VIRGINIA REGISTER OF REGULATIONS

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TABLE OF CONTENTS

Register Information Page 841
Publication Schedule and Deadlines 842
Petitions for Rulemaking 843
Periodic Reviews and Small Business Impact Reviews 844
Notices of Intended Regulatory Action 845
Regulations 846
4VAC15-20. Definitions and Miscellaneous: In General (Final) 846
4VAC15-20. Definitions and Miscellaneous: In General (Final) 847
4VAC15-20. Definitions and Miscellaneous: In General (Final) 847
4VAC15-30. Definitions and Miscellaneous: Importation, Possession, Sale, etc., of Animals (Final) 848
4VAC15-320. Fish: Fishing Generally (Final) 854
4VAC15-330. Fish: Trout Fishing (Final) 864
4VAC15-340. Fish: Seines and Nets (Final) 866
4VAC15-350. Fish: Gigs, Grab Hooks, Trotlines, Snares, etc. (Final) 867
4VAC15-360. Fish: Aquatic Invertebrates, Amphibians, Reptiles, and Nongame Fish (Final) 868
4VAC20-270. Pertaining to Blue Crab Fishery (Final) 869
12VAC30-70. Methods and Standards for Establishing Payment Rates - Inpatient Hospital Services (Final) 872
12VAC30-80. Methods and Standards for Establishing Payment Rates; Other Types of Care (Final) 872
12VAC30-90. Methods and Standards for Establishing Payment Rates for Long-Term Care (Final) 872
14VAC5-405. Rules Governing Balance Billing for Out-of-Network Health Care Services (Final) 879
18VAC105-20. Regulations Governing the Practice of Optometry (Final) 888
18VAC130-20. Real Estate Appraiser Board Rules and Regulations (Final) 888
20VAC5-315. Regulations Governing Net Energy Metering (Proposed) 892
Guidance Documents 900
General Notices 901

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THE VIRGINIA REGISTER INFORMATION PAGE

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

ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

Unless exempted by law, an agency wishing to adopt, amend, or repeal regulations must follow the procedures in the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia). Typically, this includes first publishing 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 proposed regulation 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 of Regulations 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 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 the final regulation contains changes made after publication of the proposed regulation that 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*. Pursuant to § 2.2-4007.06 of the Code of Virginia, any person may request that the agency solicit additional public comment on certain changes made after publication of the proposed regulation. The agency shall suspend the regulatory process for 30 days upon such request from 25 or more individuals, 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 alternative to the standard process set forth in the Administrative Process Act for regulations deemed by the Governor to be noncontroversial. To use this process, the Governor's concurrence is required and advance notice must be provided to certain legislative committees. Fast-track regulations become effective on the date noted in the regulatory action if fewer than 10 persons object to using the process in accordance with § 2.2-4012.1.

EMERGENCY REGULATIONS

Pursuant to § 2.2-4011 of the Code of Virginia, an agency may adopt emergency regulations if necessitated by an emergency situation or when Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or fewer from its enactment. In either situation, approval of the Governor is required. The emergency regulation is effective upon its filing with the Registrar of Regulations, unless a later date is specified per § 2.2-4012 of the Code of Virginia. Emergency regulations are limited to no more than 18 months in duration; however, may be extended for six months under the circumstances noted in § 2.2-4011 D. Emergency regulations are published as soon as possible in the *Virginia Register* and are on the Register of Regulations website at register.dls.virgina.gov.

During the time the emergency regulation is in effect, the agency may proceed with the adoption of permanent regulations in accordance with the Administrative Process Act. 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.

PUBLICATION SCHEDULE AND DEADLINES

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

December 2020 through December 2021

Volume: Issue	Material Submitted By Noon*	Will Be Published On
37:9	December 2, 2020	December 21, 2020
37:10	December 14, 2020 **(Monday)**	January 4, 2021
37:11	December 30, 2020	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 27, 2021	June 7, 2021
37:20	May 3, 2021 **(Monday)**	May 24, 2021
37:21	May 19, 2021	June 7, 2021
37:22	June 2, 2021	June 21, 2021
37:23	June 16, 2021	July 5, 2021
37:24	June 30, 2021	July 19, 2021
37:25	July 14, 2021	August 2, 2021
37:26	July 28, 2021	August 16, 2021
38:1	August 11, 2021	August 30, 2021
38:2	August 25, 2021	September 13, 2021
38:3	September 8, 2021	September 27, 2021
38:4	September 22, 2021	October 11, 2021
38:5	October 6, 2021	October 25, 2021
38:6	October 20, 2021	November 8, 2021
38:7	November 3, 2021	November 22, 2021
38:8	November 17, 2021	December 6, 2021
38:9	December 1, 2021	December 20, 2021

*Filing deadlines are Wednesdays unless otherwise specified.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF VETERINARY MEDICINE

Initial Agency Notice

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

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

Name of Petitioner: Daniel Gideon.

Nature of Petitioner's Request: To amend 18VAC150-20-172 to allow an unlicensed veterinary assistant to place an intravenous catheter.

Agency Plan for Disposition of Request: The petition will be published on November 23, 2020, in the Virginia Register of Regulations and also posted on the Virginia Regulatory Town Hall at www.townhall.virginia.gov to receive public comment ending December 23, 2020. Following receipt of all comments on the petition to amend regulations, the board will decide whether to make any changes to the regulatory language. This matter will be on the board's agenda for its first meeting after the comment period, which is scheduled for March 11, 2021. The petitioner will be informed of the board's decision after that meeting.

Public Comment Deadline: December 23, 2020.

Agency Contact: Leslie L. Knachel, Executive Director, Board of Veterinary Medicine, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 597-4130, or email leslie.knachel@dhp.virginia.gov.

VA.R. Doc. No. R21-06; Filed October 26, 2020, 10:46 a.m.

TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

COMMISSION ON THE VIRGINIA ALCOHOL SAFETY ACTION PROGRAM

Agency Decision

Title of Regulation: **24VAC35-60. Ignition Interlock Program 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 § 2.2-4007of the Code of Virginia, do humbly submit this petition for the following amendment to Virginia Administrative Code 24VAC35-60-80.

Currently, interlock devices are implemented contrary to the "Visual-Manual NHTSA Driver Distraction Guidelines for Portable and Aftermarket Devices."

This publication states, "Driver distraction is a specific type of inattention that occurs when drivers divert their attention away from the driving task to focus on another activity."

"Phase 1 Guidelines are based upon a number of fundamental principles. These principles include that: the driver's eyes should usually be looking at the road ahead; the driver should be able to keep at least one hand on the steering wheel while performing a secondary task (both driving-related and non-driving related); the distraction induced by any secondary task performed while driving should not exceed that associated with a baseline reference task (manual radio tuning); any task performed by a driver should be interruptible at any time; the driver, not the system/device, should control the pace of task interactions; and displays should be easy for the driver to see and content presented should be easily discernible."

These data show that many drivers continue to engage in visual-manual distraction activities with their portable devices while driving.

IID rolling retests are very concerning because research by NHTSA shows "visual-manual manipulation of devices while driving dramatically increases crash risk."

Installed in any vehicle, I believe ignition interlock is an inherent, significant cognitive distraction, but to install IID in a vehicle that is exclusively hand-foot-operated is extraordinarily dangerous to the driver, and to overall public safety.

The mandated use of the in-car Breath Alcohol Ignition Interlock Device is the epitome of visual-manual, and cognitive driver distraction, and I submit no IID shall be installed on any vehicle with a non-fully-automatic transmission.

In the interest of offender and public safety, please add the following language to the statute:

"N. Under no circumstances shall an ignition interlock device be installed on a vehicle having manual transmission."

I totaled my 5-speed '07 Mustang while retrieving a dropped IID handset, and attempting to simultaneously shift into second gear in order to pull over.

Thank you for considering the public safety hazard posed by ignition interlock devices.

Cynthia Hites"

Agency Decision: Take no action.

Statement of Reason for Decision: The Commission on the Virginia Alcohol Safety Action Program reviewed this petition at its October 30, 2020, meeting and voted to deny it based on the commission's lack of authority to act. Current statutes would have to be amended, requiring action by the General Assembly.

Agency Contact: Richard L. Foy, Field Services Specialist, Commission on the Virginia Alcohol Safety Action Program, 1111 East Main Street, Suite 801, Richmond, VA, 23219, telephone (804) 786-5895, or email rfoy@vasap.virginia.gov.

VA.R. Doc. No. R21-03; Filed November 3, 2020, 11:00 a.m.

TITLE 16. LABOR AND EMPLOYMENT

DEPARTMENT OF LABOR AND INDUSTRY

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of Labor and Industry conducted a periodic review and small business impact review of **16VAC15-50, Regulation Governing the Employment of Minors on Farms, in Gardens and in Orchards**, and determined that this regulation should be retained in its current form. The department is publishing its report of findings dated October 14, 2020, to support this decision.

This regulation is highly effective in ensuring that agricultural employers do not place minors in truly hazardous situations. All hazardous occupations in this regulation are demonstrable and proven hazards, even for adults. This regulation is essential in focusing society's attention to the fact that while minors may work at many jobs at 14 years of age and may work at most jobs at 16 years of age, certain occupations are so clearly dangerous, even to adults, that they should be only performed by mature adults.

The regulation is clearly written and easily understandable.

This regulation should have minimal economic impact on small businesses. The regulation also offers clarity and guidance for small businesses that employ minors to work on farms, in gardens, and in orchards.

This regulation does not overlap, duplicate, or conflict with federal or state law or regulation. This regulation was last reviewed four years ago. There have not been significant changes in technology, economic conditions, or other factors in the area affected by the regulation since it became effective.

The department has determined that retaining the regulation without amendment is consistent with the stated objectives of applicable law, and is the most effective way to minimize the economic impact of regulations on small businesses.

Contact Information: Holly Trice, Attorney, Department of Labor and Industry, Main Street Centre, 600 East Main Street, Richmond, VA 23219, telephone (804) 786-2641, or email holly.trice@doli.virginia.gov.

TITLE 22. SOCIAL SERVICES

DEPARTMENT FOR AGING AND REHABILITATIVE SERVICES

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 and a small business impact review: **22VAC30-11, Public Participation Guidelines**. The review 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 November 23, 2020, and ends December 14, 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: Charlotte Arbogast, Policy Analyst, Department for Aging and Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, VA 23229, telephone (804) 662-7063, FAX (804) 662-7663, TDD (800) 464-9950, or email charlotte.arbogast@dars.virginia.gov.

TITLE 9. ENVIRONMENT

STATE WATER CONTROL BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Water Control Board intends to consider promulgating **9VAC25-920, General Permit for Use of the Surficial Aquifer in a Groundwater Management Area**. This regulatory action will create a new general permit to promote use of the surficial aquifer in any groundwater management area. The purpose of the proposed new regulation is to conserve groundwater in the confined aquifers within groundwater management areas for potable needs. Chapter 670 of the 2020 Acts of Assembly directs the State Water Control Board to address the impacts of nonagricultural irrigation on the confined aquifer system by prohibiting the use of these aquifers unless the quality and quantity of the surficial aquifer is insufficient for the proposed beneficial use. The new general permit for nonagricultural irrigation from the surficial aquifer will include the establishment of permit terms, withdrawal limits, reporting requirements, and criteria for determining adequate quality and quantity from the surficial aquifer necessary to permit withdrawals.

Statutory Authority: §§ 62.1-256, 62.1-258.1, and 62.1-266 of the Code of Virginia.

Public Comment Deadline: December 23, 2020.

Agency Contact: Joseph Grist, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4031, or email joseph.grist@deq.virginia.gov.

VA.R. Doc. No. R21-6550; Filed October 22, 2020.

