to counsel for the Petitioner, Bryan D. Stogdale, Senior Counsel, NiSource Corporate Services Company, 1809 Coyote Drive, Chester, Virginia 23836. If acceptable to the requesting party, the Company may provide the documents by electronic means. Copies of these documents also shall be available for interested persons to review in the Commission's Document Control Center, located on the First Floor of the Tyler Building, 1300 East Main Street, Richmond, Virginia 23219, between the hours of 8:15 a.m. and 5 p.m., Monday through Friday, excluding holidays. Interested persons also may download unofficial copies from the Commission's website: <http://www.scc.virginia.gov/case>.

On or before May 17, 2018, any interested person may file written comments on the Petition with Joel H. Peck, Clerk, State Corporation Commission c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118. In the alternative, comments may be submitted with the Clerk of the Commission electronically by following the instructions found on the Commission's website: <http://www.scc.virginia.gov/case>. Compact discs or any other form of electronic storage medium may not be filed with the comments. All comments shall refer to Case No. URS-2018-00005.

On or before May 17, 2018, any interested person may request that the Commission convene a hearing on the Proposed Rule. If not filed electronically, an original and fifteen (15) copies of such request for hearing shall be filed with the Clerk of the Commission at the address set forth above. Requests for hearing shall refer to Case No. URS-2018-00005 and shall include: (i) a precise statement of the filing party's interest in the proceeding; (ii) a statement of the specific action sought to the extent then known; (iii) a statement of the legal basis for such action; and (iv) a precise statement why a hearing should be conducted in this matter.

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

STATE CORPORATION COMMISSION

(4) On or before March 23, 2018, the Petitioner shall serve a copy of this Order upon each member of the Advisory Committee and each entity listed in Attachment B to this Order.

(5) The Petitioner shall formally present the Petition at the 2018 Virginia Damage Prevention Conference pursuant to the conference agenda made available by the Commission's Division of Utility and Railroad Safety.

(6) On or before April 9, 2018, the Petitioner shall file with Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118, proof of the service required by Ordering Paragraph (4).

(7) On or before May 17, 2018, any interested person may file comments concerning whether the Commission should modify Rule 150 as requested in the Petition. All comments shall provide suggested changes, if any, to the Proposed Rule. Such comments shall be filed with the Clerk of the Commission at the address in Ordering Paragraph (6) or may be submitted electronically by following the instructions found on the Commission's website: <http://www.scc.virginia.gov/case>. Compact discs or any other form of electronic storage medium may not be filed with the comments. Comments shall refer to Case No. URS-2018-00005.

(8) On or before May 17, 2018, interested persons may request that the Commission convene a hearing on the Proposed Rule. Such request for hearing shall be filed with the Clerk of the Commission. If not filed electronically, the original and fifteen (15) copies of the request for hearing shall be submitted to the Clerk of the Commission at the address set forth in Ordering Paragraph (6). Requests for hearing shall refer to Case No. URS-2018-00005 and shall include: (i) a precise statement of the filing party's interest in the

proceeding; (ii) a statement of the specific action sought to the extent then known; (iii) a statement of the legal basis for such action; and (iv) a precise statement why a hearing should be conducted in this matter.

(9) A copy of any written comments and request for hearing simultaneously shall be sent to counsel for the Petitioner, Bryan D. Stogdale, Senior Counsel, NiSource Corporate Services Company, 1809 Coyote Drive, Chester, Virginia 23836.

(10) On or before April 5, 2018, the Staff shall file any comments on, proposed modifications or supplements to, or requests for hearing on the Proposed Rule.

(11) On or before May 31, 2018, the Petitioner may file with the Clerk of the Commission any response in rebuttal to Staff comments, requests for hearing, and any comments filed by interested persons in this proceeding.

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

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to: Bryan D. Stogdale, Senior Counsel, NiSource Corporate Services Company, 1809 Coyote Drive, Chester, Virginia 23836; C. Meade Browder, Jr., Senior Assistant Attorney General, Office of the Attorney General, Division of Consumer Counsel, 202 N. 9th Street, 8th Floor, Richmond, Virginia 23219-3424; and a copy shall be delivered to the Commission's Office of General Counsel, Division of Utility and Railroad Safety, and the Division of Information Resources.

¹ 20VAC5-309-10 et seq.

