



# VIRGINIA

## REGISTER OF REGULATIONS

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MARCH 30, 2020

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Virginia Code Commission

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# VIRGINIA REGISTER INFORMATION PAGE

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**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; **James A. "Jay" Leftwich**, Vice Chair; **Ryan T. McDougle**; **Nicole Cheuk**; **Rita Davis**; **Leslie L. Lilley**; **Thomas M. Moncure, Jr.**; **Christopher R. Nolen**; **Charles S. Sharp**; **Samuel T. Towell**; **Malfourd W. Trumbo**.

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

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# PUBLICATION SCHEDULE AND DEADLINES

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This schedule is available on the Virginia Register of Regulations website (<http://register.dls.virginia.gov>).

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## April 2020 through May 2021

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
36:17	March 25, 2020	April 13, 2020
36:18	April 8, 2020	April 27, 2020
36:19	April 22, 2020	May 11, 2020
36:20	May 4, 2020 ( <b>Monday</b> )	May 25, 2020
36:21	May 20, 2020	June 8, 2020
36:22	June 3, 2020	June 22, 2020
36:23	June 17, 2020	July 6, 2020
36:24	July 1, 2020	July 20, 2020
36:25	July 15, 2020	August 3, 2020
36:26	July 29, 2020	August 17, 2020
37:1	August 12, 2020	August 31, 2020
37:2	August 26, 2020	September 14, 2020
37:3	September 9, 2020	September 28, 2020
37:4	September 23, 2020	October 12, 2020
37:5	October 7, 2020	October 26, 2020
37:6	October 21, 2020	November 9, 2020
37:7	November 4, 2020	November 23, 2020
37:8	November 16, 2020 ( <b>Monday</b> )	December 7, 2020
37:9	December 2, 2020	December 21, 2020
37:10	December 14, 2020 ( <b>Monday</b> )	January 4, 2021
37:11	December 28, 2020 ( <b>Monday</b> )	January 18, 2021
37:12	January 13, 2021	February 1, 2021
37:13	January 27, 2021	February 15, 2021
37:14	February 10, 2021	March 1, 2021
37:15	February 24, 2021	March 15, 2021
37:16	March 10, 2021	March 29, 2021
37:17	March 24, 2021	April 12, 2021
37:18	April 7, 2021	April 26, 2021
37:19	April 21, 2021	May 10, 2021

\*Filing deadlines are Wednesdays unless otherwise specified.

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# PETITIONS FOR RULEMAKING

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## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### BOARD OF MEDICINE

#### Initial Agency Notice

**Title of Regulation: 18VAC85-101. Regulations Governing the Practice of Radiologic Technology.**

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

**Name of Petitioner:** Virginia Society of Radiologic Technologists.

**Nature of Petitioner's Request:** To amend sections on renewal, reinstatement, or reactivation to require a licensee to hold current American Registry of Radiologic Technologists or Nuclear Medicine Technology Certification Board credentials in good standing for biennial renewal, reinstatement, or reactivation of one's license under the Board of Medicine.

**Agency Plan for Disposition of Request:** In accordance with Virginia law, the petition will be filed with the Registrar of Regulations, published on March 30, 2020, and posted on the Virginia Regulatory Town Hall at [www.townhall.virginia.gov](http://www.townhall.virginia.gov). Comment on the petition will be requested until April 29, 2020, and may be posted on the Town Hall or sent to the board. Following receipt of all comments on the petition to amend regulations, the matter will be considered by the Advisory Board on Radiologic Technology and by the full board at their meetings in June of 2020.

**Public Comment Deadline:** April 29, 2020.

**Agency Contact:** William L. Harp, M.D., Executive Director, Board of Medicine, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4558, or email [william.harp@dhp.virginia.gov](mailto:william.harp@dhp.virginia.gov).

VA.R. Doc. No. R20-26 Filed February 26, 2020, 12:03 p.m.

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## TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

### COMMISSION ON THE VIRGINIA ALCOHOL SAFETY ACTION PROGRAM

#### Agency Decision

**Title of Regulation: 24VAC35-30. VASAP Case Management Policy and Procedure Manual.**

**Statutory Authority:** § 18.2-270.2 of the Code of Virginia.

**Name of Petitioner:** Cynthia Ellen Hites.

**Nature of Petitioner's Request:** "I, Cynthia Hites, citizen of the Commonwealth of Virginia, pursuant to § 2.2-4007 of the Code of Virginia, do humbly submit this petition for the following amendment to Virginia Administrative Code 24VAC35-30-150. Currently, Alcohol Safety Action Program (ASAP) case managers can deny citizens' right to due process by choosing to restart an ASAP client's court imposed ignition interlock sentence. Upon suspicion of an ignition interlock violation, ASAP case managers should initiate a non-compliance hearing for that offender. However, ASAP case managers are usurping the jurisdiction of the court, endowed by §§ 18.2-271.1 and 18.2-271.2 of the Code of Virginia, by personally altering or extending the sentences of their clients. ASAP case managers serve in a probationary capacity, and as such, are precluded from considering evidence surrounding ignition interlock violation accusations. Despite this, ASAP case managers are choosing to impose punishment on citizens without the benefit of a trial. The current verbiage of the statute is as follows: '24VAC35-30-150. Reporting. ASAPs shall work with the courts and service providers to establish reports essential to the probationary function of the case manager.' To clarify for all ASAP and VASAP personnel, and reiterate wherein lies judicial authority, I request the addition of the following language to 24VAC35-30-150: '24VAC35-30-150. Reporting. ASAPs shall work with the courts and service providers to establish reports essential to the probationary function of the case manager. Under no circumstance shall an ASAP case manager alter any court-imposed sentence, or attempt to personally adjudicate a suspected ignition interlock violation.' This simple change will help protect Virginians from being unjustly penalized before all evidence and accusations against them can be presented in a court of law."

**Agency Decision:** Request denied.

**Statement of Reason for Decision:** The Commission on the Virginia Alcohol Safety Action Program considered this petition at its December 13, 2019, quarterly meeting and decided to take no action on the petitioner's request.

**Agency Contact:** Richard Foy, Regulatory Coordinator, Commission on the Virginia Alcohol Safety Action Program, 701 East Franklin Street, Suite 1110, Richmond, VA 23219, telephone (804) 786-5895, or email [rfoyl@vasap.virginia.gov](mailto:rfoyl@vasap.virginia.gov).

VA.R. Doc. No. R19-32 Filed March 10, 2020, 2:57 p.m.

#### Initial Agency Notice

**Title of Regulation: 24VAC35-60. Ignition Interlock Regulations.**

**Statutory Authority:** § 18.2-270.2 of the Code of Virginia.

**Name of Petitioner:** Cynthia Hites.

**Nature of Petitioner's Request:** "I, Cynthia Hites, a citizen of the Commonwealth of Virginia, pursuant to § 2.2-4007 of the Code of Virginia, do humbly submit this petition for the

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## Petitions for Rulemaking

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following amendment to the specific verbiage within Virginia Administrative Code 24VAC35-60-70, F, 6: "The results of the test shall be noted through the use of green, yellow, and red signals or similar pass/fail indicators. No digital blood alcohol concentration shall be indicated to the offender." With the insertion of the word "warn," I request the statute be amended to read: "The results of the test shall be noted through the use of green, yellow, and red signals, or similar pass/warn/fail indicators. No digital blood alcohol concentration shall be indicated to the offender." ASAPs can cite an offender with a violation if that offender fails to reach "zero" BrAC within 15 minutes of a failed IID reading. The problem lies in the fact that, currently, the State and the Interlock companies operate on two separate standards of "zero." Most people assume a Virginia ignition interlock prevents a car from starting when alcohol is detected. This is not true. In the small window between .000 and .02, a green light comes on, the IID display reads "Start Engine," the car is permitted to start, and the printed datalog reads "Standing Pass." The problem is, that without a yellow caution light, <.02, when the green light is displayed and the car starts, the driver can only assume they've reached zero and cleared the violation. No one has any idea they need more blows to reach zero and avoid a violation. This is why the law says "green, yellow and red," because without the yellow, the disparity between the two standards of zero leaves open a small "window of fraud." This allows an ASAP to claim an accusation of "At 2:13 p.m. a BAC reading of 0.035 was registered. It was not cleared to zero within 15 minutes." When, really, at 2:13 p.m. a .035 reading was indeed registered, however at 2:18 p.m. a .016 pass is logged, and a subsequent .012 passing test is recorded before turning off the car. This client and the passenger never saw a yellow light on the Alcolock device. They had no idea they didn't reach zero, and this pending case wasn't filed until almost 6 months after the event. I also experienced yellow light fraud. While 2 months sober, on July 21, 2016 a failed rolling retest with a BrAC of 0.058, plummeted within nine minutes to a passing .019. This could not be ethanol, and it PASSING, yet it was considered a violation. I coincidentally have a video of the entire event. The green light appearing, the "Start Car" message, and my confusion as to what was occurring. The yellow caution light is shown and explained in the Alcolock LR Instruction Manual, and the Alcolock training video echoes the same device feature. "Depending on your jurisdiction, if your breath sample contains an amount of alcohol over the warning threshold but not enough alcohol to fail a test, the handset will indicate "Caution" and the indicator light will turn yellow. Please note that if you are aware your alcohol level is rising when you receive a "Caution" do not start the vehicle engine since you are not likely to pass a retest and it may not be safe to drive. When you receive a "Caution" message, you will have two options. You may wait 5 minutes and try the test again if you are certain there is no alcohol in your body, or you may press the bottom button to acknowledge that you intend to drive with

alcohol in your system. If your breath sample contains an amount of alcohol above the fail level the handset will indicate a "Lockout" message with a timer..." Relying upon a non-ethanol-specific device, with its yellow caution light disabled, the ASAPs are able to cooperate with IID companies to violate totally compliant and unsuspecting citizens. Couple the absence of the yellow light, with automatically restarting 6 month IID time, and filing violations late, offenders are allowed to be suspended in a perpetual, indefensible loop, while their fees get divvied between the respective IID company, VASAP and ASAPs. It's an unsettling cooperation between the State and the contracted vendors, and perhaps amending the wording of law will prompt companies to comply with what's already mandated. The enigmatic yellow caution light."