TITLE 4. CONSERVATION AND NATURAL RESOURCES

BOARD OF WILDLIFE RESOURCES

Final Regulation

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

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

Statutory Authority: §§ 29.1-103, 29.1-501, and 29.1-502 of the Code of Virginia.

Effective Date: January 1, 2021.

Agency Contact: Aaron Proctor, Regulations Coordinator, Department of Wildlife Resources, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228, telephone (804) 367-8341, or email aaron.proctor@dwr.virginia.gov.

Summary:

The amendment updates the List of Native and Naturalized Fauna of Virginia to the 2020 version.

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

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

"Native animal" means those species and subspecies of animals naturally occurring in Virginia, as included in the department's ~~2018~~ 2020 "List of Native and Naturalized Fauna of Virginia," with copies available in the headquarters and regional offices of the department.

"Naturalized animal" means those species and subspecies of animals not originally native to Virginia that have established wild, self-sustaining populations, as included in the department's ~~2018~~ 2020 "List of Native and Naturalized Fauna of Virginia," with copies available in the headquarters and regional offices of the department.

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

The following animals are defined as domestic animals:

Domestic dog (Canis familiaris), including wolf hybrids.

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

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

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

Domestic cattle (Bos taurus and Bos indicus).

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

Domestic goat (Capra hircus).

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

Llama (Lama glama).

Alpaca (Lama pacos).

Camels (Camelus bactrianus and Camelus dromedarius).

Domesticated races of hamsters (Mesocricetus spp.).

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

Domesticated races of guinea pigs (Cavia porcellus).

Domesticated races of gerbils (Meriones unguiculatus).

Domesticated races of chinchillas (Chinchilla laniger).

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

Domesticated races of mice (Mus musculus).

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

Domesticated races of chickens (Gallus).

Domesticated races of turkeys (Meleagris gallopavo).

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

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

Domesticated races of guinea fowl (Numida meleagris).

Domesticated races of peafowl (Pavo cristatus).

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

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

DOCUMENTS INCORPORATED BY REFERENCE

~~List of Native and Naturalized Fauna of Virginia, April 2018, Virginia Department of Game and Inland Fisheries~~

List of Native and Naturalized Fauna of Virginia, October 2020, Virginia Department of Wildlife Resources

Federal Endangered and Threatened Animal Species as of May 7, 2019

VA.R. Doc. No. R21-5905; Filed October 28, 2020.

Final Regulation

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

Title of Regulation: **4VAC15-20. Definitions and Miscellaneous: In General (amending 4VAC15-20-66).**

Statutory Authority: §§ 29.1-103, 29.1-501, and 29.1-502 of the Code of Virginia.

Effective Date: January 1, 2021.

Agency Contact: Aaron Proctor, Regulations Coordinator, Department of Wildlife Resources, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228, telephone (804) 367-8341, or email aaron.proctor@dwr.virginia.gov.

Summary:

The amendments extend the daily or annual fee provision for use of certain department-owned or department-managed facilities to include all department-managed lands and boat launch sites. This fee shall not apply to any person who is a passenger of but not the owner or operator of a paddlecraft or registered vessel.

4VAC15-20-66. Admittance, parking, or other use fee at certain department-owned and department-managed facilities.

A. Pursuant to the authority of the board under § 29.1-103 (14) of the Code of Virginia and in accordance with § 29.1-113 of the Code of Virginia, a daily fee of $3.00 or an annual fee equal to the price of an annual basic state resident fishing or hunting license is established for admittance, parking, or other use at department-owned ~~wildlife management areas~~ or department-managed lands, boat launch sites, and public fishing lakes. Such fee shall not apply to (i) any person holding a valid hunting, trapping, or fishing license, or a current certificate of boat registration issued by the department; (ii) persons 16 years of age or younger; or (iii) ~~the use of department-owned boat ramps.~~ any person who is a passenger in but not the owner or operator of a paddlecraft or registered vessel.

B. Any person violating this section may~~, in lieu of any criminal penalty,~~ be assessed a civil penalty of $50 in lieu of any criminal penalty.

C. The director may waive fees for any person, group, or organization whenever such action is deemed to be in the department's interest. Any or all facilities may be closed by the director without notice due to an emergency or natural disaster. Full refunds or credits may be issued whenever the closure prevents any use of the facility during the term of the permit. Partial refunds of fees may be made in the interest of providing better customer service.

D. The director may allow deviations from established fees in the form of discounts or special promotions for the purpose of stimulating visitation and use of departmental facilities.

VA.R. Doc. No. R21-5914; Filed October 28, 2020.

Final Regulation

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

Title of Regulation: **4VAC15-20. Definitions and Miscellaneous: In General (adding 4VAC15-20-155).**

Statutory Authority: §§ 29.1-103, 29.1-501, and 29.1-502 of the Code of Virginia.

Effective Date: January 1, 2021.

Agency Contact: Aaron Proctor, Regulations Coordinator, Department of Wildlife Resources, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228, telephone (804) 367-8341, or email aaron.proctor@dwr.virginia.gov.

Summary:

The regulation authorizes dispersed primitive camping on Wildlife Management Areas and other department-owned or department-controlled lands. The regulation additionally establishes and defines terms and conditions for camping.

4VAC15-20-155. Camping on Wildlife Management Areas and other department-owned or department-managed lands.

A. Temporary dispersed camping, with no amenities provided, may only be performed on Wildlife Management Areas (WMAs) and other department-owned or managed lands when occupants are engaged in authorized activities and in strict compliance with established terms and conditions, including those listed in this section. Camping may be prohibited on certain portions or entire parcels of department-owned or managed lands, including certain WMAs.

B. Authorization. It shall be unlawful to camp without written authorization from the department. Written authorization to camp is required in addition to any and all other licenses, permits or authorizations that may otherwise be required. Written authorization is obtained by completing and submitting a Camping Authorization Form. Only an individual 18 years of age or older who is a member of and accepts responsibility for the camp and camping group may be issued a camping authorization.

C. Camping periods. Unless otherwise posted or authorized, it shall be unlawful to camp for more than 14 consecutive nights, or more than 14 nights in a 28-day period on department-owned or controlled lands. At the end of the authorized camping period, all personal property and any refuse must be removed.

D. Prohibited locations. Camping is allowed only at previously cleared and established sites. No vegetation may be cut, damaged, or removed to establish a camp site. It shall be unlawful to camp within 300 feet of any department-owned lake, boat ramp or other facility. It shall be unlawful to camp at other specific locations as posted. This section shall not prohibit active angling at night along shorelines where permitted.

E. Removal of personal property and refuse. Any person who establishes or occupies a camp shall be responsible for the complete removal of all personal property and refuse when the camping authorization has expired. Any personal property or refuse that remains after the camping authorization has expired shall be considered litter and punishable pursuant to § 33.2-802 of the Code of Virginia.

F. It shall be unlawful when camping on department-owned or managed lands to store or leave unattended any food (including food for pets and livestock), refuse, bear attractant, or other wildlife attractant unless it is (i) in a bear-resistant container; (ii) in a trunk of a vehicle or in a closed, locked, hard-sided motor vehicle with a solid top; (iii) in a closed, locked, hard-body trailer; or (iv) suspended at least 10 feet clear of the ground at all points and at least four feet horizontally from the supporting tree or pole and any other tree or pole. It shall be unlawful to discard, bury, or abandon any food, refuse, bear attractant, or other wildlife attractant unless it is disposed of by placing it inside an animal-resistant trash receptacle provided by the department.

G. Any violation of this section or other posted rules shall be punishable as a Class III misdemeanor, and the camping permit shall become null and void. The permittee shall be required to immediately vacate the property upon summons or notification. A second or subsequent offense may result in the loss of camping privileges on department-owned or managed properties.

VA.R. Doc. No. R21-5916; Filed October 28, 2020.

Final Regulation

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

Title of Regulation: **4VAC15-30. Definitions and Miscellaneous: Importation, Possession, Sale, etc., of Animals (amending 4VAC15-30-40).**

Statutory Authority: §§ 29.1-103, 29.1-501, and 29.1-502 of the Code of Virginia.

Effective Date: January 1, 2021.

Agency Contact: Aaron Proctor, Regulations Coordinator, Department of Wildlife Resources, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228, telephone (804) 367-8341, or email aaron.proctor@dwr.virginia.gov.

Summary:

The amendments clarify the exception for grass carp and add an exception relating to the possession and transport of Alabama bass.

4VAC15-30-40. Importation requirements, possession, and sale of nonnative (exotic) animals.

A. Permit required. A special permit is required and may be issued by the department, if consistent with the department's fish and wildlife management program, to import, possess, or sell those nonnative (exotic) animals listed [~~below~~ in the following table] and in 4VAC15-20-210 that the board finds and declares to be predatory or undesirable within the meaning and intent of § 29.1-542 of the Code of Virginia, in that their introduction into the Commonwealth will be detrimental to the native fish and wildlife resources of Virginia.

AMPHIBIANS			
Order	Family	Genus/Species	Common Name
Anura	Bufonidae	Rhinella marina	Cane toad*
	Pipidae	Hymenochirus spp. Pseudohymenochiris merlini	African dwarf frog
		Xenopus spp.	Tongueless or African clawed frog
Caudata	Ambystomatidae	All species	All mole salamanders
BIRDS			
Order	Family	Genus/Species	Common Name
Psittaciformes	Psittacidae	Myiopsitta monachus	Monk parakeet*
Anseriformes	Anatidae	Cygnus olor	Mute swan
FISH			
Order	Family	Genus/Species	Common Name
Cypriniformes	Catostomidae	Catostomus microps	Modoc sucker
		Catostomus santaanae	Santa Ana sucker
		Catostomus warnerensis	Warner sucker
		Ictiobus bubalus	Smallmouth* buffalo
		I. cyprinellus	Bigmouth* buffalo
		I. niger	Black buffalo*
	Characidae	Pygopristis spp. Pygocentrus spp. Rooseveltiella spp. Serrasalmo spp. Serrasalmus spp. Taddyella spp.	Piranhas
	Cobitidae	Misgurnus anguillicaudatus	Oriental weatherfish
	Cyprinidae	Aristichyhys nobilis	Bighead carp*
		Chrosomus saylori	Laurel dace
		Ctenopharyngodon idella	Grass carp or white amur
		Cyprinella caerulea	Blue shiner
		Cyprinella formosa	Beautiful shiner
		Cyprinella lutrensis	Red shiner
		Hypophthalmichthys molitrix	Silver carp*
		Mylopharyngodom piceus	Black carp*
		Notropis albizonatus	Palezone shiner
		Notropis cahabae	Cahaba shiner
		Notropis girardi	Arkansas River shiner
		Notropis mekistocholas	Cape Fear shiner
		Notropis simus pecosensis	Pecos bluntnose shiner