² Attachment A reflects the Proposed Rule as filed by the Petitioner and modified consistent with Virginia Code Commission drafting recommendations.

³ Petition at 1.

⁴ Id.

⁵ Petition at 3.

⁶ Id.

⁷ Id.

⁸ Id. at 4.

⁹ Id.

¹⁰ Petition at 4; see also Attachment A.

¹¹ Petition at 4.

¹² An agenda for the conference will be published prior to the start of the conference on April 24, 2018.

20VAC5-309-150. Requirement for trenchless excavation.

A. Any person conducting trenchless excavation shall take all reasonable steps necessary to protect and support underground utility lines. ~~These~~ Except as provided in

subsection B of this section, these steps shall include, but are not limited to the following:

1. The excavator should verify that all utility lines in the area are marked;
2. The excavator shall ensure that bore equipment stakes are installed at a safe distance from marked utility lines;
3. When grounding rods are used, the excavator shall ensure that they are installed at a safe distance (at least 24 inches plus the width of the utility line, if known) away from the marked or staked location of utility lines;
4. The excavator shall ensure sufficient clearance is maintained between the bore path and any underground utility lines during pullback;
5. The excavator shall give special consideration to water and sewer systems within the area that cannot be located accurately;
6. Unless prohibited by other laws, ordinances, regulations, or rules of governmental and regulatory authorities having jurisdiction, the excavator shall expose all utility lines ~~which that~~ will be in the bore path by hand digging to establish the underground utility line's location prior to commencing bore. For a parallel type bore, unless prohibited by other laws, ordinances, regulations, or rules of governmental and regulatory authorities having jurisdiction, the excavator shall expose the utility line by hand digging at reasonable distances along the bore path;
7. The excavator shall ensure the drill head locating device is functioning properly and within its specification;
8. The excavator shall visually check the drill head as it passes through potholes, entrances, and exit pits; and
9. If the depth indicated by the locating device is lower than the bottom of the pothole or pit, the excavator shall cease boring until the ~~hole/pit hole or pit~~ can be hand excavated further to maintain a visual inspection of the drill head.

B. Notwithstanding the requirements of subdivision A 6 of this section, any person conducting trenchless excavation crossing any gravity fed sewer main or combination storm/sanitary sewer system utility lines need not expose such utility lines by hand digging if, in addition to meeting the other applicable requirements set forth in subsection A of this section, the following steps are taken:

1. Prior to commencing a project, the excavator shall receive documentation from the utility line operator (such as, but not limited to, documentation through the permitting process) documenting that the operator has been notified of the proposed trenchless excavation and that trenchless excavation will be used to cross its underground utility line. The scope of a project shall not exceed the scope of a single notice of excavation;

Regulations

2. Prior to commencing the boring process, the excavator shall determine (i) the depth of the utility line through appropriate locating technology and (ii) the diameter and condition of the utility line using a sewer system camera with video recording capability;

3. The excavator shall ensure that a clearance of at least three feet is maintained between the bore path and the utility line;

4. Using the same type of video equipment identified in subdivision B 2 of this section, after the bore has been completed, the excavator shall use a sewer system camera to determine the condition of the utility line and ensure that no cross bore or other damage has occurred;

5. The excavator shall immediately notify the utility line operator of any damage found; and

6. After the bore has been completed, the excavator shall make all video documentation available to the utility line operator and the division upon request. Such video documentation shall be maintained and made available for 12 months from the time of the bore.

C. The provisions of subsection B of this section shall apply only to gravity fed sewer mains or combination storm/sanitary systems that are considered "utility lines" as that term is defined in § 56-265.15 of the Act.

VA.R. Doc. No. R18-5415; Filed March 9, 2018, 4:51 p.m.

GOVERNOR

EXECUTIVE ORDER NUMBER FIVE (2018)

Declaration of a State of Emergency for the Commonwealth of Virginia Due to Severe Weather

Importance of the Issue

On this date, March 2, 2018, I am declaring a state of emergency to exist for the Commonwealth of Virginia based on the severe weather event.

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

Therefore, by virtue of the authority vested in me by § 44-146.17 of the Code of Virginia, as Governor and as Director of Emergency Management, and by virtue of the authority vested in me by Article V, Section 7 of the Constitution of Virginia and by § 44-75.1 of the Code of Virginia, as Governor and Commander-in-Chief of the armed forces of the Commonwealth, and subject always to my continuing and ultimate authority and responsibility to act in such matters, I hereby proclaim a state of emergency. Accordingly, I direct state and local government agencies to render appropriate assistance, to prepare for potential severe weather impacts, to alleviate any conditions resulting from the situation, and to implement recovery and mitigation operations and activities so as to return impacted areas to pre-event conditions as much as possible.