Agency Plan for Disposition of Request: This petition will be considered by the Commission on the Virginia Alcohol Safety Action Program at its quarterly meeting on June 5, 2020.

Public Comment Deadline: May 29, 2020.

Agency Contact: Richard Foy, Regulatory Coordinator, Commission on the Virginia Alcohol Safety Action Program, 701 East Franklin Street, Suite 1110, Richmond, VA 23219, telephone (804) 786-5895, or email [rfoy@vasap.virginia.gov](mailto:rfoy@vasap.virginia.gov).

VA.R. Doc. No. R20-27 Filed March 10, 2020, 5:27 p.m.

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# PERIODIC REVIEWS AND SMALL BUSINESS IMPACT REVIEWS

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## TITLE 9. ENVIRONMENT

### STATE AIR POLLUTION CONTROL BOARD

#### Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the State Air Pollution Control Board conducted a small business impact review of **9VAC5-190, Variance for Merck Stonewall Plant**, and determined that this regulation should be retained in its current form. The State Air Pollution Control Board is publishing its report of findings dated February 21, 2020, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

This regulation continues to be needed to allow Merck to use compliance with a prevention of significant deterioration (PSD) permit as an alternate demonstration of compliance with provisions of the regulations of the State Air Pollution Control Board. It provides a cost-effective means of fulfilling ongoing state and federal requirements that protect air quality.

There were no public comments received that requested a change to the regulation. The regulation's level of complexity is appropriate to ensure that the regulated entity is able to meet its legal mandate as efficiently and cost effectively as possible. This regulation does not overlap, duplicate, or conflict with any state law or other state regulation. This regulation was last reviewed in 2001. Over time, it generally becomes less expensive to characterize, measure, and mitigate the regulated pollutants that contribute to poor air quality. This variance continues to provide the most efficient and cost-effective means to determine the level and impact of excess emissions and to control those excess emissions.

This variance is specific to the Merck Stonewall Plant and has been implemented based on the Environmental Protection Agency's site-specific PSD rule (40 CFR 52.2454) for the Merck Stonewall Plant. The department does not believe that Merck meets the definition of a "small business" as defined by § 2.2-4007.1 of the Code of Virginia; therefore, the regulation does not impact small businesses.

Contact Information: Gary Graham, Regulatory Analyst, Office of Regulatory Affairs, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4103, FAX (804) 698-4319, or email [gary.graham@deq.virginia.gov](mailto:gary.graham@deq.virginia.gov).

### VIRGINIA WASTE MANAGEMENT BOARD

#### Agency Notice

Pursuant to Executive Order 14 (as amended July 16, 2018) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the following regulations are undergoing a periodic review: **9VAC20-20, Schedule of Fees for Hazardous Waste Facility Site Certification; 9VAC20-30, Technical**

**Assistance Fund Administrative Procedures; 9VAC20-40, Administrative Procedures for Hazardous Waste Facility Site Certification; and 9VAC20-150, Waste Tire End User Reimbursement Regulation.** The review of these regulations will be guided by the principles in Executive Order 14 (as amended July 16, 2018).

The purpose of this review is to determine whether these regulations should be repealed, amended, or retained in their current forms. Public comment is sought on the review of any issue relating to these regulations, including whether each 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.

Public comment period begins March 30, 2020, and ends April 20, 2020.

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 published in the Virginia Register of 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](mailto:melissa.porterfield@deq.virginia.gov).

#### Agency Notice

Pursuant to Executive Order 14 (as amended July 16, 2018) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the following regulation is undergoing a periodic review: **9VAC20-50, Hazardous Waste Facility Siting Criteria.** The review of this regulation will be guided by the principles in Executive Order 14 (as amended July 16, 2018).

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.

Public comment period begins March 30, 2020, and ends April 20, 2020.

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# Periodic Reviews and Small Business Impact Reviews

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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 published in the Virginia Register of Regulations.

Contact Information: Cindy Berndt, Regulatory Coordinator, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4378, FAX (804) 698-4019, or email [cindy.berndt@deq.virginia.gov](mailto:cindy.berndt@deq.virginia.gov).

## STATE WATER CONTROL BOARD

### Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the State Water Control Board conducted a small business impact review of **9VAC25-192, Virginia Pollution Abatement (VPA) Regulation and General Permit for Animal Feeding Operations and Animal Waste Management**, and determined that this regulation should be retained in its current form. The State Water Control Board is publishing its report of findings dated February 7, 2020, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

This regulation continues to be needed. The regulation provides a streamlined permitting process for pollutant management activities of animal wastes at confined animal feeding operations having 300 or more animal units utilizing a liquid manure collection and storage system. Without this regulation, individual permits would be required to be obtained by the operator, which would cost more to prepare, and the individual permits would contain requirements that are similar to the requirements found in the general permit.

One comment was received from the public; however, the comment pertained to activities regulated by another regulation, not the regulation being reviewed.

This regulation has been developed to protect human health and the environment from impacts from the operation of confined animal feeding operations having 300 or more animal units utilizing a liquid manure collection and storage system. Standard requirements applicable to these types of operations have been included in the general permit. The regulation contains technical standards that must be met by all operations and provides the regulatory community with a consistent set of standards for operations.

The regulation was adopted as required by state law and does not overlap, duplicate, or conflict with state law. The regulation was last issued in 2014 and will expire in 2024. As part of the general permit regulation reissuance, the agency will evaluate changes that are needed to the regulation in response to changes in technology, economic conditions, and other factors that impact the content of the regulation. The

agency believes the use of the general permit regulation process minimizes the impact on the regulated community. The use of the general permit minimizes the administrative costs associated with applying for a permit, which minimizes the impact this regulation has on small businesses.

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](mailto:melissa.porterfield@deq.virginia.gov).



## TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

### DEPARTMENT OF TRANSPORTATION

#### Agency Notice

Pursuant to Executive Order 14 (as amended July 16, 2018) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the following regulations are undergoing a periodic review: **24VAC30-17, Solicitation and Use of VDOT Buildings and Grounds for Nonwork Purposes; 24VAC30-73, Access Management Regulations; 24VAC30-121, Comprehensive Roadside Management Program; 24VAC30-151, Land Use Permit Regulations; 24VAC30-570, Procedures for Inclusion of Routes into the Non-Interstate Qualifying Network and Virginia Access Systems; and 24VAC30-620, Rules, Regulations, and Rates Concerning Toll and Bridge Facilities.** The review of these regulations will be guided by the principles in Executive Order 14 (as amended July 16, 2018).

The purpose of this review is to determine whether these regulations should be repealed, amended, or retained in their current forms. Public comment is sought on the review of any issue relating to these regulations, including whether each 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.

Public comment period begins March 30, 2020, and ends April 20, 2020.

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 published in the Virginia Register of Regulations.



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## Periodic Reviews and Small Business Impact

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Contact Information: JoAnne P. Maxwell, Agency Regulatory Coordinator, Governance and Legislative Affairs Division, Virginia Department of Transportation, 1401 East Broad Street, Richmond, VA 23219, telephone (804) 786-1830, FAX (804) 225-4700, or email [joanne.maxwell@vdot.virginia.gov](mailto:joanne.maxwell@vdot.virginia.gov).

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# REGULATIONS

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

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## 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.

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## TITLE 11. GAMING

### VIRGINIA RACING COMMISSION

#### Notice of Extension of Emergency Regulation

Title of Regulation: **11VAC10-47. Historical Horse Racing (adding 11VAC10-47-10 through 11VAC10-47-200).**

Statutory Authority: § 59.1-369 of the Code of Virginia.

Effective Date Extended Through: October 3, 2020.

The Governor approved the request of the Virginia Racing Commission to extend the expiration date of the emergency regulation for six months as provided by § 2.2-4011 D of the Code of Virginia. Therefore, the emergency regulation will continue in effect through October 3, 2020. The emergency regulation implements Chapter 811 of the 2018 Acts of Assembly, which authorizes Historical Horse Racing at facilities licensed by the Virginia Racing Commission throughout the Commonwealth of Virginia. The commission will begin the process of finalizing the permanent regulation pending completion of legislative action requiring significant changes to the proposed language. The emergency regulation was published in [35:5 VA.R. 785-796 October 29, 2018](#).