		Notropis topeka (= tristis)	Topeka shiner
		Phoxinus cumberlandensis	Blackside dace
		Rhinichthys osculus lethoporus	Independence Valley speckled dace
		Rhinichthys osculus nevadensis	Ash Meadows speckled dace
		Rhinichthys osculus oligoporus	Clover Valley speckled dace
		Rhinichthys osculus ssp.	Foskett speckled dace
		Rhinichthys osculus thermalis	Kendall Warm Springs dace
		Scardinius erythrophthalmus	Rudd
		Tinca tinca	Tench*
Cyprinodontiformes	Poeciliidae	Gambusia gaigei	Big Bend gambusia
		Gambusia georgei	San Marcos gambusia
		Gambusia heterochir	Clear Creek gambusia
		Gambusia nobilis	Pecos gambusia
		Peociliopsis occidentalis	Gila topminnow
Gasterosteiformes	Gasterosteidae	Gasterosteus aculeatus williamsoni	Unarmored threespine stickleback
Gobiesociformes	Gobiidae	Proterorhinus marmoratus	Tubenose goby
		Neogobius melanostomus	Round goby
Perciformes	Channidae	Channa spp. Parachanna spp.	Snakeheads
	Cichlidae	Tilapia spp.	Tilapia
		Gymnocephalus cernuum	Ruffe*
	Elassomatidae	Elassoma alabamae	Spring pygmy sunfish
	Percidae	Crystallaria cincotta	Diamond darter
		Etheostoma chermocki	Vermilion darter
		Etheostoma boschungi	Slackwater darter
		Etheostoma chienense	Relict darter
		Etheostoma etowahae	Etowah darter
		Etheostoma fonticola	Fountain darter
		Etheostoma moorei	Yellowcheek darter
		Etheostoma nianguae	Niangua darter
		Etheostoma nuchale	Watercress darter
		Etheostoma okaloosae	Okaloosa darter
		Etheostoma phytophilum	Rush darter
		Etheostoma rubrum	Bayou darter
		Etheostoma scotti	Cherokee darter
		Etheostoma sp.	Bluemask (= jewel) darter
		Etheostoma susanae	Cumberland darter

		Etheostoma wapiti	Boulder darter
		Percina antesella	Amber darter
		Percina aurolineata	Goldline darter
		Percina jenkinsi	Conasauga logperch
		Percina pantherina	Leopard darter
		Percina tanasi	Snail darter
Scorpaeniformes	Cottidae	Cottus sp.	Grotto sculpin
		Cottus paulus (= pygmaeus)	Pygmy sculpin
Siluriformes	Clariidae	All species	Air-breathing catfish
	Ictaluridae	Noturus baileyi	Smoky madtom
		Noturus crypticus	Chucky madtom
		Noturus placidus	Neosho madtom
		Noturus stanauli	Pygmy madtom
		Noturus trautmani	Scioto madtom
Synbranchiformes	Synbranchidae	Monopterus albus	Swamp eel
MAMMALS			
Order	Family	Genus/Species	Common Name
Artiodactyla	Suidae	All Species	Pigs or Hogs*
	Cervidae	All Species	Deer*
Carnivora	Canidae	All Species	Wild Dogs,* Wolves, Coyotes or Coyote hybrids, Jackals and Foxes
	Ursidae	All Species	Bears*
	Procyonidae	All Species	Raccoons and* Relatives
	Mustelidae	All Species (except Mustela putorius furo)	Weasels, Badgers,* Skunks and Otters Ferret
	Viverridae	All Species	Civets, Genets,* Lingsangs, Mongooses, and Fossas
	Herpestidae	All Species	Mongooses*
	Hyaenidae	All Species	Hyenas and Aardwolves*
	Felidae	All Species	Cats*
Chiroptera		All Species	Bats*
Lagomorpha	Lepridae	Brachylagus idahoensis	Pygmy rabbit
		Lepus europeaeous	European hare
		Oryctolagus cuniculus	European rabbit
		Sylvilagus bachmani riparius	Riparian brush rabbit
		Sylvilagus palustris hefneri	Lower Keys marsh rabbit
Rodentia		All species native to Africa	All species native to Africa

	Dipodidae	Zapus hudsonius preblei	Preble's meadow jumping mouse
	Muridae	Microtus californicus scirpensis	Amargosa vole
		Microtus mexicanus hualpaiensis	Hualapai Mexican vole
		Microtus pennsylvanicus dukecampbelli	Florida salt marsh vole
		Neotoma floridana smalli	Key Largo woodrat
		Neotoma fuscipes riparia	Riparian (= San Joaquin Valley) woodrat
		Oryzomys palustris natator	Rice rat
		Peromyscus gossypinus allapaticola	Key Largo cotton mouse
		Peromyscus polionotus allophrys	Choctawhatchee beach mouse
		Peromyscus polionotus ammobates	Alabama beach mouse
		Peromyscus polionotus niveiventris	Southeastern beach mouse
		Peromyscus polionotus peninsularis	St. Andrew beach mouse
		Peromyscus polionotus phasma	Anastasia Island beach mouse
		Peromyscus polionotus trissyllepsis	Perdido Key beach mouse
		Reithrodontomys raviventris	Salt marsh harvest mouse
	Heteromyidae	Dipodomys heermanni morroensis	Morro Bay kangaroo rat
		Dipodomys ingens	Giant kangaroo rat
		Dipodomys merriami parvus	San Bernadino Merriam's kangaroo rat
		Dipodomys nitratoides exilis	Fresno kangaroo rat
		Dipodomys nitratoides nitratoides	Tipton kangaroo rat
		Dipodomys stephensi (including D. cascus)	Stephens' kangaroo rat
		Perognathus longimembris pacificus	Pacific pocket mouse
	Sciuridae	Cynomys spp.	Prairie dogs
		Spermophilus brunneus brunneus	Northern Idaho ground squirrel
		Tamiasciurus hudsonicus grahamensis	Mount Graham red squirrel
Soricomorpha	Soricidae	Sorex ornatus relictus	Buena Vista Lake ornate shrew
MOLLUSKS			
Order	Family	Genus/Species	Common Name
Neotaenioglossa	Hydrobiidae	Potamopyrgus antipodarum	New Zealand mudsnail
Veneroida	Dreissenidae	Dreissena bugensis	Quagga mussel
		Dreissena polymorpha	Zebra mussel
REPTILES			
Order	Family	Genus/Species	Common Name

Crocodilia	Alligatoridae	All species	Alligators, caimans*
	Crocodylidae	All species	Crocodiles*
	Gavialidae	All species	Gavials*
Squamata	Colubridae	Boiga irregularis	Brown tree snake*
CRUSTACEANS			
Order	Family	Genus/Species	Common Name
Decapoda	Cambaridae	Cambarus aculabrum	Cave crayfish
		Cambarus zophonastes	Cave crayfish
		Orconectes rusticus	Rusty crayfish
		Orconectes shoupi	Nashville crayfish
		Pacifastacus fortis	Shasta crayfish
		Procambarus sp.	Marbled crayfish
	Parastacidae	Cherax spp.	Australian crayfish
	Varunidea	Eriocheir sinensis	Chinese mitten crab

B. Temporary possession permit for certain animals. Notwithstanding the permitting requirements of subsection A of this section, a person, company, or corporation possessing any nonnative (exotic) animal, designated with an asterisk (*) in subsection A of this section, prior to July 1, 1992, must declare such possession in writing to the department by January 1, 1993. This written declaration shall serve as a permit for possession only, is not transferable, and must be renewed every five years. This written declaration must include species name, common name, number of individuals, date or dates acquired, sex (if possible), estimated age, height or length, and other characteristics such as bands and band numbers, tattoos, registration numbers, coloration, and specific markings. Possession transfer will require a new permit according to the requirements of this subsection.

C. Exception for certain monk parakeets. A permit is not required for monk parakeets (quakers) that have been captive bred and are closed-banded with a seamless band.

D. Exception for parts or products. A permit is not required for parts or products of those nonnative (exotic) animals listed in subsection A of this section that may be used for personal use, in the manufacture of products, or used in scientific research, provided that such parts or products be packaged outside the Commonwealth by any person, company, or corporation duly licensed by the state in which the parts originate. Such packages may be transported into the Commonwealth, consistent with other state laws and regulations, so long as the original package remains unbroken, unopened and intact until its point of destination is reached. Documentation concerning the type and cost of the animal parts ordered, the purpose and date of the order, point and date of shipping, and date of receiving shall be kept by the person, business, or institution ordering such nonnative (exotic) animal parts. Such documentation shall be open to inspection by a representative of the Department of [~~Game and Inland Fisheries~~ Wildlife Resources].

E. Exception for prairie dogs. The effective date of listing of prairie dogs under subsection A of this section shall be January 1, 1998. Prairie dogs possessed in captivity in Virginia on December 31, 1997, may be maintained in captivity until the animals' deaths, but they may not be sold on or after January 1, 1998, without a permit.

F. Exception for snakehead fish. Anglers may legally harvest snakehead fish of the family Channidae, provided that they immediately kill such fish and that they notify the department, as soon as practicable, of such actions.

G. Exception for feral hogs. Anyone may legally trap feral hogs with written permission of the landowner, provided that any trapped hogs are not removed from the trap site alive and are killed immediately.

H. Exception for grass carp. Anglers may legally harvest grass carp of the family Cyprinidae only from public waters of the Commonwealth~~, except from department-owned or department-controlled lakes, provided that anglers~~. It is unlawful to harvest grass carp from any public inland lake or reservoir. Anglers taking grass carp must ensure that harvested grass carp are dead.

I. Exception for Alabama bass. Anglers may possess live Alabama bass of the family Centrarchidae only on the body of water from which the fish were captured, provided that the angler does not live transport these fish outside of the body of water from which the fish were captured. Anglers may only release live Alabama bass back into the body of water from which the fish were captured. Anglers may legally harvest

Alabama bass provided that the anglers ensure all harvested Alabama bass are dead.

J. All other nonnative (exotic) animals. All other nonnative (exotic) animals not listed in subsection A of this section may be possessed, purchased, and sold; provided, that such animals shall be subject to all applicable local, state, and federal laws and regulations, including those that apply to threatened/endangered species, and further provided, that such animals shall not be liberated within the Commonwealth.

VA.R. Doc. No. R21-5906; Filed October 28, 2020.

Final Regulation

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

Title of Regulation: **4VAC15-320. Fish: Fishing Generally (amending 4VAC15-320-25, 4VAC15-320-60, 4VAC15-320-100).**

Statutory Authority: §§ 29.1-103, 29.1-501, and 29.1-502 of the Code of Virginia.

Effective Date: January 1, 2021.

Agency Contact: Aaron Proctor, Regulations Coordinator, Department of Wildlife Resources, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228, telephone (804) 367-8341, or email aaron.proctor@dwr.virginia.gov.

Summary:

The amendments (i) adjust creel and length limits for largemouth bass, smallmouth bass, spotted bass, Alabama bass, white bass, saugeye, yellow perch, and blue catfish; (ii) prohibit the stocking of spotted bass in private waters; (iii) remove the prohibition of mechanical paddle wheel boats on department-owned or department-controlled waters; and (iv) require a boat ramp special use permit and immediate live release of fish taken at the capture site following certification during a fishing tournament.

4VAC15-320-25. Creel and length limits.

The creel limits (including live possession) and the length limits for the various species of fish shall be as follows, unless otherwise excepted by posted rules at department-owned or department-controlled waters (see 4VAC15-320-100 D).