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

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

B. Activation of the Virginia Emergency Operations Center (VEOC) and the Virginia Emergency Support Team (VEST), as directed by the State Coordinator of Emergency Management, to coordinate the provision of assistance to local governments and emergency services assignments of other agencies as necessary and determined by the State Coordinator of Emergency Management and other agencies as appropriate.

C. Provision of appropriate assistance, including temporary assignments of non-essential state employees to the Adjunct Emergency Workforce, be rendered by agencies of state government to respond to this situation.

D. Evacuation of areas threatened or stricken by effects of the severe weather, as appropriate. Pursuant to § 44-146.17(1) of

the Code of Virginia, I reserve the right to direct and compel the evacuation of all or part of the populace therein from such areas and upon such timetable as the local governing body, in coordination with the VEOC, acting on behalf of the State Coordinator of Emergency Management, shall determine. I authorize the control of ingress and egress at an emergency area, including the movement of persons within the area and the occupancy of premises therein upon such timetable as the local governing body, in coordination with the State Coordinator of Emergency Management and the VEOC, shall determine. Violations of any order to citizens to evacuate shall constitute a violation of this Executive Order and are punishable as a Class 1 misdemeanor.

E. Activation, implementation, and coordination of appropriate mutual aid agreements and compacts, including the Emergency Management Assistance Compact (EMAC), and the authorization of the State Coordinator of Emergency Management to enter into any other supplemental agreements, pursuant to § 44-146.17(5) and § 44-146.28:1 of the Code of Virginia. The State Coordinator of Emergency Management is hereby designated as Virginia's authorized representative within the meaning of the Emergency Management Assistance Compact, § 44-146.28:1 of the Code of Virginia.

F. This Emergency Declaration implements limited relief from the provisions 49 CFR §§ 390.23 and 395.3 for purpose of providing direct relief or assistance as a result of this disaster.

G. Authorization of the Department of Emergency Management, Departments of State Police, Transportation, and Motor Vehicles to grant temporary overweight, over width, registration, license, or hours of service exemptions to all carriers transporting essential emergency relief supplies to, through, and from any area of the Commonwealth. This Declaration is also intended to satisfy the federal commercial motor vehicle requirements of 49 CFR § 390.23, which provides any motor carrier or driver operating a commercial motor vehicle emergency relief from Parts 390-399 of the Federal Motor Carrier Safety Regulations (Title 49, CFR). The exemption shall not exceed the duration of the motor carrier's or driver's direct assistance in providing emergency relief, or 14 days from the initial declaration of emergency, whichever is less.

Implementation and discontinuance of the transportation related provisions authorized above shall be disseminated by the publication of administrative notice to all affected and interested parties. I hereby delegate to the Secretary of Public Safety and Homeland Security, after consultation with other affected Cabinet Secretaries, the authority to implement and disseminate this Order as set forth in § 2.2-104 of the Code of Virginia.

H. Authorization of the Commissioner of Agriculture and Consumer Services to grant a temporary waiver of the maximum vapor pressure prescribed in regulation 2VAC5-425 et seq., and to prescribe a vapor pressure limit the Commissioner deems reasonable. The temporary waiver shall remain in effect until emergency relief is no longer necessary, as determined by the Commissioner of Agriculture and Consumer Services.

I. Authorization of appropriate oversight boards, commissions, and agencies to waive and/or ease building code restrictions, permitting requirements, and to allow for emergency demolition, hazardous waste disposal, debris removal, emergency landfill siting, and other operations and activities necessary to address immediate health and safety needs without regard to time-consuming procedures or formalities and without regard to application or permit fees or royalties. All appropriate executive branch agencies are to exercise their discretion to the extent allowed by law to address any pending deadlines or expirations affected by or attributable to this emergency event.

J. I hereby authorize the heads of executive branch agencies, acting when appropriate on behalf of their regulatory boards, to waive any state requirements or regulation for which the federal government has issued a waiver of the corresponding federal or state regulation based on the impact of events related to this situation.