Agency Contact: Kimberly Mackey, Regulatory Coordinator, Virginia Racing Commission, 5707 Huntsman Road, Suite 201-B, Richmond, VA 23250, telephone (804) 966-7406, or email [kimberly.mackey@vrc.virginia.gov](mailto:kimberly.mackey@vrc.virginia.gov).

VA.R. Doc. No. R19-5684; Filed March 16, 2020, 7:42 a.m.

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## TITLE 12. HEALTH

### DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

#### Notice of Extension of Emergency Regulation

Titles of Regulations: **12VAC30-10. State Plan under Title XIX of the Social Security Act Medical Assistance Program; General Provisions (amending 12VAC30-10-10, 12VAC30-10-410; repealing 12VAC30-10-20).**

**12VAC30-20. Administration of Medical Assistance Services (amending 12VAC30-20-205, 12VAC30-20-210).**

**12VAC30-30. Groups Covered and Agencies Responsible for Eligibility Determination (amending 12VAC30-30-10).**

#### **12VAC30-40. Eligibility Conditions and Requirements (adding 12VAC30-40-348).**

Statutory Authority: § 32.1-325 of the Code of Virginia; 42 USC § 1396 et seq.

Effective Date Extended Through: September 17, 2021.

The Governor approved the request of the Department of Medical Assistance Services to extend the expiration date of the emergency regulations for six months as provided by § 2.2-4011 D of the Code of Virginia. Therefore, the emergency regulations will continue in effect through September 17, 2021. The emergency regulations incorporate changes made to the State Plan for Medical Assistance to implement Medicaid expansion. The extension is required in order to continue enforcing the legislative mandate set out in the 2018 Appropriation Act, Item 303 SS 4 a. The emergency regulations were published in [35:25 VA.R. 3028-3044 August 5, 2019](#).

Agency Contact: Emily McClellan, Regulatory Supervisor, Policy Division, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-4300, FAX (804) 786-1680, or email [emily.mcclellan@dmas.virginia.gov](mailto:emily.mcclellan@dmas.virginia.gov).

VA.R. Doc. No. R19-5692; Filed March 16, 2020, 7:41 a.m.

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## TITLE 13. HOUSING

### BOARD OF HOUSING AND COMMUNITY DEVELOPMENT

#### Extension of Public Comment Period and Reschedule of Public Hearing

Title of Regulation: **13VAC5-31. Virginia Amusement Device Regulations (amending 13VAC5-31-20, 13VAC5-31-30, 13VAC5-31-40, 13VAC5-31-75; adding 13VAC5-31-300).**

Statutory Authority: § 36-98.3 of the Code of Virginia.

The Board of Housing and Community Development noticed a public comment period on amendments to the Virginia Amusement Device Regulations (13VAC5-31) published in the February 3, 2020, issue of the Virginia Register of Regulations ([36:12 VA.R. 1452-1457 February 3, 2020](#)).

The public comment period has been extended to May 15, 2020, and commenters will use the Virginia Regulatory Town

Hall website at <http://www.townhall.virginia.gov/>. Please include the full name of the person commenting and any organization represented. To be considered, written comments must be submitted using the Town Hall online comment forum at <https://townhall.virginia.gov/L/ViewStage.cfm?stageid=8875> by 11:59 p.m. on May 15, 2020.

A rescheduled public hearing will be held on May 11, 2020, at 10 a.m. at the Virginia Housing Development Authority Virginia Housing Center, 4224 Cox Road, Glen Allen, Virginia 23060. Oral and written comments will be accepted at the public hearing.

**Agency Contact:** Kyle Flanders, Senior Policy Analyst, Department of Housing and Community Development, Main Street Centre, 600 East Main Street, Suite 300, Richmond, VA 23219, telephone (804) 786-6761, FAX (804) 371-7090, TTY (804) 371-7089, or email [kyle.flanders@dhcd.virginia.gov](mailto:kyle.flanders@dhcd.virginia.gov).

VA.R. Doc. No. R19-5883; Filed March 12, 2020,

**Extension of Public Comment Period and Reschedule of Public Hearing**

**Title of Regulation:** 13VAC5-51. Virginia Statewide Fire Prevention Code (amending 13VAC5-51-21, 13VAC5-51-31, 13VAC5-51-61, 13VAC5-51-91, 13VAC5-51-130 through 13VAC5-51-135.5, 13VAC5-51-138.4 through 13VAC5-51-141, 13VAC5-51-142 through 13VAC5-51-144.6, 13VAC5-51-144.8 through 13VAC5-51-155; adding 13VAC5-51-138.1).

**Statutory Authority:** § 27-97 of the Code of Virginia.

The Board of Housing and Community Development noticed a public comment period on amendments to the Statewide Fire Prevention Code (13VAC5-51) published in the February 3, 2020, issue of the Virginia Register of Regulations (36:12 VA.R. 1457 1581 February 3, 2020).

The public comment period has been extended to May 15, 2020, and commenters will use the Virginia Regulatory Town Hall website, <http://www.townhall.virginia.gov/>. Please include the full name of the person commenting and any organization represented. To be considered, written comments must be submitted using the Town Hall online comment forum at <https://townhall.virginia.gov/L/ViewStage.cfm?stageid=8878> by 11:59 p.m. on May 15, 2020.

A rescheduled public hearing will be held on May 11, 2020, at 10 a.m. at the Virginia Housing Development Authority Virginia Housing Center, 4224 Cox Road, Glen Allen, Virginia 23060. Oral and written comments will be accepted at the public hearing.

**Agency Contact:** Kyle Flanders, Senior Policy Analyst, Department of Housing and Community Development, Main Street Centre, 600 East Main Street, Suite 300, Richmond,

VA 23219, telephone (804) 786-6761, FAX (804) 371-7090, TTY (804) 371-7089, or email [kyle.flanders@dhcd.virginia.gov](mailto:kyle.flanders@dhcd.virginia.gov).

VA.R. Doc. No. R19-5886; Filed March 12, 2020, 2:23 p.m.

**Extension of Public Comment Period and Reschedule of Public Hearing**

**Title of Regulation:** 13VAC5-63. Virginia Uniform Statewide Building Code (amending 13VAC5-63-10, 13VAC5-63-20, 13VAC5-63-30, 13VAC5-63-50, 13VAC5-63-60, 13VAC5-63-80, 13VAC5-63-100, 13VAC5-63-120, 13VAC5-63-130, 13VAC5-63-150, 13VAC5-63-160, 13VAC5-63-190 through 13VAC5-63-280, 13VAC5-63-295 through 13VAC5-63-360, 13VAC5-63-400 through 13VAC5-63-440, 13VAC5-63-450, 13VAC5-63-470, 13VAC5-63-480, 13VAC5-63-490, 13VAC5-63-510, 13VAC5-63-520, 13VAC5-63-530, 13VAC5-63-540, 13VAC5-63-545; repealing 13VAC5-63-445).

**Statutory Authority:** § 36-98 of the Code of Virginia.

The Board of Housing and Community Development noticed a public comment period on amendments to the Virginia Uniform Statewide Building Code (13VAC5-63) published in the February 3, 2020, issue of the Virginia Register of Regulations (36:12 VA.R. 1581-1774 February 3, 2020).

The public comment period has been extended to May 15, 2020, and commenters will use the Virginia Regulatory Town Hall website at <http://www.townhall.virginia.gov/>. Please include the full name of the person commenting and any organization represented. To be considered, written comments must be submitted using the Town Hall online comment forum at <https://townhall.virginia.gov/L/ViewStage.cfm?stageid=8877> by 11:59 p.m. on May 15, 2020.

A rescheduled public hearing will be held on May 11, 2020, at 10 a.m. at the Virginia Housing Development Authority Virginia Housing Center, 4224 Cox Road, Glen Allen, Virginia 23060. Oral and written comments will be accepted at the public hearing.

**Agency Contact:** Kyle Flanders, Senior Policy Analyst, Department of Housing and Community Development, Main Street Centre, 600 East Main Street, Suite 300, Richmond, VA 23219, telephone (804) 786-6761, FAX (804) 371-7090, TTY (804) 371-7089, or email [kyle.flanders@dhcd.virginia.gov](mailto:kyle.flanders@dhcd.virginia.gov).

VA.R. Doc. No. R19-5887; Filed March 12, 2020, 2:26 p.m.

**Extension of Public Comment Period and Reschedule of Public Hearing**

**Title of Regulation:** 13VAC5-91. Virginia Industrialized Building Safety Regulations (amending 13VAC5-91-10, 13VAC5-91-20, 13VAC5-91-150, 13VAC5-91-160, 13VAC5-91-260).

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# Regulations

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Statutory Authority: § 36-73 of the Code of Virginia.

The Board of Housing and Community Development noticed a public comment period on amendments to the Virginia Industrialized Building Safety Regulations (13VAC5-91) published in the February 3, 2020, issue of the Virginia Register of Regulations (36:12 VA.R. 1747-1750 February 3, 2020).

The public comment period has been extended to May 15, 2020, and commenters will use the Virginia Regulatory Town Hall website at <http://www.townhall.virginia.gov/>. Please include the full name of the person commenting and any organization represented. To be considered, written comments must be submitted using the Town Hall online comment forum at <https://townhall.virginia.gov/L/ViewStage.cfm?stageid=8876> by 11:59 p.m. on May 15, 2020.