Type of fish	Subtype or location	Creel and length limits	Geographic exceptions	Creel or length limits for exceptions
largemouth bass, smallmouth bass~~,~~ ~~spotted bass~~		5 per day in the aggregate (combined) No statewide length limits	Lakes	
			Briery Creek Lake	No largemouth or smallmouth bass 16 to 24 inches; only 1 largemouth or smallmouth bass per day in the aggregate longer than 24 inches
			Buggs Island (Kerr)	Only 2 of 5 largemouth or smallmouth bass in the aggregate less than 14 inches
			Claytor Lake	No smallmouth bass less than 14 inches~~; 15 spotted bass per day~~
			Flannagan Reservoir	No smallmouth bass less than 15 inches No largemouth bass less than 12 inches
			Lake Gaston	Only 2 of 5 largemouth or smallmouth bass in the aggregate less than 14 inches

			Leesville Reservoir	Only 2 of 5 largemouth or smallmouth bass in the aggregate less than 14 inches
			Lake Moomaw	No largemouth or smallmouth bass less than 12 inches
			Philpott Reservoir	No largemouth or smallmouth bass less than 12 inches
			Quantico Marine Base waters	No largemouth or smallmouth bass 12 to 15 inches
			Smith Mountain Lake and its tributaries below Niagara Dam	Only 2 of 5 largemouth or smallmouth bass in the aggregate less than 14 inches
			Rivers	
			Clinch River – within the boundaries of Scott, Wise, Russell, or Tazewell Counties	No largemouth or smallmouth bass less than 20 inches; only 1 largemouth or smallmouth bass in the aggregate per day longer than 20 inches
			Levisa Fork River – within the boundaries Buchanan County	No largemouth or smallmouth bass less than 20 inches; only 1 largemouth or smallmouth bass in the aggregate per day longer than 20 inches
			Dan River and tributaries downstream from the Union Street Dam, Danville	Only 2 of 5 largemouth or smallmouth bass less than 14 inches
			James River – Confluence of the Jackson and Cowpasture rivers (Botetourt County) downstream to the 14th Street Bridge in Richmond	No largemouth or smallmouth bass 14 to 22 inches; only 1 largemouth or smallmouth bass in the aggregate per day longer than 22 inches

			New River – Fields Dam (Grayson County) downstream to the VA - WV state line and its tributaries Little River downstream from Little River Dam in Montgomery County, Big Walker Creek from the Norfolk Southern Railroad Bridge downstream to the New River, and Wolf Creek from the Narrows Dam downstream to the New River in Giles County (This does not include Claytor Lake, which is delineated as: The upper end of the island at Allisonia downstream to the dam)	No largemouth or smallmouth bass 14 to 22 inches; only 1 largemouth or smallmouth bass in the aggregate per day longer than 22 inches
			North Fork Holston River - Rt. 91 bridge upstream of Saltville, VA downstream to the VA - TN state line	No largemouth or smallmouth bass less than 20 inches; only 1 largemouth or smallmouth bass in the aggregate per day longer than 20 inches
			~~North Fork Shenandoah River – Rt. 42 bridge, Rockingham County downstream to the confluence with S. Fork Shenandoah at Front Royal~~	~~No bass 11 to 14 inches~~
			Potomac River - Virginia tidal tributaries above Rt. 301 bridge	No largemouth or smallmouth bass less than 15 inches from March 1 through June 15
			Roanoke (Staunton) River - and its tributaries below Difficult Creek, Charlotte County	Only 2 of 5 largemouth or smallmouth bass in the aggregate less than 14 inches
			~~Shenandoah River – Confluence of South Fork and North Fork Rivers, Front Royal, downstream, to the Warren Dam, near Front Royal~~	~~No bass 11 to 14 inches~~

			~~Base of Warren Dam, near Front Royal downstream to Rt. 17/50 bridge~~	~~No bass 14 to 20 inches; only 1 per day longer than 20 inches~~
			~~Rt. 17/50 bridge downstream to VA - WV state line~~	~~No bass 11 to 14 inches~~
			~~South Fork Shenandoah River -~~ Shenandoah River, South Fork Shenandoah River, North Fork Shenandoah River ~~Confluence of North and South rivers, below Port Republic, downstream to Shenandoah Dam, near Town of Shenandoah~~	No largemouth or smallmouth bass 11 to 14 inches
			~~Base of Shenandoah Dam, near Town of Shenandoah, downstream to Luray Dam, near Luray~~	~~No bass 14 to 20 inches; only 1 per day longer than 20 inches~~
			~~Base of Luray Dam, near Luray, downstream to the confluence with North Fork of Shenandoah, Front Royal~~	~~No bass 11 to 14 inches~~
			Staunton River - Leesville Dam (Campbell County) downstream to the mouth of Difficult Creek, Charlotte County	No largemouth or smallmouth bass less than 20 inches; only 1 largemouth or smallmouth bass in the aggregate per day longer than 20 inches
Alabama bass, spotted bass		No statewide daily limit No statewide length limit		

striped bass	landlocked striped bass and landlocked striped bass - white bass hybrids	4 per day in the aggregate No fish less than 20 inches	Buggs Island (Kerr) Reservoir, including the Staunton River to Leesville Dam and the Dan River to Union Street Dam (Danville)	October 1 - May 31: 2 per day in the aggregate; no striped bass or hybrid striped bass less than 20 inches June 1 - September 30: 4 per day in the aggregate; no length limit
			Claytor Lake and its tributaries	September 16 – June 30: 2 per day in the aggregate; no striped bass or hybrid bass less than 20 inches July 1 – September 15: 4 per day in the aggregate; no length limit
			Smith Mountain Lake and its tributaries, including the Roanoke River upstream to Niagara Dam	2 per day in the aggregate November 1 - May 31: No striped bass 30 to 40 inches June 1 - October 31: No length limit
			Lake Gaston	4 per day in the aggregate October 1 - May 31: No striped bass or hybrid striped bass less than 20 inches June 1 - September 30: No length limit
	anadromous (coastal) striped bass above the fall line in all coastal rivers of the Chesapeake Bay	Creel and length limits shall be set by the Virginia Marine Resources Commission for recreational fishing in tidal waters		

	anadromous (coastal) in the Meherrin, Nottoway, Blackwater (Chowan Drainage), North Landing and Northwest Rivers and their tributaries plus Back Bay	2 per day No striped bass less than 18 inches		
white bass		5 per day No statewide length limits	Buggs Island (Kerr) Reservoir, including the Staunton River to Leesville Dam and the Dan River to Union Street Dam (Danville)	10 per day; no white bass less than 14 inches
			Lake Gaston	10 per day; no white bass less than 14 inches
walleye, saugeye		5 per day in the aggregate No walleye or saugeye less than 18 inches	~~New River upstream of Buck Dam in Carroll County~~	~~No walleye less than 20 inches~~
			Claytor Lake and the New River upstream of Claytor Lake Dam to Buck Dam in Carroll County	~~February 1 - May 31:~~ 2 walleye per day; no walleye 19 to 28 inches ~~June 1 - January 31: 5 walleye per day; no walleye less than 20 inches~~
sauger		2 per day No statewide length limits		
yellow perch		No statewide daily limit No statewide length limits	Lake Moomaw	10 per day
			Below the fall line in all coastal rivers of the Chesapeake Bay	No yellow perch less than 9 inches; no daily limit
chain pickerel		5 per day No statewide length limits	Gaston and Buggs Island (Kerr) Reservoirs	No daily limit
northern pike		2 per day No pike less than 20 inches		

muskellunge		2 per day No muskellunge less than 30 inches	New River - Fields Dam (Grayson County) downstream to Claytor Dam, including Claytor Lake	1 per day; no muskellunge less than 42 inches
			New River - Claytor Dam downstream to the VA - WV state line	1 per day June 1 - last day of February: No muskellunge 40 to 48 inches March 1 - May 31: No muskellunge less than 48 inches
bluegill (bream) and other sunfish excluding crappie, rock bass (redeye) and Roanoke bass		50 per day in the aggregate No statewide length limits	Gaston and Buggs Island (Kerr) Reservoirs and that portion of the New River from the VA - NC state line downstream to the confluence of the New and Little Rivers in Grayson County	No daily limit
crappie (black or white)		25 per day in the aggregate No statewide length limits	Lake Gaston and that portion of the New River from the VA - NC state line downstream to the confluence of the New and Little Rivers in Grayson County	No daily limit
			Buggs Island (Kerr) Reservoir	No crappie less than 9 inches
			Briery Creek and Sandy River Reservoirs	No crappie less than 9 inches
			Flannagan and South Holston Reservoirs	No crappie less than 10 inches
rock bass (redeye)		25 per day; in the aggregate with Roanoke bass No statewide length limits	Gaston and Buggs Island (Kerr) Reservoirs and that portion of the New River from the VA - NC state line downstream to the confluence of the New and Little Rivers in Grayson County	No daily limit

			Nottoway, Meherrin, Blackwater (Franklin County), Falling, and Smith Rivers and their tributaries	5 per day in the aggregate with Roanoke bass; no rock bass less than 8 inches
Roanoke bass		25 per day in the aggregate with rock bass No statewide length limits	Nottoway, Meherrin, Blackwater (Franklin County), Falling, and Smith Rivers and their tributaries	5 per day in the aggregate with rock bass; no Roanoke bass less than 8 inches
trout	See 4VAC15-330. Fish: Trout Fishing.			
catfish	channel, white, and flathead catfish	20 per day; No length limits	All rivers below the fall line	No daily limit
	blue catfish	20 per day; No statewide length limits	Lake Gaston	No daily limit, except only 1 blue catfish per day longer than 32 inches
			Kerr Reservoir	20 per day, except only 1 blue catfish per day longer than 32 inches
			James River and its tributaries below the fall line, Rappahannock River and its tributaries below the fall line, and York River and its tributaries (including the Pamunkey River and Mattaponi River) below the fall line	No daily limit, except only 1 blue catfish per day longer than 32 inches
			All rivers below the fall line other than the James River and its tributaries, Rappahannock River and its tributaries, and the York River and its tributaries	No daily limit
	yellow, brown, and black bullheads	No daily limit; No length limits		
hickory shad	Above and below the fall line in all coastal rivers of the Chesapeake Bay	Creel and length limits shall be the same as those set by the Virginia Marine Resources Commission in tidal rivers		

	Meherrin River below Emporia Dam Nottoway River, Blackwater River (Chowan Drainage), North Landing and Northwest Rivers, and their tributaries plus Back Bay	10 per day No length limits		
American shad		No possession		
anadromous (coastal) alewife and blueback herring	Above and below the fall line in all coastal rivers of the Chesapeake Bay	Creel and length limits shall be the same as those set by the Virginia Marine Resources Commission for these species in tidal rivers		
	Meherrin River, Nottoway River, Blackwater River (Chowan Drainage), North Landing and Northwest Rivers, and their tributaries plus Back Bay	No possession		
red drum	Back Bay and tributaries including Lake Tecumseh and the North Landing River and its tributaries	1 per day No drum less than 18 inches or greater than 27 inches		
spotted sea trout (speckled trout)	Back Bay and tributaries including Lake Tecumseh and the North Landing River and its tributaries	4 per day No sea trout less than 14 inches		
grey trout (weakfish)	Back Bay and tributaries including Lake Tecumseh and North Landing River and its tributaries	1 per day No grey trout less than 12 inches		

southern flounder	Back Bay and tributaries including Lake Tecumseh and the North Landing River and its tributaries	6 per day No flounder less than 15 inches		
northern snakehead		Anglers may possess snakeheads taken from Virginia waters if they immediately kill the fish and notify the headquarters or a regional office of the department; notification may be made by telephoning (804) 367-2925 No statewide daily limit No statewide length limits		
longnose gar		5 per day No statewide length limits		
bowfin		5 per day No statewide length limits		
American eel		25 per day No eel less than 9 inches	Back Bay and North Landing River	No possession limit for those individuals possessing a permit obtained under 4VAC15-340-80
other native or naturalized nongame fish	See 4VAC15-360-10. Fish: Aquatic Invertebrates, Amphibians, Reptiles, and Nongame Fish. Taking aquatic invertebrates, amphibians, reptiles, and nongame fish for private use.			
endangered or threatened fish	See 4VAC15-20-130. Definitions and Miscellaneous: In General. Endangered and threatened species; adoption of federal list; additional species enumerated.			
nonnative (exotic) fish	See 4VAC15-30-40. Definitions and Miscellaneous: Importation, Possession, Sale, Etc., of Animals. Importation requirements, possession and sale of nonnative (exotic) animals.			

4VAC15-320-60. Approval required to stock fish into inland waters.

It shall be unlawful to stock any species of fish into any inland waters of the Commonwealth~~,~~ without first obtaining written approval to do so from the department. Nothing in this section shall be construed as restricting the use of native and naturalized species of fish in privately-owned ponds and lakes, except spotted bass, blue catfish, and their hybrids may not be stocked.