K. Activation of the statutory provisions in § 59.1-525 et seq. of the Code of Virginia related to price gouging.

L. Authorization of a maximum of \$250,000 in state sum sufficient funds for state and local government's mission assignments authorized and coordinated through the Virginia Department of Emergency Management that are allowable as defined by The Stafford Act. 42 USC 5121 et seq. This funding is also available for state response and recovery operations and incident documentation.

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

N. During this declared emergency, any person who holds a license, certificate, or other permit issued by any U.S. territory, state, or political subdivision thereof, evidencing the meeting of qualifications for professional, mechanical, or other skills, the person, without compensation other than reimbursement for actual and necessary expenses, may render aid involving that skill in the Commonwealth during a disaster, and such person shall not be liable for negligently

causing the death of, or injury to, any person or for the loss of, or damage to, the property of any person resulting from such service as set forth in Code of Virginia § 44-146.23(C). Additionally, members and personnel of volunteer, professional, auxiliary, and reserve groups identified and tasked by the State Coordinator of Emergency Management for specific disaster-related mission assignments as representatives of the Commonwealth engaged in emergency services activities within the meaning of the immunity provisions of §§ 44-146.23(a) and (f) of the Code of Virginia, in the performance of their specific disaster-related mission assignments.

Effective Date of this Executive Order

This Executive Order shall be effective March 2, 2018, and shall remain in full force and in effect until June 2, 2018, unless sooner amended or rescinded by further executive order. Termination of the Executive Order is not intended to terminate any federal type benefits granted or to be granted due to injury or death as a result of service under this Executive Order.

Given under my hand and under the Seal of the Commonwealth of Virginia, this 2nd day of March, 2018.

/s/ Ralph S. Northam
Governor

GUIDANCE DOCUMENTS

Section 2.2-4103.1 of the Code of Virginia requires annual publication in the *Virginia Register* of guidance document lists from state agencies. A guidance document is defined as "...any document developed by a state agency or staff that provides information or guidance of general applicability to the staff or public to interpret or implement statutes or the agency's rules or regulations..." Agencies are required to maintain a complete, current list of all guidance documents and make the full text of such documents available to the public.

Generally, the format for the guidance document list is: document number (if any), title of document, date issued or last revised, and citation of Virginia Administrative Code regulatory authority or Code of Virginia statutory authority. Questions concerning documents or requests for copies of documents should be directed to the contact person listed by the agency.

SECRETARY OF TECHNOLOGY

The following guidance documents were developed by the Identity Management Standards Advisory Council (IMSAC), on behalf of the Secretary of Technology, pursuant to §§ 2.2-436 and 2.2-437 of the Code of Virginia. The guidance documents establish minimum specifications for digital identity systems so as to warrant liability protection pursuant to the Electronic Identity Management Act, §§ 59.1-550 through 59.1-555 of the Code of Virginia.

All guidance documents can be viewed and downloaded at no charge through the Virginia Information Technologies Agency (VITA) website at <https://www.vita.virginia.gov/about/councils-committees/imsac/documents-and-definitions/>. Questions regarding interpretation or implementation of these documents may be directed to Dan Wolf, Policy Director, Virginia Information Technologies Agency, 11751 Meadowville Lane, Chester, VA 23836, FAX (804) 416-6355, or email daniel.wolf@vita.virginia.gov.

IMSAC Guidance Documents:

Digital authentication: Guidance document establishes minimum specifications for authentication within a digital identity system. The minimum specifications conform with National Institute of Standards and Technology Special Publication 800-63-3.

<https://www.vita.virginia.gov/media/vitavirginiagov/about/pdf/IMSACGD1Digital-Authentication102417.pdf>, 12/1/2017, §§ 59.1-550 through 59.1-555

Identity proofing and verification: Guidance document establishes minimum specifications for identity proofing and verification to enable registration and authentication events within a digital identity system. The minimum specifications conform with National Institute of Standards and Technology Special Publication 800-63A.

<https://www.vita.virginia.gov/media/vitavirginiagov/about/pdf/IMSACGD1AIdentityProofingVerification102417.pdf>, 12/1/2017, §§ 59.1-550 through 59.1-555

Authenticators and lifecycle management: Guidance document establishes minimum specifications for authenticators and lifecycle management within a digital

identity system. The minimum specifications conform with National Institute of Standards and Technology Special Publication 800-63B.