A rescheduled public hearing will be held on May 11, 2020, at 10 a.m. at the Virginia Housing Development Authority Virginia Housing Center, 4224 Cox Road, Glen Allen, Virginia 23060. Oral and written comments will be accepted at the public hearing.

Agency Contact: Kyle Flanders, Senior Policy Analyst, Department of Housing and Community Development, Main Street Centre, 600 East Main Street, Suite 300, Richmond, VA 23219, telephone (804) 786-6761, FAX (804) 371-7090, TTY (804) 371-7089, or email [kyle.flanders@dhcd.virginia.gov](mailto:kyle.flanders@dhcd.virginia.gov).

VA.R. Doc. No. R19-5885; Filed March 12, 2020, 2:28 p.m.

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## TITLE 14. INSURANCE

### STATE CORPORATION COMMISSION

#### Proposed Regulation

<p><u>REGISTRAR'S NOTICE:</u> 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: **14VAC5-200. Rules Governing Long-Term Care Insurance (amending 14VAC5-200-125).**

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

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

Public Comment Deadline: May 1, 2020.

Agency Contact: Bob Grissom, Chief Insurance Market Examiner, Bureau of Insurance, State Corporation Commission, P.O. Box 1157, Richmond, VA 23218, telephone (804) 371-9152, FAX (804) 371-9944, or email [bob.grissom@scc.virginia.gov](mailto:bob.grissom@scc.virginia.gov).

Summary:

*The proposed amendments remove the due date for annual long-term care rate reports, which coincides with other deadlines that impact workloads within the Bureau of Insurance, allowing the bureau to set the date by administrative letter. The new deadline for the annual rate report is anticipated to be in September or October of each year.*

AT RICHMOND, MARCH 11, 2020

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. INS-2020-00033

Ex Parte: In the matter of Amending Rules

Governing Long-Term Care Insurance

#### ORDER TO TAKE NOTICE

Section 12.1-13 of the Code of Virginia ("Code") provides that the State Corporation Commission ("Commission") shall have the power to promulgate rules and regulations in the enforcement and administration of all laws within its jurisdiction, and § 38.2-223 of the Code provides that the Commission may issue any rules and regulations necessary or appropriate for the administration and enforcement of Title 38.2 of the Code.

The rules and regulations issued by the Commission pursuant to § 38.2-223 of the Code are set forth in Title 14 of the Virginia Administrative Code. A copy also may be found at the Commission's website: <http://www.scc.virginia.gov/case>.

The Bureau of Insurance ("Bureau") has submitted to the Commission proposed amendments to the Rules at Chapter 200 of Title 14 of the Virginia Administrative Code entitled "Rules Governing Long-Term Care Insurance," which amend the Rules at 14 VAC 5-200-125.

The amendments to the Rules are necessary to allow more flexibility with the due date for the annual long-term care rate report. The Commission intends to allow the Bureau to set a date by administrative letter in approximately September or October.

NOW THE COMMISSION is of the opinion that the proposal to amend the Rules at Chapter 200 of Title 14 of the Virginia Administrative Code as submitted by the Bureau should be considered for adoption with a proposed effective date of July 1, 2020.

Accordingly, IT IS ORDERED THAT:

(1) The proposal to amend Chapter 200 of Title 14 of the Virginia Administrative Code at 14 VAC 5-200-125 is attached hereto and made a part hereof.

(2) All interested persons who desire to comment in support of or in opposition to, or request a hearing to oppose amendments to Chapter 200 shall file such comments or hearing request on or before May 1, 2020, with Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, and shall refer to Case No. INS-2020-00033. Interested persons desiring to submit comments electronically may do so by following the instructions at the Commission's website: <http://www.scc.virginia.gov/case>. All comments shall refer to Case No. INS-2020-00033.

(3) If no written request for a hearing on the proposal to amend rules as outlined in this Order is received on or before May 1, 2020, the Commission, upon consideration of any comments submitted in support of or in opposition to the proposal, may adopt amendments to Chapter 200 of Title 14 of the Virginia Administrative Code as proposed by the Bureau.

(4) The Bureau shall provide notice of the proposal to all carriers licensed in Virginia to write long-term care insurance and to all interested persons.

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

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

(7) The Bureau shall file with the Clerk of the Commission an affidavit of compliance with the notice requirements of Ordering Paragraph (4) above.

(8) This matter is continued.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to: 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 hereof shall be delivered to the Commission's Office of General Counsel and the Bureau of Insurance in care of Deputy Commissioner Julie S. Blauvelt.

**14VAC5-200-125. Annual rate reports.**

A. Every insurer shall report to the commission annually ~~by June 30~~ premium rates for all long-term care insurance policies. The commission shall establish the due date and post

this report to the Bureau of Insurance's webpage. The rate report shall include:

1. For policies issued on or after October 1, 2003, an actuarial certification prepared, dated, and signed by a qualified actuary that provides at least the following information:

a. A statement of the sufficiency of the current premium rate schedule including:

(1) For policies currently marketed:

(a) The premium rate schedule continues to be sufficient to cover anticipated costs under moderately adverse experience, consistent with the margins as defined in the original rate filing or any subsequent rate filing, and that the premium rate schedule is reasonably expected to be sustainable over the life of the form with no future premium increases anticipated; or

(b) If the statement in subdivision 1 a (1) (a) of this subsection cannot be made, a statement that margins for moderately adverse experience, consistent with the margins as defined in the original rate filing or any subsequent rate filing, may no longer be sufficient. In this situation, the insurer shall submit to the commission within 60 days of the date of the actuarial certification a plan of action, including a timeframe, for the reestablishment of adequate margins for moderately adverse experience so that the ultimate premium rate schedule would be reasonably expected to be sustainable over the future life of the form with no future premium increases anticipated. Failure to submit a plan of action to the commission within 60 days or to comply with the timeframe stated in the plan of action constitutes grounds for withdrawal or modification of approval of the form for future sales.

(2) For policies that are no longer marketed:

(a) A statement that the premium rate schedule continues to be sufficient to cover anticipated costs under best estimate assumptions; or

(b) A statement that the premium rate schedule may no longer be sufficient. The insurer shall submit to the commission within 60 days of the date of the actuarial certification a plan of action, including a timeframe for the reestablishment of adequate margins for moderately adverse experience.

b. A description of the review performed that led to the statement.

c. At least once every three years, an actuarial memorandum dated and signed by a qualified actuary that supports the actuarial certification and provides at least the following information:

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- (1) A detailed explanation of the data sources and review performed by the actuary prior to making the statement in subdivision 1 a (1) of this subsection;
- (2) A complete description of experience assumptions and their relationship to the initial pricing assumptions;
- (3) A description of the credibility of the experience data; and
- (4) An explanation of the analysis and testing performed in determining the current presence of margins.

2. For policies issued prior to October 1, 2003, the report shall include a statement signed by a qualified actuary that a complete analysis and review of the premium rates was conducted, a description of the analysis, the date on which the analysis was completed, and any rate action found to be necessary as a result of the analysis.

B. Reports required in this section shall be based on the previous calendar year data and filed with the commission no later than ~~June 30~~ the due date. The commission may request any additional information that will support the information required in this section.

VA.R. Doc. No. R20-6337; Filed March 11, 2020, 1:41 p.m.

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## TITLE 16. LABOR AND EMPLOYMENT

### SAFETY AND HEALTH CODES BOARD

#### Final Regulation

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

**Title of Regulation:** **16VAC25-90. Federal Identical General Industry Standards (amending Appendix A to 16VAC25-90-1910.134).**

**Statutory Authority:** § 40.1-22 of the Code of Virginia; Occupational Safety and Health Act of 1970 (P.L. 91-596).

**Effective Date:** March 31, 2020.

**Agency Contact:** Holly Trice, Senior Staff Attorney and Regulatory Coordinator, Department of Labor and Industry, 600 East Main Street, Suite 207, Richmond, VA 23219,

telephone (804) 786-2641, FAX (804) 371-6524, or email [holly.trice@doli.virginia.gov](mailto:holly.trice@doli.virginia.gov).

#### Summary:

*In a final rule, federal Occupational Safety and Health Administration approved two additional quantitative fit testing protocols for inclusion in Appendix A of the Respiratory Protection Standard, including the modified ambient aerosol condensation nuclei counter (CNC) quantitative fit testing protocol for full-facepiece and half-mask elastomeric respirators and the modified ambient aerosol CNC quantitative fit testing protocol for filtering facepiece respirators. The protocols apply to employers in general industry, shipyard employment, and the construction industry. In this regulatory action, the board is adopting this final rule.*

**Note on Incorporation by Reference:** Pursuant to § 2.2-4103 of the Code of Virginia, 29 CFR Part 1910 (Occupational Safety and Health Standards) is declared a document generally available to the public and appropriate for incorporation by reference. For this reason, this document will not be printed in the Virginia Register of Regulations. A copy of this document is available for inspection at the Department of Labor and Industry, Main Street Centre, 600 East Main Street, Richmond, Virginia 23219, and in the office of the Registrar of Regulations, 900 East Main Street, 11th Floor, Richmond, Virginia 23219.