4VAC15-320-100. Department-owned or department-controlled lakes, ponds, streams, boat access sites, or hatcheries.

A. Motors and boats. Unless otherwise posted at each recognized entrance to any department-owned or department-controlled lake, pond, or stream, the use of boats propelled by a gasoline ~~motors,~~ motor or sail ~~or mechanically operated recreational paddle wheel~~ is prohibited. Department employees and other government agency officials may use gasoline motors in the performance of official duties.

B. Method of fishing. Taking any fish at any department-owned or department-controlled lake, pond, or stream by any means other than by use of one or more attended poles with hook and line attached is prohibited unless otherwise posted in which case cast nets (subject to 4VAC15-360-10 B) may be used for collecting nongame fish for use as bait.

C. Hours for fishing. Fishing is permitted 24 hours a day unless otherwise posted at each recognized entrance to any department-owned or department-controlled lake, pond, stream, or boat access site.

D. Seasons; hours and methods of fishing; size and creel limits; hunting and trapping. The open seasons for (i) fishing, as well as fishing hours, methods of taking fish, and the size, possession, and creel limits~~,~~ and (ii) hunting and trapping for department-owned or department-controlled lakes, ponds, streams or boat access sites shall conform to the regulations of the board unless otherwise excepted by posted rules by the director or his designee. Such posted rules shall be displayed at each lake, pond, stream, or boat access site, in which case the posted rules shall be in effect. Failure to comply with posted rules concerning seasons, hours, methods of taking, bag limits, and size, possession, and creel limits shall constitute a violation of this regulation.

E. Other uses. Camping overnight or building fires (except in developed and designated areas), swimming, or wading in department-owned or department-controlled lakes, ponds, or streams (except by anglers, hunters and trappers actively engaged in fishing, hunting, or trapping), is prohibited. All other uses shall conform to the regulations of the board unless excepted by posted rules.

F. Fishing tournaments, etc. ~~It shall be unlawful~~ A boat ramp special use permit is required to organize, conduct, supervise, or solicit entries for fishing tournaments, rodeos, or other fishing events on lakes, ponds, or streams owned by the department, for which prizes are offered, awarded, or accepted based on size or numbers of fish caught, either in money or other valuable considerations. ~~This chapter will not prohibit events approved by the department that are intended to promote youth fishing or provide instruction, provided no prizes, as defined above, are awarded and no participation fees are charged.~~ Any fish captured and entered for scoring or consideration during a permitted fishing tournament, rodeo, or other fishing event on lakes, ponds, or streams owned by the department must be immediately released at the capture site. A boat ramp special use permit is not required for tournaments, rodeos, or other fishing events that occur on a statewide or nationwide basis and that do not have a designated meeting or gathering location.

VA.R. Doc. No. R21-5909; Filed October 28, 2020.

Final Regulation

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

Title of Regulation: **4VAC15-330. Fish: Trout Fishing (amending 4VAC15-330-150, 4VAC15-330-160; repealing 4VAC15-330-110).**

Statutory Authority: §§ 29.1-103, 29.1-501, and 29.1-502 of the Code of Virginia.

Effective Date: January 1, 2021.

Agency Contact: Aaron Proctor, Regulations Coordinator, Department of Wildlife Resources, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228, telephone (804) 367-8341, or email aaron.proctor@dwr.virginia.gov.

Summary:

The amendments (i) repeal the special provisions applicable to certain portions of Green Cove Creek, Smith Creek, Snake Creek, and Whitetop Laurel Creek regarding the taking of trout; (ii) add portions of Green Cove Creek in Washington County, Whitetop Laurel Creek in Washington County, Smith Creek in Alleghany County, and Snake Creek and Little Snake Creek in Carroll County to the special provision for artificial lure, single hook-only trout fishing; and (iii) remove portions of the Hardware River in Fluvanna County and Peak Creek in Pulaski County and add portions of the Hardy Creek in Lee County and the Piney River in Nelson County to the special provision for artificial lure only and no live possession of bait or trout for trout fishing.

4VAC15-330-110. ~~Special provisions applicable to certain portions of Green Cove Creek, Smith Creek, Snake Creek and Whitetop Laurel Creek.~~ (Repealed.)

~~It shall be lawful to fish using only artificial lures with single hooks in that portion of Green Cove Creek in Washington County from Route 859 downstream to its mouth, in that portion of Smith~~

~~Creek in Alleghany County from the Clifton Forge Reservoir Dam downstream to a sign at the Forest Service boundary above the C + O Dam, on Snake Creek in Carroll County upstream from its mouth to Hall's Fork on Big Snake Fork and to the junction of Routes 922 and 674 on Little Snake Fork, in Whitetop Laurel Creek in Washington County upstream from the mouth of Straight Branch to a sign at the Forest Service boundary just downstream of Taylor Valley, and in Whitetop Laurel Creek in Washington County upstream from the first railroad trestle above Taylor Valley to the mouth of Green Cove Creek at Creek Junction. All trout caught in these waters under 12 inches in length shall be immediately returned to the water unharmed. It shall be unlawful for any person to have in his possession any bait or any trout under 12 inches in length in these areas.~~

4VAC15-330-150. Special provision applicable to trout fishing using artificial lures with single hook.

It shall be lawful year around to fish for trout using only artificial lures with single hooks within:

1. The Stewarts Creek Trout Management Area in Carroll County.

2. The Rapidan and Staunton Rivers and their tributaries upstream from a sign at the Lower Shenandoah National Park boundary in Madison County.

3. The Dan River and its tributaries between the Townes Dam and the Pinnacles Hydroelectric Project powerhouse in Patrick County.

4. The East Fork of Chestnut Creek (Farmers Creek) and its tributaries upstream from the Blue Ridge Parkway in Grayson and Carroll Counties.

5. Roaring Fork and its tributaries upstream from the southwest boundary of Beartown Wilderness Area in Tazewell County.

6. That section of the South Fork Holston River and its tributaries from the concrete dam at Buller Fish Culture Station downstream to the lower boundary of the Buller Fish Culture Station in Smyth County.

7. North Creek and its tributaries upstream from a sign at the George Washington National Forest North Creek Campground in Botetourt County.

8. Spring Run from it confluence with Cowpasture River upstream to a posted sign at the discharge for Coursey Springs Hatchery in Bath County.

9. Venrick Run and its tributaries within the Big Survey Wildlife Management Area and Town of Wytheville property in Wythe County.

10. Brumley Creek and its tributaries from the Hidden Valley Wildlife Management Area boundary upstream to the Hidden Valley Lake Dam in Washington County.

11. Stony Creek (Mountain Fork) and its tributaries within the Jefferson National Forest in Wise and Scott Counties from the outlet of High Knob Lake downstream to the confluence of Chimney Rock Fork and Stony Creek.

12. Little Stony Creek and its tributaries within the Jefferson National Forest in Scott County from the Falls of Little Stony Creek downstream to a posted sign at the Hanging Rock Recreation Area.

13. Little Tumbling Creek and its tributaries within the Clinch Mountain Wildlife Management Area in Smyth and Tazewell Counties downstream to the concrete bridge.

14. Big Tumbling Creek and its tributaries within the Clinch Mountain Wildlife Management Area in Smyth County from a sign starting at the foot of the mountain and extending upstream seasonally from October 1 until five days prior to the first Saturday in April.

15. South River in the City of Waynesboro from the Wayne Avenue Bridge downstream 2.2 miles to the Second Street Bridge.

16. Wolf Creek and its tributaries within the Abingdon Muster Grounds in the Town of Abingdon from Colonial Road downstream to Stone Mill Road.

17. Beaver Creek and its tributaries within the boundaries of Sugar Hollow Park in the City of Bristol.

18. Green Cove Creek in Washington County from Route 859 downstream to its mouth.

19. Whitetop Laurel Creek in Washington County upstream from the mouth of Straight Branch to a sign posted at the Forest Service boundary just downstream of Taylor Valley, and in Whitetop Laurel Creek in Washington County upstream from the first railroad trestle above Taylor Valley to the mouth of Green Cove Creek at Creek Junction.

20. Smith Creek in Alleghany County from the Clifton Forge Dam downstream to a sign at the Forest Service boundary above the C & O Dam.

21. Snake Creek in Carroll County below Hall Ford and that portion of Little Snake Creek below the junction of Routes 922 and 674, downstream to Route 58.

All trout caught in these waters must be immediately returned to the water. No trout or bait may be in possession at any time in these areas.

4VAC15-330-160. Special provisions applicable to certain portions of Accotink Creek, Back Creek, Big Moccasin Creek, Chestnut Creek, Hardware River Hardy Creek, Holliday Creek, Holmes Run, Indian Creek, North River, Passage Creek, Peak Creek, Pedlar River, Piney River, North Fork of Pound and Pound rivers, Middle Fork of Powell River, and Roanoke River.

It shall be lawful to fish from October 1 through May 31, both dates inclusive, using only artificial lures in Accotink Creek (Fairfax County) from King Arthur Road downstream 3.1 miles to Route 620 (Braddock Road), in Back Creek (Bath

County) from the Route 600 bridge just below the Virginia Power Back Creek Dam downstream 1.5 miles to the Route 600 bridge at the lower boundary of the Virginia Power Recreational Area, in Big Moccasin Creek (Scott County) from the Virginia Department of Transportation foot bridge downstream approximately 1.9 miles to the Wadlow Gap Bridge, in Chestnut Creek (Carroll County) from the U.S. Route 58 bridge downstream 11.4 miles to the confluence with New River, in ~~the Hardware River (Fluvanna County) from the Route 646 bridge upstream 3.0 miles to Muleshoe Bend as posted~~ Hardy Creek (Lee County) from the Virginia Department of Transportation swinging bridge just upstream of the Route 658 ford downstream to the Route 661 bridge, in Holliday Creek (Appomattox/Buckingham Counties) from the Route 640 crossing downstream 2.8 miles to a sign posted at the headwaters of Holliday Lake, in Holmes Run (Fairfax County) from the Lake Barcroft Dam downstream 1.2 miles to a sign posted at the Alexandria City line, in Indian Creek within the boundaries of Wilderness Road State Park (Lee County), in the North River (Augusta County) from the base of Elkhorn Dam downstream 1.5 miles to a sign posted at the head of Staunton City Reservoir, in Passage Creek (Warren County) from the lower boundary of the Front Royal State Hatchery upstream 0.9 miles to the Shenandoah/Warren County line, ~~in Peak Creek (Pulaski County) from the confluence of Tract Fork downstream 2.7 miles to the Route 99 bridge,~~ in the Pedlar River (Amherst County) from the City of Lynchburg/George Washington National Forest boundary line (below Lynchburg Reservoir) downstream 2.7 miles to the boundary line of the George Washington National Forest, in the Piney River (Nelson County) in that portion of stream from the Piney River Trailhead (Route 151) to the Rose Mill Trailhead (Route 674) adjacent to the Blue Ridge Railway Trail, in North Fork of Pound and Pound rivers from the base of North Fork of Pound Dam downstream to the confluence with Indian Creek, in the Middle Fork of Powell River (Wise County) from the old train trestle at the downstream boundary of Appalachia extending approximately 1.9 miles downstream to the trestle just upstream of the Town of Big Stone Gap, in the Roanoke River (Roanoke County) from the Route 760 bridge (Diuguids Lane) upstream 1.0 miles to a sign posted at the upper end of Green Hill Park (Roanoke County), and in the Roanoke River (City of Salem) from the Route 419 bridge upstream 2.2 miles to the Colorado Street bridge. From October 1 through May 31, all trout caught in these waters must be immediately returned to the water unharmed, and it shall be unlawful for any person to have in possession any bait or trout. During the period of June 1 through September 30, the above restrictions will not apply.