<https://www.vita.virginia.gov/media/vitavirginiagov/about/pdf/IMSACGD1BAuthenticatorsLifecycleMgt.pdf>, 12/1/2017, §§ 59.1-550 through 59.1-555

Digital identity assertions: Guidance document establishes minimum specifications for assertions in a digital identity system. The minimum specifications conform with National Institute of Standards and Technology Special Publication 800-63C.

<https://www.vita.virginia.gov/media/vitavirginiagov/about/pdf/IMSACGD1CDigitalIdentityAssertions.pdf>, 12/1/2017, §§ 59.1-550 through 59.1-555

Identity trust frameworks: Guidance document establishes minimum specifications for identity trust frameworks supporting digital identity systems.

<https://www.vita.virginia.gov/media/vitavirginiagov/about/pdf/IMSACGD2IdentityTrustFrameworks102417.pdf>, 12/1/2017, §§ 59.1-550 through 59.1-555

Privacy, security, and confidentiality of identity information: Guidance document establishes minimum specifications for the privacy, security, and confidentiality of identity information within a digital identity system. The minimum specifications apply core provisions of the Commonwealth of Virginia's Information Security Standard 501 (SEC501) and National Institute of Standards and Technology Special Publication 800-53-4.

<https://www.vita.virginia.gov/media/vitavirginiagov/about/pdf/IMSACGDPrivacySecurityConf102417.pdf>, pending (Draft Date: 10/24/2017), §§ 59.1-550 through 59.1-555

Identity management of nonperson entities: Guidance document establishes minimum specifications for electronic identity management of Non-Person Entities (NPEs) in a digital identity system. The minimum specifications also outline a data model for interoperability and discovery of identity information on NPEs.

<https://www.vita.virginia.gov/media/vitavirginiagov/about/pdf/IMSACGDIdMNNonPersonEntity.pdf>, pending (Draft Date 10/24/2017), §§ 59.1-550 through 59.1-555

Guidance Documents

Certification of trust framework operators: Guidance document establishes criteria and recommended processes for certifying compliance with the Commonwealth's identity management minimum specifications and standards adopted pursuant to § 2.2-436.

<https://www.vita.virginia.gov/media/vitavirginiagov/about/pdf/IMSACGD5CertificationTrustFramework.pdf>, pending (Draft Date 10/24/ 2017), §§ 59.1-550 through 59.1-555, § 2.2-436

Trustmarks for digital identity management: Guidance document establishes minimum specifications and standards for trustmarks in digital identity systems, pursuant to the Electronic Identity Management Act.

<https://www.vita.virginia.gov/media/vitavirginiagov/about/pdf/IMSACGD6Trustmarks.pdf>, pending (Draft Date 10/24/ 2017), §§ 59.1-550 through 59.1-555

GENERAL NOTICES/ERRATA

CRIMINAL JUSTICE SERVICES BOARD

Dispatcher Curriculum Review Committee: Proposed Performance Outcomes for Dispatchers

The Department of Criminal Justice Services (DCJS) is seeking public comment. The public comment period opens March 19, 2018, and closes May 21, 2018. Public comment is accepted through the Virginia Regulatory Town Hall website. The agenda for the June 14, 2018, meeting of the Committee on Training will include an opportunity for public comment.

The members of the Dispatcher Curriculum Review Committee (CRC) have spent more than two years conducting a comprehensive review of the minimum training standards for dispatchers. The members have reviewed, discussed, revised, and repealed existing performance outcomes; reviewed, discussed, and revised proposed performance outcomes submitted by stakeholders; and discussed and developed new performance outcomes.

The CRC worked diligently to address first responder and public safety while identifying the knowledge and skills essential for the dispatch profession. The CRC worked to streamline the performance outcomes, remove redundant and antiquated language, and clarify confusing and ambiguous training objectives, testing criteria, and terminology. The CRC approved a comprehensive rewrite of the dispatcher performance outcomes and intends to recommend that the Committee on Training approve the package as submitted.

The comprehensive rewrite of the dispatcher performance outcomes can be viewed on the DCJS website on the Law Enforcement page at <https://www.dcjs.virginia.gov/law-enforcement> by clicking on the tab labeled "Proposed Performance Outcomes for Dispatchers."