**Statement of Final Agency Action:** On March 5, 2020, the Safety and Health Codes Board adopted the federal Occupational Safety and Health Administration's final rule for Additional Ambient Aerosol CNC Quantitative Fit Testing Protocols: Respiratory Protection Standard, as published in 84 FR 50739 through 84 FR 50756 on September 26, 2019, with an effective date of March 31, 2020.

**Federal Terms and State Equivalents:** When the regulations as set forth in the revised Final Rule for the Respiratory Protection Standard are applied to the Commissioner of the Department of Labor and Industry or to Virginia employers, the following federal terms shall be considered to read as follows:

<u>Federal Terms</u>	<u>VOSH Equivalent</u>
29 CFR	VOSH Standard
Assistant Secretary	Commissioner of Labor and Industry
Agency	Department
September 26, 2019	March 31, 2020

VA.R. Doc. No. R20-6294; Filed March 11, 2020, 11:06 a.m.

**TITLE 18. PROFESSIONAL AND  
OCCUPATIONAL LICENSING**

**COMMON INTEREST COMMUNITY BOARD**

**Forms**

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

[Time-Share Exchange Program Registration Application A492-0516REG-v2 \(eff. 1/2020\)](#)

[Time-Share Exchange Program Annual Report A492-0516ANRPT-v2 \(eff. 1/2020\)](#)

[Alternative Purchase Registration Application A492-0524REG-v2 \(eff. 1/2020\)](#)

[Alternative Purchase Annual Report A492-0524ANRPT-v2 \(eff. 1/2020\)](#)

[Time-Share Reseller Registration Application A492-0525REG-v3 \(eff. 1/2020\)](#)

[Time-Share Reseller Lead Dealer Change Form A492-0525LDCHG-v2 \(eff. 1/2020\)](#)

Title of Regulation: **18VAC48-45. Time-Share Regulations.**

VA.R. Doc. No. R20-6328; Filed March 5, 2020, 2:30 p.m.

Contact Information: Joseph C. Haughwout, Jr., Regulatory Administrator, Department of Professional and Occupational Regulation, Perimeter Center, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-2684, or email [joseph.haughwout@dpor.virginia.gov](mailto:joseph.haughwout@dpor.virginia.gov).

FORMS (18VAC48-45)

~~Time Share Registration/Amendment Application A492-0515REG v2 (eff. 10/2018)~~

~~Time Share Annual Report A492-0515ANRPT v4 (eff. 10/2018)~~

[Time-Share Registration/Amendment Application A492-0515REG-v3 \(eff. 1/2020\)](#)

[Time-Share Annual Report A492-0515ANRPT-v5 \(eff. 1/2020\)](#)

[Time-Share Building Status Form A492-0515BLDST-v1 \(eff. 9/2013\)](#)

~~Time Share Bond/Letter of Credit Verification Form A492-0515BOND v2 (eff. 10/2018)~~

~~Time Share Exchange Company Annual Report A492-0516ANRPT v1 (eff. 9/2013)~~

~~Time Share Exchange Company Registration Application A492-0516REG v1 (eff. 9/2013)~~

~~Alternative Purchase Annual Report A492-0524ANRPT v1 (eff. 10/2015)~~

~~Alternative Purchase Registration Application A492-0524REG v1 (eff. 10/2015)~~

~~Time Share Reseller Lead Dealer Change Form A492-0525LDCHG v1 (eff. 1/2016)~~

~~Time Share Reseller Registration Application A492-0525REG v2 (eff. 10/2018)~~

[Time-Share Bond/Letter of Credit Verification Form A492-0515BOND-v3 \(eff. 1/2020\)](#)

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# GUIDANCE DOCUMENTS

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## PUBLIC COMMENT OPPORTUNITY

Pursuant to § 2.2-4002.1 of the Code of Virginia, a certified guidance document is subject to a 30-day public comment period after publication in the Virginia Register of Regulations and prior to the guidance document's effective date. During the public comment period, comments may be made through the Virginia Regulatory Town Hall website (<http://www.townhall.virginia.gov>) or sent to the agency contact. Under subsection C of § 2.2-4002.1, the effective date of the guidance document may be delayed for an additional period. The guidance document may also be withdrawn.

The following guidance documents have been submitted for publication by the listed agencies for a public comment period. Online users of this issue of the Virginia Register of Regulations may click on the name of a guidance document to access it. Guidance documents are also available on the Virginia Regulatory Town Hall (<http://www.townhall.virginia.gov>) or from the agency contact or may be viewed at the Office of the Registrar of Regulations, 900 East Main Street, Richmond, Virginia 23219.

### BOARD OF ACCOUNTANCY

Titles of Documents:

[CPE Violation Penalties Guidelines.](#)

[Virginia Board of Accountancy Bylaws.](#)

Public Comment Deadline: April 29, 2020.

Effective Date: April 30, 2020.

Agency Contact: Elizabeth Marcello, Information and Policy Advisor, Board of Accountancy, 9960 Mayland Drive, Suite 402, Richmond, VA 23233, telephone (804) 367-2006, or email [elizabeth.marcello@boa.virginia.gov](mailto:elizabeth.marcello@boa.virginia.gov).

### BOARD OF VETERINARY MEDICINE

Title of Document: [Virginia Board of Veterinary Medicine Bylaws.](#)

Public Comment Deadline: April 29, 2020.

Effective Date: April 30, 2020.

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

### STATE BOARD OF HEALTH

Title of Document: [Virginia Bleeding Disorders Program Pool of Funds Guidelines.](#)

Public Comment Deadline: April 29, 2020.

Effective Date: April 30, 2020.

Agency Contact: Mylam Ly, Policy Analyst and Project Coordinator, Virginia Department of Health, James Madison Building, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7263, or email [mylam.ly@vdh.virginia.gov](mailto:mylam.ly@vdh.virginia.gov).

### DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Title of Document: [SUPPORT Act Established Medicare Part B Benefit for Opioid Use Disorder Treatment Services by Opioid Treatment Program Effective January 1, 2020.](#)

Public Comment Deadline: April 29, 2020.

Effective Date: April 30, 2020.

Agency Contact: Emily McClellan, Regulatory Manager, Office of Policy and Research, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-6043, or email [emily.mcclellan@dmas.virginia.gov](mailto:emily.mcclellan@dmas.virginia.gov).



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# GENERAL NOTICES/ERRATA

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## STATE AIR POLLUTION CONTROL BOARD

### State Implementation Plan Revision - Northern Virginia Ozone Nonattainment Area - Precursors to the Pollutant Ozone

Notice of action: The Department of Environmental Quality (DEQ) is seeking public comment and announcing a public hearing on a proposed 2017 base year inventory for precursors to the pollutant ozone, which are carbon monoxide (CO), nitrogen oxides (NO<sub>x</sub>), and volatile organic compounds (VOC), in the Northern Virginia Ozone Nonattainment Area. The Commonwealth intends to submit the inventory as a revision to the Virginia State Implementation Plan (SIP) in accordance with the federal Clean Air Act. The SIP is the plan developed by Virginia in order to fulfill its responsibilities under the federal Clean Air Act to attain and maintain the National Ambient Air Quality Standards (NAAQS) promulgated by the U.S. Environmental Protection Agency (EPA).

Purpose of notice: DEQ is seeking comments on the overall 2017 inventory for the Northern Virginia portion of the Metropolitan Washington, DC-MD-VA Ozone Nonattainment Area, which is classified as marginal for the 2015 NAAQS, and consists of the Counties of Arlington, Fairfax, Loudoun, and Prince William and the Cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park.

Public comment period: March 30, 2020, to April 29, 2020.

Public hearing: A public hearing will be conducted at the Department of Environmental Quality, Northern Region Office, 13901 Crown Court, Woodbridge, Virginia, at 10 a.m. on April 29, 2020. A map and directions may be found at <http://www.deq.virginia.gov/Locations/NorthernRegionalOffice.aspx>.

Description of proposal: The proposal consists of a comprehensive inventory of actual emissions from all sources of relevant pollutants for the base year 2017. This inventory, once finalized, will be the basis for any future planning exercises that have as a goal compliance with the 2015 ozone NAAQS. The proposal was prepared by the Metropolitan Washington Air Quality Committee (MWAQC), which consists of elected officials from the affected localities and representatives of state transportation and air quality planning agencies.

The complete proposal is available at <https://www.mwcog.org/documents/2020/01/24/washington-dc-md-va-2015-ozone-naaqs-nonattainment-area-base-year-2017-emissions-inventory-/>.

Federal information: This notice is being given to satisfy the public participation requirements of federal regulations (40 CFR 51.102). The proposed inventory and supporting technical documents will be submitted as a revision to the

Commonwealth of Virginia SIP under § 110(a) of the federal Clean Air Act in accordance with 40 CFR 51.104.

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

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

- 1) Main Street Office, 22nd Floor, 1111 East Main Street, Richmond, VA, telephone (804) 698-4249 and
- 2) Northern Regional Office, 13901 Crown Court, Woodbridge, VA, telephone (703) 583-3800.

Contact Information: Doris A. McLeod, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4197, FAX (804) 698-4319, or email [doris.mcleod@deq.virginia.gov](mailto:doris.mcleod@deq.virginia.gov).