VA.R. Doc. No. R21-5910; Filed October 28, 2020.

Final Regulation

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

Title of Regulation: **4VAC15-340. Fish: Seines and Nets (amending 4VAC15-340-10, 4VAC15-340-30, 4VAC15-340-60).**

Statutory Authority: §§ 29.1-103, 29.1-501, and 29.1-502 of the Code of Virginia.

Effective Date: January 1, 2021.

Agency Contact: Aaron Proctor, Regulations Coordinator, Department of Wildlife Resources, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228, telephone (804) 367-8341, or email aaron.proctor@dwr.virginia.gov.

Summary:

The amendments (i) prohibit American shad from being taken using haul seines or gill nets in the City of Virginia Beach on Back Bay and its natural tributaries and (ii) prohibit the use of seines, nets, or traps in streams and their associated tributaries that flow into Hungry Mother Lake in Smyth County.

4VAC15-340-10. Haul seines to take fish for sale.

A. Authorization to take fish for sale. A haul seine permit shall authorize the person to whom issued to take fish for sale as specified with a haul seine from the waters designated in this section.

B. Permit holder to be present when seine operated. The holder of a haul seine permit must be present with the seine at all times when it is being operated. The holder, however, may have others to assist him, and such persons assisting are not required to have a permit.

C. Length and size of nets. The length of haul seine nets shall not be more than 500 yards. The size of mesh shall be 1-1/2 inch bar mesh.

D. Season and fish to be taken in Virginia Beach City. In Back Bay and its natural tributaries (not including Lake Tecumseh and Red Wing Lake), North Landing River from the North Carolina line to Pungo Ferry (not including Blackwater River), the open season to take all fish, except game fish, American shad, alewife, and blueback herring, with a haul seine shall be from November 1 through March 31, both dates inclusive. The harvest limit for anadromous ~~American and~~ hickory shad shall be 10 per day~~, in the aggregate~~.

E. Labeling packages containing fish taken with haul seine. It shall be unlawful for any person to ship or otherwise transport any package, box, or other receptacle containing fish taken under a haul seine permit unless the same bears a label showing the name and address of the owner of the seine and a statement of the kind of fish contained in it.

F. Reporting. The holder of a permit to take fish for sale by means of haul seines shall keep a record of the pounds of fish taken by species and location (name and county of water body), and the pounds of each species sold.

4VAC15-340-30. Gill nets.

A. Authorization to take fish. A gill net permit shall authorize the holder thereof to take nongame fish during the times and in the waters and for the purposes provided for in this section. Such gill net shall not be more than 300 feet in length. The mesh size shall be not less than one-inch bar or square mesh (three-inch stretch mesh). Applicants must annually purchase tags for each net the applicant intends to operate and attach a department tag to each net prior to use. A single permit will be issued to the permittee and shall list each tag number the permittee has been issued. All nets must be checked daily and all game fish returned to the wild.

B. Permit holder to be present when gill net is being set and checked for fish. The holder of a gill net permit must be present with the net at all times when it is being set and checked for fish. The holder may have others to assist him, and such persons assisting are not required to have a permit. However, those assisting the permittee must meet the fishing license requirements of the Commonwealth.

C. Times and places permitted in Virginia Beach City; fish which may be taken. Gill nets may be used in Virginia Beach City in Back Bay and its natural tributaries (not including Lake Tecumseh and Red Wing Lake) and North Landing River from the North Carolina line to Pungo Ferry (not including Blackwater River) for the taking of nongame fish, except American shad, alewife, and blueback herring, for table use and also for sale from November 1 through March 31, both dates inclusive. The harvest limit for anadromous ~~American and~~ hickory shad shall be 10 per day~~, in the aggregate~~. Gill nets set in Back Bay waters shall be at least 300 feet from any other net and at least 300 feet from the shoreline. All such nets must be marked at both ends and at least every 100 feet along the length of the net with a five-inch by 12-inch minimum dimensions float.

4VAC15-340-60. Seines, traps, and nets prohibited in certain areas.

A. It shall be unlawful to use seines and nets of any kind for the taking of fish from the public waters of the Roanoke (Staunton) and Dan Rivers in Campbell, Charlotte, Halifax, and Pittsylvania Counties and in the City of Danville; provided, however, this section shall not be construed to prohibit the use of hand-landing nets for the landing of fish legally hooked or the taking of fish from these waters pursuant to the provisions of 4VAC15-360. In addition, this section shall not be construed to prohibit the use of cast nets, also known as throw nets, for the taking of bait fish.

B. In Lick Creek and tributaries in Smyth and Bland Counties, in Bear Creek and ~~Hungry Mother Creek above~~ in streams and their associated tributaries that flow into Hungry Mother Lake in Smyth County, in Laurel Creek and tributaries upstream of Highway 16 bridge in Tazewell and Bland Counties, in Susong Branch and Mumpower Creek in Washington County and the City of Bristol, and in Timbertree Branch in Scott County, it shall be unlawful to use seines, nets, or traps; provided, however, this section shall not be construed to prohibit the use of hand-landing nets for the landing of fish legally hooked.

VA.R. Doc. No. R21-5911; Filed October 28, 2020.

Final Regulation

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

Title of Regulation: **4VAC15-350. Fish: Gigs, Grab Hooks, Trotlines, Snares, etc. (amending 4VAC15-350-20, 4VAC15-350-70).**

Statutory Authority: §§ 29.1-103, 29.1-501, and 29.1-502 of the Code of Virginia.

Effective Date: January 1, 2021.

Agency Contact: Aaron Proctor, Regulations Coordinator, Department of Wildlife Resources, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228, telephone (804) 367-8341, or email aaron.proctor@dwr.virginia.gov.

Summary:

The amendments (i) define a fishing spear and allow the taking of nongame fish by gig or fishing spear from a position above the surface of the water on those portions below the fall line of the Rappahannock River and its tributaries and the Potomac River and its tributaries and (ii) change the lawful taking of certain fish with a bow and arrow or crossbow from public inland waters to public rivers and streams as well as changing the exception from department-owned or department-controlled lakes to public inland lakes and reservoirs.

4VAC15-350-20. Gigs, grab hooks, etc.; certain counties east of the Blue Ridge Mountains.

A. It shall be lawful to take nongame fish ~~(daily creel (possession) and length limits for nongame fish are found in 4VAC15-320-25)~~ at any time by snagging, grabbing, snaring, gigging, and with a striking iron in all waters ~~of the following counties~~, except (i) public impoundments, (ii) the Roanoke (Staunton) ~~and~~ River, (iii) the Dan ~~rivers~~ River, (iv) the James River in Goochland County, and (v) those waters stocked by the department, of the following counties: Amelia, Appomattox, Brunswick, Buckingham, Campbell, Charlotte, Cumberland, Dinwiddie, Goochland, Greensville, Halifax, Louisa, Lunenburg, Mecklenburg, Nottoway, Pittsylvania, and Prince Edward.

B. It shall be lawful to take nongame fish by gig or fishing spear from a position above the surface of the water on those portions below the fall line of the Rappahannock River and its tributaries and the Potomac River and its tributaries. For the purpose of this section, a fishing spear is defined as an implement with a shaft and sharp point or tines designed to be thrusted or thrown by hand.

C. Daily creel (possession) and length limits for nongame fish are found in 4VAC15-320-25.

4VAC15-350-70. Taking of fish with bow and arrow or crossbow.

A. Season. Except as otherwise provided by local legislation or as posted, it shall be lawful to take common carp, northern snakehead, goldfish, and gar from the public inland waters of the Commonwealth, grass carp from public ~~inland waters~~ rivers and streams of the Commonwealth except ~~department-owned or department-controlled lakes~~ public inland lakes and reservoirs, and bowfin and catfish from below the fall line in tidal rivers of the Chesapeake Bay, except waters stocked with trout, by means of bow and arrow or crossbow.

B. Poison arrows or explosive-head arrows prohibited. It shall be unlawful to use poison arrows or arrows with explosive heads at any time for the purpose of taking common carp, grass carp, northern snakehead, bowfin, catfish, goldfish, or gar in the public inland waters of the Commonwealth.

C. Fishing license required. All persons taking fish in the manner described in this section shall be required to have a regular fishing license.

D. Creel limits. The creel limits for common carp, grass carp, northern snakehead, goldfish, and catfish shall be unlimited, provided that any angler taking northern snakehead immediately kill such fish and notify the department, as soon as practicable, of such actions and provided that any angler taking grass carp ensure that harvested fish are dead. The creel limit for bowfin and longnose gar shall be five fish per day.

VA.R. Doc. No. R21-5912; Filed October 28, 2020.

Final Regulation

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

Title of Regulation: **4VAC15-360. Fish: Aquatic Invertebrates, Amphibians, Reptiles, and Nongame Fish (amending 4VAC15-360-10).**

Statutory Authority: §§ 29.1-103, 29.1-501, and 29.1-502 of the Code of Virginia.

Effective Date: January 1, 2021.

Agency Contact: Aaron Proctor, Regulations Coordinator, Department of Wildlife Resources, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228, telephone (804) 367-8341, or email aaron.proctor@dwr.virginia.gov.

Summary:

This amendments (i) limit the harvest of grass carp to only public inland rivers and streams and prohibit their harvest from any public inland lake or reservoir and (ii) remove the provision for take of candy darter as previously allowed under this section.

4VAC15-360-10. Taking aquatic invertebrates, amphibians, reptiles, and nongame fish for private use.

A. Possession limits. Except as otherwise provided for in § 29.1-418 of the Code of Virginia, 4VAC15-20-130, 4VAC15-320-40, and the sections of this chapter, it shall be lawful to capture and possess live for private use and not for sale no more than five individuals of any single native or naturalized (as defined in 4VAC15-20-50) species of amphibian and reptile and 20 individuals of any single native or naturalized (as defined in 4VAC15-20-50) species of aquatic invertebrate and nongame fish unless specifically listed ~~below~~ in this subsection:

1. The following species may be taken in unlimited numbers from inland waters statewide: carp, mullet, yellow bullhead, brown bullhead, black bullhead, flat bullhead, snail bullhead, white sucker, northern hogsucker, gizzard shad, threadfin shad, blueback herring (see 4VAC15-320-25 for anadromous blueback herring limits), white perch, yellow perch, alewife (see 4VAC15-320-25 for anadromous alewife limits), stoneroller (hornyhead), fathead minnow, golden shiner, goldfish, and Asian clams. Grass carp may only be harvested in unlimited numbers from public inland ~~waters~~ rivers and streams of the Commonwealth ~~other than department-owned or department-controlled lakes~~. It is unlawful to harvest grass carp from any public inland lake and reservoir. Anglers taking grass carp must ensure that all harvested grass carp are dead.

2. See 4VAC15-320-25 for American shad, hickory shad, channel catfish, white catfish, flathead catfish, and blue catfish limits.

3. For the purpose of this chapter, "fish bait" shall be defined as native or naturalized species of minnows and chubs (Cyprinidae), salamanders (each under six inches in total length), crayfish, and hellgrammites. The possession limit for taking "fish bait" shall be 50 individuals in aggregate, unless said person has purchased "fish bait" and has a receipt specifying the number of individuals purchased by species, except salamanders and crayfish which cannot be sold pursuant to the provisions of 4VAC15-360-60 and 4VAC15-360-70. However, stonerollers (hornyheads), fathead minnows, golden shiners, and goldfish may be taken and possessed in unlimited numbers as provided for in subdivision 1 of this subsection.

4. The daily limit for bullfrogs shall be 15 and for snapping turtles shall be five. Snapping turtles shall only be taken from June 1 to September 30. Bullfrogs and snapping turtles may not be taken from the banks or waters of designated stocked trout waters.