Contact Information: Barbara Peterson-Wilson, Law Enforcement Program Coordinator, Department of Criminal Justice Services, 1100 Bank Street, Richmond, VA 23219, telephone (804) 225-4503, FAX (804) 786-0410, or email barbara.peterson-wilson@dcjs.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 conducting a periodic review and small business impact review of **12VAC5-200, Regulations Governing Eligibility Standards and Charges for Medical Care Services to Individuals**. The review of this regulation will be guided by the principles in Executive Order 17 (2014).

The purpose of this review is to determine whether this regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any

issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

The comment period begins April 2, 2018, and ends April 23, 2018.

Comments may be submitted online to the Virginia Regulatory Town Hall at <http://www.townhall.virginia.gov/L/Forums.cfm>. Comments may also be sent to Lisa Park, Health Care Reimbursement Manager, Department of Health, 109 Governor Street, 13th Floor, Richmond, VA 23219, telephone (804) 864-7018, FAX (804) 864-7022, or email lisa.park@vdh.virginia.gov.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of both reviews will be posted on the Town Hall and a report of the small business impact review will be published in the Virginia Register of Regulations.

VIRGINIA LOTTERY

Director's Orders

The following Director's Orders of the Virginia Lottery were filed with the Virginia Registrar of Regulations on March 14, 2018. 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 Twenty-Two (18)

Virginia Lottery "Spring Into Summer Extra 1% Commission Retailer Incentive Promotion" (this Director's Order becomes effective on 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 Twenty-Five (18)

Virginia Lottery's Scratch Game 1856 "Blockbuster Crossword" Final Rules for Game Operation (effective February 28, 2018)

Director's Order Number Twenty-Six (18)

Virginia Lottery's Scratch Game 1833 "Ca\$h Match™" Final Rules for Game Operation (effective February 28, 2018)

Director's Order Number Twenty-Seven (18)

Virginia Lottery's Scratch Game 1885 "Blazing Hot 7s" Final Rules for Game Operation (effective February 28, 2018)

General Notices/Errata

Director's Order Number Twenty-Eight (18)

Virginia Lottery's Scratch Game 1883 "Red Hot 7s" Final Rules for Game Operation (effective February 28, 2018)

Director's Order Number Twenty-Nine (18)

Virginia Lottery's Scratch Game 1884 "Sizzling Hot 7s" Final Rules for Game Operation (effective February 28, 2018)

Director's Order Number Thirty (18)

Virginia Lottery's Scratch Game 1882 "Hot 7s" Final Rules for Game Operation (effective February 28, 2018)

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Updated Dental Procedure Codes - Notice of Intent to Amend the Virginia State Plan for Medical Assistance (Pursuant to § 1902(a)(13) of the Act (USC § 1396a(a)(13)))

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

This notice is intended to satisfy the requirements of 42 CFR 447.205 and of § 1902(a)(13) of the Social Security Act, 42 USC § 1396a(a)(13). A copy of this notice is available for public review from Jimiequa Williams, Policy and Research Division, Department of Medical Assistance Services, 600 Broad Street, Suite 1300, Richmond, VA 23219, or via email at jimiequa.williams@dmas.virginia.gov.

This notice is available for public review on the Regulatory Town Hall at www.townhall.virginia.gov, on the General Notices page, found at <https://townhall.virginia.gov/L/generalnotice.cfm>.

12VAC30-80-30 of Reimbursement Changes Affecting Other Types of Care (12VAC30-80) is being amended. The agency's fee schedule is being updated on March 30, 2018, to include updated dental procedure codes.

There is no expected increase or decrease in aggregate annual expenditures.

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.mcvlellan@dmas.virginia.gov.

STATE WATER CONTROL BOARD

Notice of Periodic Review and Small Business Impact Review

Pursuant to Executive Order 17 (2014) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of Environmental Quality is conducting a periodic review and small business impact review of **9VAC25-200, Water Withdrawal Reporting**. The review of this regulation will be guided by the principles in Executive Order 17 (2014).

The purpose of this review is to determine whether this regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

The comment period begins April 2, 2018, and ends April 23, 2018.

Comments may be submitted online to the Virginia Regulatory Town Hall at <http://www.townhall.virginia.gov/L/Forums.cfm>. Comments may also be sent to Melissa Porterfield, Office of Regulatory Affairs, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4238, FAX (804) 698-4019, or email melissa.porterfield@deq.virginia.gov.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of both reviews will be posted on the Town Hall and a report of the small business impact review will be published in the Virginia Register of Regulations.