## STATE CORPORATION COMMISSION

### Bureau of Insurance

February 24, 2020

Administrative Letter 2020-01

\*Revised March 10, 2020

TO: All Carriers Licensed to Write Accident and Sickness Insurance in Virginia, All Health Services Plans and Health Maintenance Organizations Licensed in Virginia, and Interested Parties

RE: Instructions Related to Health Care Shared Savings Incentive Programs in Virginia

The purpose of this Administrative Letter is to provide guidance to carriers regarding the statutory requirements that apply to Health Care Shared Savings Incentive Programs ("Program" or "Programs") in Virginia as set forth in Article 8 of Chapter 34 of Title 38.2 of the Code of Virginia ("Code").

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## General Notices/Errata

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Article 8 requires carriers offering health benefit plans in the small group market in Virginia to have in place components of a Program and an online interactive comparative mechanism for estimated in-network out-of-pocket costs. In preparation for the Bureau of Insurance's review of each Program and to assist carriers in developing and describing acceptable Programs in plan materials for 2021, we offer the following guidance for submission timelines:

### Interactive Comparative Mechanism

Pursuant to § 38.2-3463 of the Code, each health carrier offering or renewing health benefit plans in the small group market on or after July 1, 2020 must establish an interactive mechanism on its website that enables a covered person to request and obtain the estimated out-of-pocket cost to the covered person for comparable health care services from network providers, as well as quality data for providers, as available. Out-of-pocket estimates must be good-faith estimates of the amount the covered person will be responsible to pay for health care services, including cost-sharing.

### File Health Care Shared Savings Incentive Program

Pursuant to § 38.2-3462 of the Code, beginning with plans offered or renewed on or after January 1, 2021, each health carrier offering a small group health benefit plan in Virginia must develop and implement a Program that provides incentives for covered persons to shop for comparable health care services from health care providers that are paid less than the average in-network allowed amounts for that service.

By April 30, 2020, each health carrier must file with the Bureau of Insurance via the System for Electronic Rate and Form Filing (SERFF) using the Type of Insurance (TOI) and Filing Type of "Shared Savings Program" under the Accident/Health Business Type. The filing must include a description of the Program to be effective January 1, 2021 that addresses the following:

1. A demonstration that the Program is cost effective by providing projected information in an Excel format using the "Health Care Shared Savings – Demonstration of Cost Effectiveness" template at: <http://www.scc.virginia.gov/boi/co/health/index.aspx> and including any data relied on in making such a determination. The Bureau will consider a Program as cost effective if the claim savings are greater than the paid incentive plus the cost to administer the Program;
2. The specific incentives and processes used to earn such incentives, including how the covered person requests the average allowed amount, how incentives are paid, along with any eligibility and documentation requirements;
3. How average allowed amounts for health care services are calculated. The amounts must be calculated over a period not to exceed one year; however, the Bureau

suggests that the average allowed amounts be based on a median of the most current allowed amounts by region, as region is determined by the carrier;

4. How the Program will be made available as a component to all small group health benefit plans, including instructions for employees and notification of availability, incentives and tax treatment; and

5. Any comparable health care services included in the Program in addition to those listed in § 38.2-3461. The carrier shall identify any health care services specifically included in the definition of comparable health care services that do not meet the variation standards noted in the definition and that the carrier does not consider to be comparable health care services.

On or before the date the Bureau approves filed forms for the 2021 plan year small group market, the Bureau will notify health carriers whether the carrier's Program complies with statutory requirements. After this initial filing, the Bureau expects each carrier to submit for review the above information prior to offering any Program that varies from the previously filed and reviewed Program.

### Plan Materials - Description of Program

As part of the SERFF form filings for the 2021 benefit year, unless granted an exemption as described below, plan materials to be issued in the small group market must inform the covered person of:

- the person's eligibility for an incentive payment;
- a website URL for the interactive mechanism where the covered person can view quality data and the estimated out-of-pocket cost from network providers for comparable health care services covered under that person's health benefit plan; and
- the process to request the average allowed amount for a comparable health care service.

### Plan Exemption

Health carriers with plans with a limited provider network may file with the Bureau a request for an exemption from participating in the Program by demonstrating that the plan's network is incompatible with the Program. A carrier's plans may be exempt if the carrier cannot demonstrate cost effectiveness as described above and in the "Health Care Shared Savings – Demonstration of Cost Effectiveness" template as referenced above. Plan exemption will be valid through the calendar year for which it was granted, or until the information supporting exemption is no longer valid, whichever occurs earlier. Annual requests for exemption must be filed by March 15 of the year prior to the requested exemption year.

## Annual Report

As described in subsection J of § 38.2-3462 of the Code, each health carrier will be required to file the "Health Care Shared Savings – Annual Report" at <http://www.scc.virginia.gov/boi/co/health/index.aspx> by April 1 of each year beginning April 1, 2022, unless all of a carrier's plans are determined exempt. It is anticipated that this filing will be made through SERFF as well, the details of which will be provided later.

This letter describes and summarizes the requirements of Article 8 of Chapter 34 of Title 38.2 of the Code. The provisions of each of these sections should be reviewed carefully for compliance.

Any questions concerning this Administrative Letter may be addressed to: David Shea, MAA, FSA, Health Actuary, Bureau of Insurance, [david.shea@scc.virginia.gov](mailto:david.shea@scc.virginia.gov).

/s/ Scott A. White  
Commissioner of Insurance

\*Revised March 10, 2020 to extend the date for the SERFF filings by insurers of their Shared Savings Programs

## **DEPARTMENT OF ENVIRONMENTAL QUALITY**

### **Director's Determination for a Small Renewable Energy (Water Related) Permit by Rule**

Pursuant to the Small Renewable Energy Projects Act of 2009 (§ 10.1-1197.5 et seq. of the Code of Virginia), the department is directed to develop one or more permits by rule "if it is determined by the Department that one or more such permits by rule are necessary for the construction and operation of small renewable energy projects." Regulatory advisory panels (RAPs) comprised of stakeholders were established for each renewable source category (i.e., wind, solar, combustion, and water) to make recommendations regarding a permit by rule (PBR) for each energy source. The director has approved a PBR regulation for wind energy projects, solar energy projects, and combustion energy projects.

The water-related RAP made a consensus recommendation in the fall of 2011 that it was not necessary or appropriate under current conditions for DEQ to develop a PBR regulation for renewable energy projects that generate electricity from falling water, wave motion, tides, or geothermal power. The RAP further recommended that DEQ reevaluate the potential need for a PBR regulation concerning these water-related renewable energy resources in 2014 or sooner if circumstances or public requests so indicate. The director issued a decision memorandum on December 2, 2011, in which the director accepted the RAP's recommendation.

DEQ completed the reevaluation of the potential need for a PBR regulation concerning these water-related renewable

energy resources in 2014 and on November 6, 2014, the director (i) determined that it was still not necessary or appropriate to develop a PBR and (ii) directed a reevaluation of the need for a PBR in 2019 or sooner if circumstances or public requests so indicate.

As part of the 2019 reevaluation of the need for a PBR regulation concerning these water-related renewable energy resources, an opportunity for the public to comment on the reevaluation of the RAP recommendation for small renewable energy (water related) PBR regulation was announced through a Virginia Regulatory Town Hall General Notice on January 10, 2020. The public comment period began January 10, 2020, and ended February 10, 2020. The notice provided an opportunity for the public to submit comments concerning the consensus recommendation of the RAP members. No comments were received during the public comment period.

Department staff are not aware of any circumstances, technological developments, changes to federal or state laws, or other factors that have changed since the director's 2014 reevaluation.

On February 28, 2020, DEQ completed the reevaluation and the director (i) determined that it is still not necessary or appropriate to develop a PBR at the present time for small renewable energy projects that generate electricity from falling water, wave motion, tides, or geothermal power and (ii) requested staff to advise the director when technical developments or changes to federal or state law occur that would warrant the reevaluation of the need for the development of a PBR for small renewable energy projects that generate electricity from falling water, wave motion, tides, or geothermal power.

Contact Information: Mary E. Major, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4423, FAX (804) 698-4510, or email [mary.major@deq.virginia.gov](mailto:mary.major@deq.virginia.gov).

## **DEPARTMENT OF ENVIRONMENTAL QUALITY and DEPARTMENT OF CONSERVATION AND RECREATION**

### **Availability of and Public Comment on Virginia's Draft Chesapeake Bay 2020–2021 Milestones**

The Department of Environmental Quality (DEQ) announces the release of the Virginia draft Chesapeake Bay 2020–2021 Milestones for public review beginning March 9, 2020. These milestones were developed by the various agencies responsible for implementing [Virginia's Phase III Watershed Implementation Plan \(WIP\)](#). Virginia is committed to setting and working toward two-year milestones to improve water quality in accordance with the Chesapeake Bay total maximum daily load (TMDL). These milestones are a part of the U.S. Environmental Protection

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## General Notices/Errata

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Agency's (EPA) accountability framework designed to ensure, with confidence, that the nitrogen, phosphorous, and sediment allocations of the TMDL will be met.

The review period begins March 9, 2020, and will conclude April 7, 2020. Beginning March 9, 2020, the draft documents can be found on [DEQ's Chesapeake Bay TMDL Phase III Watershed Implementation Planning webpage](#). We invite review by all stakeholders and the general public.