5. The following species may not be taken in any number for private use: ~~candy darter,~~ eastern hellbender, diamondback terrapin, and spotted turtle.

6. Native amphibians and reptiles, as defined in 4VAC15-20-50, that are captured within the Commonwealth and possessed live for private use and not for sale may be liberated under the following conditions:

a. Period of captivity does not exceed 30 days;

b. Animals must be liberated at the site of capture;

c. Animals must have been housed separately from other wild-caught and domestic animals; and

d. Animals that demonstrate symptoms of disease or illness or that have sustained injury during their captivity may not be released.

B. Methods of taking species in subsection A of this section. Except as otherwise provided for in the Code of Virginia, 4VAC15-20-130, 4VAC15-320-40, and other regulations of the board, and except in any waters where the use of nets is prohibited, the species listed in subsection A of this section may only be taken (i) by hand, hook and line; (ii) with a seine not exceeding four feet in depth by 10 feet in length; (iii) with an umbrella type net not exceeding five by five feet square; (iv) by small minnow traps with throat openings no larger than one inch in diameter; (v) with cast nets; and (vi) with hand-held bow nets with diameter not to exceed 20 inches and handle length not to exceed eight feet (such cast net and hand-held bow nets when so used shall not be deemed dip nets under the provisions of § 29.1-416 of the Code of Virginia). Gizzard shad and white perch may also be taken from below the fall line in all tidal rivers of the Chesapeake Bay using a gill net in accordance with Virginia Marine Resources Commission recreational fishing regulations. Bullfrogs may also be taken by gigging or bow and arrow and, from private waters, by firearms no larger than .22 caliber rimfire. Snapping turtles may be taken for personal use with hoop nets not exceeding six feet in length with a throat opening not exceeding 36 inches.

C. Areas restricted from taking mollusks. Except as provided for in §§ 29.1-418 and 29.1-568 of the Code of Virginia, it shall be unlawful to take the spiny riversnail (Io fluvialis) in the Tennessee drainage in Virginia (Clinch, Powell, and the North, South, and Middle Forks of the Holston Rivers and tributaries). It shall be unlawful to take mussels from any inland waters of the Commonwealth.

D. Areas restricted from taking salamanders. Except as provided for in §§ 29.1-418 and 29.1-568 of the Code of Virginia, it shall be unlawful to take salamanders in Grayson Highlands State Park and on National Forest lands in the Jefferson National Forest in those portions of Grayson, Smyth, and Washington Counties bounded on the east by State Route 16, on the north by State Route 603 and on the south and west by U.S. Route 58.

VA.R. Doc. No. R21-5913; Filed October 28, 2020.

MARINE RESOURCES COMMISSION

Final Regulation

REGISTRAR'S NOTICE: The Marine Resources Commission is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 11 of the Code of Virginia; however, the commission is required to publish the full text of final regulations.

Title of Regulation: **4VAC20-270. Pertaining to Blue Crab Fishery (amending 4VAC20-270-30, 4VAC20-270-40, 4VAC20-270-51, 4VAC20-270-55).**

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

Effective Date: November 1, 2020.

Agency Contact: Jennifer Farmer, Regulatory Coordinator, Marine Resources Commission, 380 Fenwick Road, Fort Monroe, VA 23651, telephone (757) 247-2248, or email jennifer.farmer@mrc.virginia.gov.

Summary:

The amendments extend the season for the hard crab pot fishery through December 19, 2020.

4VAC20-270-30. Daily time limits for commercial harvest.

A. It shall be unlawful for any person licensed to catch and sell crabs taken by crab pot or peeler pot to take and harvest crabs from any crab pot or peeler pot, or to retrieve, bait, or set any crab pot or peeler pot, except during the lawful daily time periods described in subsections A, B, C, and D of this section. The lawful daily time periods for the commercial harvesting of crabs by crab pot or peeler pot shall be from 6 a.m. to 2 p.m. during the lawful seasons, as described in 4VAC20-270-40 A, except as described in subsections B, C, and D of this section. The lawful daily time periods for the commercial harvesting of crabs by crab pot or peeler pot shall be from 5 a.m. to 1 p.m. during the months of May, June, July, and August, as described in 4VAC20-270-40 A, except as specified in subsections B, C, and D of this section. Crab pots or peeler pots already on board a boat at the end of the lawful daily time period, as defined in subsections A, B, and C of this section, may be set immediately following the end of lawful daily time period to one hour after the lawful daily time period ends.

B. Any licensed crab pot or peeler pot fisherman who provides an opinion and supporting documentation from an attending physician to the commissioner of an existing medical condition that prevents him from adhering to the daily time limit established in subsection A of this section may be permitted by the commissioner or his designee to take and harvest crabs from his crab pot or peeler pot, or to retrieve, bait, or set his crab pot or peeler pot during an alternate eight-hour daily time limit. That alternative eight-hour daily time limit will be prescribed by the commissioner or his designee in accordance with the medical condition that forms a basis for the exception to the daily time limit as described in subsection A of this section.

Nothing in this regulation shall prohibit any licensed crab pot or peeler pot fisherman, who has been granted an exception to the eight-hour work schedule, on a medical basis, from using another licensed crab pot or peeler pot fisherman as a mate; provided, however, during the designated alternate work hours, only the crab pots or peeler pots of the fisherman receiving the exception shall be fished. Further, it shall be unlawful for the licensed crab fisherman, who has been granted an exception, or his mate, who is a licensed crab pot or peeler pot fisherman, to fish, set, retrieve, or bait, during the alternate work hours, any crab pot or peeler pot that is not owned and licensed by the fisherman granted the exception.

C. Any licensed crab pot or peeler pot fisherman who requests and obtains an alternate eight-hour daily time limit permit shall be authorized to take and harvest crabs from his crab pot or peeler pot or to retrieve, bait, or set his crab pot or peeler pot one hour earlier than described in subsection A of this section, only for the months of June, July, August, and September. During the months of March, April, May, October, ~~and~~ November, and December, the lawful daily time period described in subsection A of this section applies to any crab pot or peeler pot licensee. The alternate lawful daily time periods for the commercial harvesting of crabs by crab pot or peeler pot shall be from 4 a.m. to 12 noon from June 1 through August 31 and from 5 a.m. to 1 p.m. from September 1 through September 30. Licensed crab pot or peeler pot fishermen must apply for this permit on an annual basis and shall adhere to the alternate daily time limit from the day the permit is issued through September 30, as well as subdivisions 1, 2, and 3 of this subsection.

1. It shall be unlawful for two or more licensed crab pot or peeler pot fishermen, or their agents, to crab aboard the same vessel if their authorized eight-hour daily time limits are not identical.

2. Requests for an alternate eight-hour time limit permit shall be submitted to the Marine Resources Commission annually and prior to May 15. Requests submitted on or after May 15 will not be considered.

3. Once any legal crab pot or peeler pot licensee obtains an alternate eight-hour daily time limit permit, that permittee shall be legally bound by the alternate eight-hour daily time limit as described in this subsection.

D. The lawful daily time periods for the commercial harvest of crabs by crab pot or peeler pot may be rescinded by the Commissioner of Marine Resources when the commissioner determines that a pending weather event is sufficient cause for the removal of crab pots from the tidal waters of the Commonwealth.

4VAC20-270-40. Season limits.

A. In 2020, the lawful season for the commercial harvest of crabs by crab pot shall be March 17 through ~~November 30~~ December 19. In 2021, the lawful season for the commercial harvest of crabs by crab pot shall be March 17 through November 30. For all other lawful commercial gear used to harvest crabs, as described in 4VAC20-1040, the lawful seasons for the harvest of crabs shall be April 1 through October 31.

B. It shall be unlawful for any person to harvest crabs or to possess crabs on board a vessel, except during the lawful season as described in subsection A of this section.

C. It shall be unlawful for any person knowingly to place, set, fish, or leave any hard crab pot in any tidal waters of Virginia from December ~~1~~ 20, 2020, through March 16, 2021. It shall be unlawful for any person to knowingly place, set, fish, or leave any lawful commercial gear used to harvest crabs, except any hard crab pot or any gear as described in 4VAC20-460-25, in any tidal waters of Virginia from November 1, 2020, through March 31, 2021.

D. It shall be unlawful for any person knowingly to place, set, fish, or leave any fish pot in any tidal waters from March 12 through March 16, except as provided in subdivisions 1 and 2 of this subsection.

1. It shall be lawful for any person to place, set, or fish any fish pot in those Virginia waters located upriver of the following boundary lines:

a. In the James River the boundary shall be a line connecting Hog Point and the downstream point at the mouth of College Creek.

b. In the York River the boundary lines shall be the Route 33 bridges at West Point.

c. In the Rappahannock River the boundary line shall be the Route 360 bridge at Tappahannock.

d. In the Potomac River the boundary line shall be the Route 301 bridge that extends from Newberg, Maryland to Dahlgren, Virginia.

2. This subsection shall not apply to legally licensed eel pots as described in 4VAC20-500-50.

E. It shall be unlawful for any person to place, set, or fish any number of fish pots in excess of 10% of the amount allowed by the gear license limit, up to a maximum of 30 fish pots per vessel, when any person on that vessel has set any crab pots.

1. This subsection shall not apply to fish pots set in the areas described in subdivision D 1 of this section.

2. This subsection shall not apply to legally licensed eel pots as described in 4VAC20-500.

3. This subsection shall not apply to fish pots constructed of a mesh less than one-inch square or hexagonal mesh.

4VAC20-270-51. Daily commercial harvester, vessel, and harvest and possession limits.

A. Any barrel used by a harvester to contain or possess any amount of crabs will be equivalent in volume to no more than three bushels of crabs.

B. From July 5, 2020, through ~~November 30~~ December 19, 2020, and April 1, 2021, through July 4, 2021, any commercial fisherman registration licensee legally licensed for any crab pot license, as described in 4VAC20-270-50 B, shall be limited to the following maximum daily harvest and possession limits for any of the following crab pot license categories:

1. 10 bushels, or three barrels and one bushel, of crabs if licensed for up to 85 crab pots.

2. 14 bushels, or four barrels and two bushels, of crabs if licensed for up to 127 crab pots.

3. 18 bushels, or six barrels, of crabs if licensed for up to 170 crab pots.

4. 29 bushels, or nine barrels and two bushels, of crabs if licensed for up to 255 crab pots.

5. 47 bushels, or 15 barrels and two bushels, of crabs if licensed for up to 425 crab pots.

C. From March 17, 2021, through March 31, 2021, any commercial fisherman registration licensee legally licensed for any crab pot license, as described in 4VAC20-270-50 B, shall be limited to the following maximum daily harvest and possession limits for any of the following crab pot license categories:

1. Eight bushels, or two barrels and two bushels, of crabs if licensed for up to 85 crab pots.

2. 10 bushels, or three barrels and one bushel, of crabs if licensed for up to 127 crab pots.

3. 13 bushels, or four barrels and one bushel, of crabs if licensed for up to 170 crab pots.

4. 21 bushels, or seven barrels, of crabs if licensed for up to 255 crab pots.

5. 27 bushels, or nine barrels, of crabs if licensed for up to 425 crab pots.

D. When a single harvester or multiple harvesters are on board any vessel, that vessel's daily harvest and possession limit shall be equal to only one daily harvest and possession limit, as described in subsections B and C of this section, and that daily limit shall correspond to the highest harvest and possession limit of only one licensee on board that vessel.

E. When transporting or selling one or more legal crab pot licensee's crab harvest in bushels or barrels, any agent shall possess either the crab pot license of that one or more crab pot licensees or a bill of lading indicating each crab pot licensee's name, address, commercial fisherman registration license number, date, and amount of bushels or barrels of crabs to be sold.