Notice of Periodic Review and Small Business Impact Review

Pursuant to Executive Order 17 (2014) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of Environmental Quality is conducting a periodic review and small business impact review of **9VAC25-740, Water Reclamation and Reuse Regulation**. The review of this regulation will be guided by the principles in Executive Order 17 (2014).

The purpose of this review is to determine whether this regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of

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

The comment period begins April 2, 2018, and ends May 2, 2018.

Comments may be submitted online to the Virginia Regulatory Town Hall at <http://www.townhall.virginia.gov/L/Forums.cfm>. Comments may also be sent to Melissa Porterfield, Office of Regulatory Affairs, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4238, FAX (804) 698-4019, or email melissa.porterfield@deq.virginia.gov.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of both reviews will be posted on the Town Hall and a report of the small business impact review will be published in the Virginia Register of Regulations.

Notice of 30-Day Public Comment Period on Revisions to the List of Impaired Waters Prioritized for TMDL or TMDL Alternative Development for 2016–2022

Public comment process: The Department of Environmental Quality (DEQ) seeks written or electronic comments from interested persons on the adjusted list of impaired waters prioritized for [total maximum daily load \(TMDL\) or TMDL alternative development](#) throughout 2016–2022. The public comment period begins April 2, 2018, and ends May 2, 2018. Please note that all written comments should include the name, address, and telephone number of the person submitting the comments. DEQ will hold a public meeting to address and discuss the revised list of impaired waters prioritized for TMDL or TMDL alternative development if there is sufficient interest from the public. For more information or to submit written or electronic comments, please contact Will Isenberg, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4228, or email william.isenberg@deq.virginia.gov.

Background: DEQ is implementing the national [§ 303\(d\) Program Vision](#), which facilitates the prioritization of impaired waters for TMDL or TMDL alternative development 2016–2022. While the national [§ 303\(d\) Program Vision](#) involves prioritizing impaired waters for TMDL or TMDL alternative development, DEQ took this opportunity to also prioritize impaired waters that require a stressor analysis report or a natural conditions report. TMDLs or TMDL alternatives are reports that outline necessary reductions in pollutant or pollution loads in order to restore water quality. In some cases, stressor analyses must be

conducted prior to any restoration plan development due to the uncertain causes of water quality impairment. These reports analyze water quality data to determine what the most probable stressors are that contribute to the impaired status of the water. In other cases where either a stressor analysis or a watershed characteristic suggests that the impaired status of the water is due more to natural conditions than human activity, a natural conditions report is conducted.

In the late summer of 2015, DEQ assembled a draft list of prioritized impaired waters and public noticed that list for public comment on July 27, 2015. The 30-day public comment period lasted until August 26, 2015. Only one comment was received and addressed by DEQ. It did not result in any changes to the priorities list, which was then finalized following the close of the comment period and submitted to the U.S. Environmental Protection Agency (EPA) in accordance with the new [§ 303\(d\) Program Vision](#). Soon thereafter in the early winter of 2015–2016, EPA announced that these priorities lists could be revised. This opportunity to revise the priorities list was due to challenges incurred by states throughout this first submittal of priority waters as part of the new [§ 303\(d\) Program Vision](#), in addition to the fact that EPA was allowing TMDL revisions to be included as priorities for the first time. Accordingly, DEQ assembled a revised list of prioritized impaired waters and public noticed that list for public comment from April 2, 2016, to May 2, 2016. No comments were received, and the revised priorities list was finalized and submitted to EPA.

EPA is now providing states another opportunity to adjust their priorities lists to adapt to changes in program resources. Therefore, DEQ is taking this opportunity to move additional waters to the list of prioritized waters that will be submitted to EPA. Before finalizing this revision of prioritized impaired waters, DEQ is providing a 30-day public comment period to seek comments from the public. Once all of the comments have been addressed following this public comment period, DEQ will finalize the revised 2016–2022 priorities list and post it on [DEQ TMDL program webpage](#). The final list will also be published in the 2018 and 2020 biennial [§ 305\(b\)/303\(d\) Integrated Reports](#), where it will be available for additional public comment under the comment period for the entire Integrated Report.