Virginia's Final 2020–2021 Milestones will be submitted to EPA no later than May 30, 2020, and will be available no later than June 13, 2020, on [DEQ's Chesapeake Bay Nutrient and Sediment Reduction Milestones webpage](#).

Written comments: Written comments on the Draft 2020–2021 Milestones may be submitted by any of the three methods listed. Please include the name and mailing address (or email address) of the commenter.

1. Email: [chesbayplan@deq.virginia.gov](mailto:chesbayplan@deq.virginia.gov)
2. Postal mail: DEQ, ATTN: Chesbayplan, P.O. Box 1105, Richmond, VA 23218
3. Hand delivery: DEQ, ATTN: Chesbayplan, 1111 East Main Street, Suite 1400, Richmond, VA 23219 (Monday through Friday, 8:30 a.m. – 5 p.m., except on state holidays and any other days on which state offices in the Richmond area are closed)

Contacts for additional information:

Michael Murphy, telephone (804) 698-4139, or email [michael.murphy@deq.virginia.gov](mailto:michael.murphy@deq.virginia.gov)

James Martin, telephone (804) 698-4298, or email [james.martin@deq.virginia.gov](mailto:james.martin@deq.virginia.gov)

Arianna Johns, telephone (804) 698-4525, or email [arianna.johns@deq.virginia.gov](mailto:arianna.johns@deq.virginia.gov)

Contact Information for DEQ: Michael Murphy, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23238, or email [chesbayplan@deq.virginia.gov](mailto:chesbayplan@deq.virginia.gov).

Contact Information for DCR: Lisa McGee, Policy and Planning Director, Department of Conservation and Recreation, 600 East Main Street, 24th Floor, Richmond, VA 23219, telephone (804) 786-4378, FAX (804) 786-6141, or email [lisa.mcgee@dcr.virginia.gov](mailto:lisa.mcgee@dcr.virginia.gov).

### STATE BOARD OF HEALTH and VIRGINIA DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

#### Legal Notice of Request for Certificate of Public Need Applications

Comment period: March 30, 2020, through April 13, 2020.

Pursuant to the requirements of § 32.1-102.3:2 of the Code of Virginia, notice is hereby given of consideration of the need to issue a request for applications (RFA) for the development of additional nursing home beds in Virginia. This notice reviews the qualification of Virginia's 22 health planning districts for the authorization of additional nursing home beds pursuant to applicable law and regulation (12VAC5-230-610).

Evaluation of Need for Additional Nursing Home Beds: The "Nursing Home Services" component of the Virginia State Medical Facilities Plan (SMFP) (12VAC5-230-10 et seq.) contains a nursing home bed need forecasting method (12VAC5-230-610). This method has been employed by the Virginia Department of Health (VDH) to compute a forecast of needed nursing home beds in 2022 in each of Virginia's 22 health planning districts. For conduct of the certificate of public need program, VDH continues to recognize the former Planning District 20, Southeastern Virginia, and the former Planning District 21, Peninsula, rather than the current combined Planning District 23, Hampton Roads.

Consistent with the SMFP (12VAC5-230-610 A), a health planning district is considered to have a need for additional nursing home beds when (i) the median annual occupancy of all existing nonfederal, Medicaid-certified nursing homes in the planning district was at least 93%; and (ii) the average annual occupancy of all existing nonfederal, Medicaid-certified nursing homes in the planning district was at least 90% for the most recent year for which bed utilization has been reported to VDH (through nursing home filings with Virginia Health Information Inc.). The Veterans Care Centers are excluded by regulation from consideration in the determination of nursing home bed need. For purposes of this notice, 2017 is the most recent year of nursing home utilization data reported to Virginia Health Information.

Also, no health planning district will be considered to have a need for additional nursing home beds if there are uncompleted nursing home beds that were authorized for the health planning district within the last three years and that will be Medicaid-certified beds. The following table displays, by health planning district, the nursing home gross bed need forecast for 2022, the current licensed bed inventory plus authorized additions of nursing home beds, and the net bed need forecast for 2022.

The table also shows the average annual percent occupancy and the median annual percent occupancy of Medicaid-certified nursing homes in each health planning district for the 2017 reporting year. The final column of the table states whether the health planning district qualifies for additional nursing home beds for the 2022 planning horizon year, and it identifies any health planning district with uncompleted nursing home beds that are expected to be certified by Medicaid when this determines the health planning district's qualification for an RFA.

Nursing Home Bed Need Forecast and Whether a Health Planning District Qualifies for Additional Nursing Home Beds for the 2022 Planning Year

Planning District	Gross Bed Need Forecast for 2022	Existing plus Authorized Beds	Projected Net Bed Need in 2022 ( ) = surplus	Median Occupancy of Medicaid NFs 2017	Average Occupancy of Medicaid NFs 2017	Plan. District Qualifies for Additional NH Beds
1	560	641	(81)	92.1%	90.8%	No - no need
2	490	509	(19)	86.5%	84.2%	No - no need
3	1,335	1,519	(184)	88.4%	89.7%	No - no need
4	772	773	(1)	88.7%	85.1%	No - no need
5	2,051	2,275	(224)	90.7%	87.6%	No - no need
6	1,588	1,504	84	92.8%	91.5%	No - low occu.
7	1,024	1,003	21*	92.6%	89.2%	No - no need
8	4,799	4,515	284	87.8%	84.5%	No - low occu.
9	790	766	24*	90.6%	88.6%	No - no need
10	1,115	1,064	51	90.0%	89.6%	No - low occu.
11	1,457	1,560	(103)	86.8%	85.1%	No - no need
12	1,881	1,929	(48)	89.4%	87.4%	No - no need
13	815	841	(26)	92.3%	85.1%	No - no need
14	567	662	(95)	89.7%	86.1%	No - no need
15	4,182	4,096	86	90.7%	87.6%	No - low occu.
16	900	875	25*	86.6%	79.5%	No - no need
17	252	268	(16)	83.8%	76.3%	No - no need
18	529	550	(21)	91.4%	88.8%	No - no need
19	943	1,055	(112)	87.0%	82.0%	No - no need
20	4,210	4,330	(120)	87.5%	86.0%	No - no need
21	1,838	1,828	10*	88.9%	87.5%	No - no need
22	292	281	11*	73.9%	77.7%	No - no need

\*Per 12VAC5-230-610 C, a projected net bed need of 1 to 29 beds rounds to zero.

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## General Notices/Errata

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Sources: Virginia State Medical Facilities Plan (12VAC5-230-610); University of Virginia Weldon Cooper Center for Public Service (population projections, 2019 edition); 2014 Virginia Nursing Home Patient-Origin Survey, VDH Office of Licensure and Certification (for age-specific nursing home use rates); VDH Office of Licensure and Certification (for bed inventory).

Conclusion: The RFA for nursing home beds issued in 2019 is hereby issued as a notice that no need exists for additional nursing home beds. As shown in the preceding table, no health planning district is identified by the standards of the SMFP as having a forecasted need for nursing home beds by 2022. No health planning district in Virginia currently meets the four-part test for qualification by:

- 1) Having a positive formula-generated need projection;
- 2) Having a median annual occupancy percentage of Medicaid-certified nursing homes for the most recent reporting year of 93% or higher;
- 3) Having an average annual occupancy percentage of Medicaid-certified nursing homes for the most recent reporting year of 90% or higher; and
- 4) Having no uncompleted nursing home beds authorized within the last three years that will be Medicaid certified.

Any person objecting to this notice may notify the State Health Commissioner and the State Board of Health within 14 days of publication of this notice in the Virginia Register of Regulations. Any objections received will be considered and replied to before a final notice is published.

**Contact Information:** Rebekah E. Allen, Senior Policy Analyst, Virginia Department of Health, 9960 Mayland Drive, Suite 401, Richmond, VA 23233, telephone (804) 367-2157, FAX (804) 527-4502, or email [regulatorycomment@vdh.virginia.gov](mailto:regulatorycomment@vdh.virginia.gov).

### STATE COUNCIL OF HIGHER EDUCATION FOR VIRGINIA

#### Seeking Comment from Students or on Behalf of Students of Certain Private and Out-of-State Institutions Regarding Enrollment Agreements

The Private Postsecondary Education (PPE) Division of the State Council of Higher Education for Virginia (SCHEV) is responsible for the regulation and oversight of certain private and out-of-state institutions. As a result of a legislative mandate, SCHEV is proposing regulatory language to amend Regulations Governing Certification of Certain Institutions to Confer Degrees, Diplomas and Certificates (8VAC40-31). Institutions certified by SCHEV are required to enter into an enrollment agreement with each student and provide student disclosures prescribed by the council. The proposed language

describes requirements of enrollment agreements now prescribed by law.

Regulation name: Regulations Governing the Certification of Certain Institutions to Confer Degrees, Diplomas and Certificates (8VAC40-31)

Purpose of notice: This regulatory proposal was developed by a workgroup consisting of institutions of higher education. During the public comment period for the Notice of Intended Regulatory Action (NOIRA), SCHEV received comments from institutions affected by this regulation. However, students did not submit comments. SCHEV would like to receive input from or on behalf of students on this regulatory proposal prior to adopting the final regulation. SCHEV is opening a comment forum in connection to this general notice for this purpose.