External links to priorities information:

1. [Description of the Process for Prioritizing Impaired Waters.](#)
2. [Revised List of Prioritized Impaired Waters.](#)

Notice of Release of the Final 2016 [§ 305\(b\)/303\(d\)](#) Water Quality Assessment Integrated Report

The Virginia Department of Environmental Quality (DEQ) will release the Final 2016 [§ 305\(b\)/303\(d\)](#) Water Quality Assessment Integrated Report on April 2, 2018.

General Notices/Errata

The Integrated Report combines both the § 305(b) Water Quality Assessment and the § 303(d) Report on Impaired Waters. The draft report was available for public comment August 7, 2017, through September 6, 2017. Comments were received from the public and the U.S. Environmental Protection Agency (EPA). EPA approved the final report on March 6, 2018.

The final report, public comment-response document, and map images are available for download on the DEQ website at <http://www.deq.virginia.gov/Programs/Water/WaterQualityInformationTMDLs/WaterQualityAssessments/2016305b303dIntegratedReport.aspx>. Copies are available at no charge on CD-ROM (limit one per person) by contacting Cleo Baker by telephone at (804) 698-4191 or via email at cleo.baker@deq.virginia.gov. These CD-ROMs include the entire final report, all of its appendices, and summary maps developed from the 2016 assessment.

Questions regarding the report can be directed to Sandra Mueller, Department of Environmental Quality, Office of Water Monitoring and Assessment, P.O. Box 1105, Richmond, VA 23218, by telephone at (804) 698-4324 or via email at sandra.mueller@deq.virginia.gov.

Contact Information: Sandra Mueller, Office of Water Monitoring and Assessment, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4324, or email sandra.mueller@deq.virginia.gov.

Proposed Consent Special Order for Hourigan Construction Corp.

An enforcement action has been proposed for Hourigan Construction Corp. for violations at the P987 Supply Warehouse, P986 Motor Transportation Facility, and P989 Armory at the Yorktown Naval Weapons Station. The State Water Control Board proposes to issue a special order by consent to Hourigan Construction Corp. to address noncompliance with the State Water Control Law and regulations. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Carla Pool will accept comments by email at carla.pool@deq.virginia.gov, FAX at (804) 698-4234, or postal mail at Department of Environmental Quality, Central Office, P.O. Box 1105, Richmond, VA 23218, from April 2, 2018, to May 2, 2018.

Proposed Consent Special Order for Wilde Acres Property Owners' Association Incorporated

An enforcement action has been proposed for Wilde Acres Property Owners' Association Incorporated for violations at the Wilde Acres Subdivision–Mountain Falls Park, in Frederick County, Virginia. The State Water Control Board proposes to issue a special order by consent to Wilde Acres Property Owners' Association Incorporated to address noncompliance with the State Water Control Law and regulations. A description of the proposed action is available

at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Carla Pool will accept comments by email at carla.pool@deq.virginia.gov, FAX at (804) 698-4234, or postal mail at Department of Environmental Quality, Central Office, P.O. Box 1105, Richmond, VA 23218, from April 2, 2018, to May 2, 2018.

Proposed Consent Special Order for DeLos G. Willmore

An enforcement action has been proposed for DeLos G. Willmore for violations at the Pinebrook II development, in Spotsylvania County, Virginia. The State Water Control Board proposes to issue a special order by consent to DeLos G. Willmore to address noncompliance with the State Water Control Law and regulations. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Carla Pool will accept comments by email at carla.pool@deq.virginia.gov, FAX at (804) 698-4234, or postal mail at Department of Environmental Quality, Central Office, P.O. Box 1105, Richmond, VA 23218, from April 2, 2018, to May 2, 2018.

VIRGINIA WASTE MANAGEMENT BOARD

Notice of Periodic Review and Small Business Impact Review

Pursuant to Executive Order 17 (2014) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of Environmental Quality 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 economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

9VAC20-70, Financial Assurance Regulations for Solid Waste Disposal, Transfer and Treatment Facilities

9VAC20-160, Voluntary Remediation Regulations

Contact Information: Melissa Porterfield, Office of Regulatory Affairs, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4238, FAX (804) 698-4019, or email melissa.porterfield@deq.virginia.gov.

The comment period begins April 2, 2018, and ends April 23, 2018.

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 Virginia Regulatory Town Hall, and a report of the small business impact review will be published in the Virginia Register of Regulations.

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 <https://commonwealthcalendar.virginia.gov>.

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

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