Public comment period: February 28, 2020, to April 17, 2020 (49 days).

Link to Proposed Regulation on the Virginia Regulatory Town Hall: <https://townhall.virginia.gov/L/ViewXML.cfm?textid=14178>.

Link to SCHEV Agency Background Statement, which further explains this regulatory proposal: [https://townhall.virginia.gov/L/GetFile.cfm?File=100\4821\8684\AgencyStatement\\_SCHEV\\_8684\\_v3.pdf](https://townhall.virginia.gov/L/GetFile.cfm?File=100\4821\8684\AgencyStatement_SCHEV_8684_v3.pdf).

Other Notices: This regulation is being promulgated through the standard rulemaking process, a flowchart of which can be viewed at <https://townhall.virginia.gov/um/chartstandardbasic.pdf>. This regulatory action is now at the proposed stage. After executive branch review and publication in the Virginia Register of Regulations, there will be a 60-day public comment period.

To be notified about this regulatory action as it continues to be developed, sign up on the Town Hall at: <https://townhall.virginia.gov/L/Register.cfm>. Be sure to sign up to receive information about SCHEV regulations.

**Contact Information:** Sylvia Rosa-Casanova, Director, Private Postsecondary Education, State Council of Higher Education for Virginia, 101 North 14 Street, Richmond, VA 23219, telephone (804) 225-3399, or email [sylviarosacasanova@schev.edu](mailto:sylviarosacasanova@schev.edu).

**DEPARTMENT OF MEDICAL ASSISTANCE  
SERVICES**

**Intent to Amend the Virginia State Plan for Medical Assistance Pursuant to § 1902(a)(13) of the Social Security Act (USC § 1396a(a)(13)) by Updating ACR Calculation of Supplemental Payments for Physicians Affiliated with Type One Hospitals**

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

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 Emily McClellan, Department of Medical Assistance Services, 600 Broad Street, Suite 1300, Richmond, VA 23219, or via email at [emily.mcclellan@dmass.virginia.gov](mailto:emily.mcclellan@dmass.virginia.gov).

DMAS is specifically soliciting input from stakeholders, providers, and beneficiaries on the potential impact of the proposed changes discussed in this notice. Comments or inquiries may be submitted, in writing, within 30 days of this notice publication to Emily McClellan, and such comments are available for review at the same address. Comments may also be submitted, in writing, on the Virginia Regulatory Town Hall public comment forum at <https://townhall.virginia.gov/L/generalnotice.cfm>.

In accordance with 42 CFR 431.16 (a) and (b) and State Medicaid Director Letter 13-003 issued by the Centers for Medicare and Medicaid Services, DMAS will be making the following changes:

Methods and Standards for Establishing Payment Rates - Other Types of Care (12VAC30-80)

Reimbursement Changes Affecting Other Types of Care:

12VAC30-80-30 is being amended to update the average commercial rate calculation of supplemental payments for physicians affiliated with Type One Hospitals in Virginia, effective April 1, 2020. The updated average commercial rate (ACR) percentage of Medicare will be 236% (combined).

The expected decrease in annual expenditures is \$4,380,724.

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

**STATE WATER CONTROL BOARD**

**Cancellation of Public Meeting and Postponement of Public Comment for a TMDL Implementation Plan for the McClure River Watershed in Dickenson County**

The Virginia Department of Environmental Quality (DEQ) has canceled the March 26, 2020, final public meeting to review the draft total maximum daily load (TMDL) implementation plan (IP) for the McClure River watershed in Dickenson County, Virginia. Due to the coronavirus, COVID-19, this meeting will be canceled and rescheduled in the near future. Also, the 30-day public comment period for interested persons to submit comments on the draft IP will be postponed until the final public meeting is rescheduled. Please contact Stephanie Kreps, Department of Environmental Quality Southwest Regional Office at telephone (276) 676-4803 or email [stephanie.kreps@deq.virginia.gov](mailto:stephanie.kreps@deq.virginia.gov) for any questions.

**Proposed Judicial Consent Decree for Virginia Electric and Power Company**

The Commonwealth of Virginia and the United States of America are proposing to enter into a judicial consent decree with Virginia Electric and Power Company to settle certain alleged violations of the Commonwealth's State Water Control Law and regulations, the Clean Water Act, Emergency Planning and Community Right-to-Know Act, and Comprehensive Environmental Response, Compensation, and Liability Act related to activities in Albemarle, Bath, Brunswick, Campbell, Chesapeake, Chesterfield, Fluvanna, Halifax, Louisa, Powhatan, and Prince William Counties and the City of Richmond, all located in Virginia. The proposed consent decree is available at <http://www.deq.virginia.gov> or by submitting a request for the document to [kristen.sadtler@deq.virginia.gov](mailto:kristen.sadtler@deq.virginia.gov). Written comments will be accepted from March 30, 2020, through April 29, 2020, and should be submitted by email to [kristen.sadtler@deq.virginia.gov](mailto:kristen.sadtler@deq.virginia.gov) or by postal mail to Enforcement, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218 or hand-delivery by close of business to 1111 East Main Street, Suite 1400, Richmond, VA 23219.

**Proposed Enforcement Action for Always Used Auto Parts Inc.**

An enforcement action has been proposed for Always Used Auto Parts Inc. for violations of the State Water Control Law in Chesapeake, Virginia. A description of the proposed action is available at the Department of Environmental Quality office listed or online at [www.deq.virginia.gov](http://www.deq.virginia.gov). Russell Deppe will accept comments by email at [russell.deppe@deq.virginia.gov](mailto:russell.deppe@deq.virginia.gov), by FAX at (757) 518-2009, or by postal mail at Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Boulevard, Virginia Beach, VA 23462, from March 30, 2020, to April 29, 2020.

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## General Notices/Errata

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### **Proposed Consent Special Order for Craig-New Castle Public Service Authority**

An enforcement action has been proposed with the Craig-New Castle Public Service Authority for violations in Craig County, Virginia. The special order by consent will address and resolve violations of environmental law and regulations. A description of the proposed action is available at the Department of Environmental Quality office listed or online at [www.deq.virginia.gov](http://www.deq.virginia.gov). Jerry Ford, Jr. will accept comments by email at [jerry.ford@deq.virginia.gov](mailto:jerry.ford@deq.virginia.gov) or by postal mail at Department of Environmental Quality, Blue Ridge Regional Office, 901 Russell Drive, Salem, VA 24153, from March 30, 2020, to April 29, 2020.

### **Proposed Consent Special Order for Eagle on 3 LLC**

An enforcement action has been proposed for Eagle on 3 LLC for violations in Pittsylvania County, Virginia. The State Water Control Board proposes to issue a special order by consent to Eagle on 3 LLC 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 listed or online at [www.deq.virginia.gov](http://www.deq.virginia.gov). Kristen Sadtler will accept comments by email at [kristen.sadtler@deq.virginia.gov](mailto:kristen.sadtler@deq.virginia.gov) or by postal mail at Department of Environmental Quality, Central Office, P.O. Box 1105, Richmond, VA 23218, from March 30, 2020, to April 29, 2020.

### **Proposed Consent Special Order for Par 3 Development Group LLC**

An enforcement action has been proposed for Par 3 Development Group LLC for violations in Charlotte, Halifax, Henry, Prince George, King and Queen, and Louisa Counties, Virginia. The State Water Control Board proposes to issue a special order by consent to Par 3 Development Group LLC 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 listed or online at [www.deq.virginia.gov](http://www.deq.virginia.gov). Kristen Sadtler will accept comments by email at [kristen.sadtler@deq.virginia.gov](mailto:kristen.sadtler@deq.virginia.gov) or by postal mail at Department of Environmental Quality, Central Office, P.O. Box 1105, Richmond, VA 23218, from March 30, 2020, to April 29, 2020.

### **Proposed Consent Special Order for Par 5 Development Group LLC**

An enforcement action has been proposed for Par 5 Development Group LLC for violations in Charlotte and Buckingham Counties, Virginia. The State Water Control Board proposes to issue a special order by consent to Par 5 Development Group LLC 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 listed or online at [www.deq.virginia.gov](http://www.deq.virginia.gov). Kristen Sadtler will accept comments by email at [kristen.sadtler@deq.virginia.gov](mailto:kristen.sadtler@deq.virginia.gov) or postal mail at Department of Environmental Quality, Central Office, P.O. Box 1105, Richmond, VA 23218, from March 30, 2020, to April 29, 2020.

### **Proposed Consent Special Order for Rhetson Companies Inc.**

An enforcement action has been proposed for Rhetson Companies Inc. for violations in Charlotte, Pittsylvania, and Halifax Counties, Virginia. The State Water Control Board proposes to issue a special order by consent to Rhetson Companies Inc. 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 listed or online at [www.deq.virginia.gov](http://www.deq.virginia.gov). Kristen Sadtler will accept comments by email at [kristen.sadtler@deq.virginia.gov](mailto:kristen.sadtler@deq.virginia.gov) or postal mail at Department of Environmental Quality, Central Office, P.O. Box 1105, Richmond, VA 23218, from March 30, 2020, to April 29, 2020.

## **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](mailto: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/cumulatab.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.