F. If any police officer finds crabs in excess of any lawful daily bushel, barrel, or vessel limit, as described in this section, that excess quantity of crabs shall be returned immediately to the water by the licensee or licensees who possess that excess over lawful daily harvest or possession limit. The refusal to return crabs, in excess of any lawful daily harvest or possession limit, to the water shall constitute a separate violation of this chapter.

G. When any person on board any boat or vessel possesses a crab pot license, it shall be unlawful for that person or any other person aboard that boat or vessel to possess a seafood buyers boat license and buy any crabs on any day.

4VAC20-270-55. Minimum size limits.

A. From March 17 through July 15, it shall be unlawful for any person to harvest, possess, sell, or offer for sale more than 10 peeler crabs, per United States standard bushel, or 5.0% of peeler crabs in any other container, that measure less than 3-1/4 inches across the shell from tip to tip of the longest spikes. From July 16 through ~~November 30~~ December 19, it shall be unlawful for any person to harvest, possess, sell, or offer for sale more than 10 peeler crabs, per United States standard bushel, or 5.0% of peeler crabs in any other container, that measure less than 3-1/2 inches across the shell from tip to tip of the longest spikes, except as described in subsections B and C of this section.

B. From July 16 through ~~November 30~~ December 19, it shall be unlawful for any person to harvest, possess, sell, or offer for sale more than 10 peeler crabs, per United States standard bushel, or 5.0% of peeler crabs in any other container, that are harvested from waters on the ocean side of Accomack and Northampton Counties and measure less than 3-1/4 inches across the shell from tip to tip of the longest spikes, except as described in subsection C of this section.

C. In the enforcement of these peeler crab minimum size limits aboard a vessel, the marine police officer shall select a single container of peeler crabs of his choosing to determine if the contents of that container violate the minimum size and tolerance described in this section. If the officer determines the contents of the container are in violation, then the officer shall return all peeler crabs on board the vessel to the water alive.

D. It shall be unlawful for any person to take, catch, harvest, possess, sell or offer for sale, or to destroy in any manner, any soft crab that measures less than 3-1/2 inches across the shell from tip to tip of the longest spikes.

VA.R. Doc. No. R21-6554; Filed October 27, 2020.

TITLE 12. HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Final Regulation

REGISTRAR'S NOTICE: The Department of Medical Assistance Services is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006

A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved. The Department of Medical Assistance Services will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Titles of Regulations: **12VAC30-70. Methods and Standards for Establishing Payment Rates - Inpatient Hospital Services (amending 12VAC30-70-301).**

12VAC30-80. Methods and Standards for Establishing Payment Rates; Other Types of Care (amending 12VAC30-80-30).

12VAC30-90. Methods and Standards for Establishing Payment Rates for Long-Term Care (amending 12VAC30-90-264).

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

Effective Date: December 23, 2020.

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.

Summary:

The amendments conform the regulations to items in the budget bill (Chapter 1289 of the 2020 Acts of Assembly) adopted during the 2020 Session of the General Assembly. Pursuant to Item 313 HHHH, a supplemental disproportionate share hospital (DSH) payment for non-state government, public acute care hospitals, up to its hospital-specific disproportionate share hospital limit (Omnibus Reconciliation Act 1993 DSH limit) as determined pursuant to 42 USC § 1396r-4, shall be made annually based upon the hospital's disproportionate share limit for the most recent year for which the disproportionate share limit has been calculated subject to the availability of DSH funds under the federal allotment of such funds to the department. Pursuant to Item 313 SSSS (1), which raised the rates for agency and consumer directed personal care, respite, and companion services in the home and community based services waivers and Early Periodic Screening, and Diagnosis and Treatment program by 5.0%, such rates are set to those established July 1, 2020. Pursuant to Item 313 LLLL, specialized care operating rates for fiscal years 2021 and 2022 are established by inflating the fiscal year 2020 rates using Virginia nursing home inflation.

12VAC30-70-301. Payment to disproportionate share hospitals.

A. Payments to disproportionate share hospitals (DSH) shall be prospectively determined in advance of the state fiscal year to which they apply. The payments shall be made on a quarterly basis and shall be final subject to subsections E and K of this section.

B. Effective July 1, 2014, in order to qualify for DSH payments, DSH eligible hospitals shall have a total Medicaid inpatient utilization rate equal to 14% or higher in the base year using Medicaid days eligible for Medicare DSH defined in 42 USC § 1396r-4(b)(2) or a low income utilization rate defined in 42 USC § 1396r-4(b)(3) in excess of 25%. Eligibility for out-of-state cost reporting hospitals shall be based on total Medicaid utilization or on total Medicaid neonatal intensive care unit (NICU) utilization equal to 14% or higher. Effective July 1, 2018, freestanding children's hospitals located in the District of Columbia shall not be eligible for DSH payments.

C. Effective July 1, 2014, the DSH reimbursement methodology for all hospitals except Type One hospitals is the following:

1. Each hospital's DSH payment shall be equal to the DSH per diem multiplied by each hospital's eligible DSH days in a base year. Days reported in provider fiscal years in state fiscal year (FY) 2011 (available from the Medicaid cost report through the Hospital Cost Report Information System (HCRIS) as of July 30, 2013) will be the base year for FY 2015 prospective DSH payments. DSH shall be recalculated annually with an updated base year. Future base year data shall be extracted from Medicare cost report summary statistics available through HCRIS as of October 1 prior to next year's effective date.

2. Eligible DSH days are the sum of all Medicaid inpatient acute, psychiatric, and rehabilitation days above 14% for each DSH hospital subject to special rules for out-of-state cost reporting hospitals. Eligible DSH days for out-of-state cost reporting hospitals shall be the higher of the number of eligible days based on the calculation in the first sentence of this subdivision times Virginia Medicaid utilization (Virginia Medicaid days as a percent of total Medicaid days) or the Medicaid NICU days above 14% times Virginia NICU Medicaid utilization (Virginia NICU Medicaid days as a percent of total NICU Medicaid days). Eligible DSH days for out-of-state cost reporting hospitals that qualify for DSH but that have less than 12% Virginia Medicaid utilization shall be 50% of the days that would have otherwise been eligible DSH days.

3. Additional eligible DSH days are days that exceed 28% Medicaid utilization for Virginia Type Two hospitals, excluding Children's Hospital of the Kings Daughters (CHKD).

4. The DSH per diem shall be calculated in the following manner:

a. The DSH per diem for Type Two hospitals is calculated by dividing the total Type Two DSH allocation by the sum of eligible DSH days for all Type Two DSH hospitals. For purposes of DSH, Type Two hospitals do not include

CHKD or any hospital whose reimbursement exceeds its federal uncompensated care cost limit. The Type Two hospital DSH allocation shall equal the amount of DSH paid to Type Two hospitals in state FY 2014 increased annually by the percent change in the federal allotment, including any reductions as a result of the Patient Protection and Affordable Care Act (Affordable Care Act), Public Law 111-148, adjusted for the state fiscal year. Effective July 1, 2018, the Type Two hospital DSH allocation shall be reduced by the amount of DSH allocated to freestanding children's hospitals located in the District of Columbia.

b. The DSH per diem for state inpatient psychiatric hospitals is calculated by dividing the total state inpatient psychiatric hospital DSH allocation by the sum of eligible DSH days. The state inpatient psychiatric hospital DSH allocation shall equal the amount of DSH paid in state FY 2013 increased annually by the percent change in the federal allotment, including any reductions as a result of the Affordable Care Act, adjusted for the state fiscal year.

c. Effective July 1, 2017, the annual DSH payment shall be calculated separately for each eligible hospital by multiplying each year's state inpatient psychiatric hospital DSH allocation described in subdivision C 4 b of this section by the ratio of each hospital's uncompensated care cost for the most recent DSH audited year completed prior to the DSH payment year to the uncompensated care cost of all state inpatient psychiatric hospitals for the same audited year.

d. The DSH per diem for CHKD shall be three times the DSH per diem for Type Two hospitals.

5. Each year, the department shall determine how much Type Two DSH has been reduced as a result of the Affordable Care Act and adjust the percent of cost reimbursed for outpatient hospital reimbursement.

D. Effective July 1, 2014, the DSH reimbursement methodology for Type One hospitals shall be to pay its uncompensated care costs up to the available allotment. Interim payments shall be made based on estimates of the uncompensated care costs and allotment. Payments shall be settled at cost report settlement and at the conclusion of the DSH audit.

E. Prior to July 1, 2014, hospitals qualifying under the 14% inpatient Medicaid utilization percentage shall receive a DSH payment based on the hospital's type and the hospital's Medicaid utilization percentage.

1. Type One hospitals shall receive a DSH payment equal to:

a. The sum of (i) the hospital's Medicaid utilization percentage in excess of 10.5%, times 17, times the hospital's Medicaid operating reimbursement, times 1.4433 and (ii) the hospital's Medicaid utilization percentage in excess of 21%, times 17, times the hospital's Medicaid operating reimbursement, times 1.4433.

b. Multiplied by the Type One hospital DSH factor. The Type One hospital DSH factor shall equal a percentage that when applied to the DSH payment calculation yields a DSH payment equal to the total calculated using the methodology outlined in subdivision 1 a of this subsection using an adjustment factor of one in the calculation of operating payments rather than the adjustment factor specified in subdivision B 1 of 12VAC30-70-331.

2. Type Two hospitals shall receive a DSH payment equal to the sum of (i) the hospital's Medicaid utilization percentage in excess of 10.5%, times the hospital's Medicaid operating reimbursement, times 1.2074 and (ii) the hospital's Medicaid utilization percentage in excess of 21%, times the hospital's Medicaid operating reimbursement, times 1.2074. Out-of-state cost reporting hospitals with Virginia utilization in the base year of less than 12% of total Medicaid days shall receive 50% of the payment described in this subsection.

F. Hospitals qualifying under the 25% low-income patient utilization rate shall receive a DSH payment based on the hospital's type and the hospital's low-income utilization rate.

1. Type One hospitals shall receive a DSH payment equal to the product of the hospital's low-income utilization in excess of 25%, times 17, times the hospital's Medicaid operating reimbursement.

2. Type Two hospitals shall receive a DSH payment equal to the product of the hospital's low-income utilization in excess of 25%, times the hospital's Medicaid operating reimbursement.

3. Calculation of a hospital's low-income patient utilization percentage is defined in 42 USC § 1396r-4(b)(3).

G. Each hospital's eligibility for DSH payment and the amount of the DSH payment shall be calculated at the time of each rebasing using the most recent reliable utilization data and projected operating reimbursement data available. The utilization data used to determine eligibility for DSH payment and the amount of the DSH payment shall include days for Medicaid recipients enrolled in capitated managed care programs. In years when DSH payments are not rebased in the way described in this section, the previous year's amounts shall be adjusted for inflation.

For freestanding psychiatric facilities licensed as hospitals, DSH payment shall be based on the most recently settled Medicare cost report available before the beginning of the state fiscal year for which a payment is being calculated.

H. Effective July 1, 2010, DSH payments shall be rebased for all hospitals with the final calculation reduced by a uniform percentage such that the expenditures in FY 2011 do not exceed expenditures in FY 2010 separately for Type One and Type Two hospitals. The reduction shall be calculated after determination of eligibility. Payments determined in FY 2011 shall not be adjusted for inflation in FY 2012.

I. Effective July 1, 2013, DSH payments shall not be rebased for all hospitals in FY 2014 and shall be frozen at the payment levels for FY 2013 eligible providers.

J. To be eligible for DSH, a hospital shall also meet the requirements in 42 USC § 1396r-4(d). No DSH payment shall exceed any applicable limitations upon such payment established by 42 USC § 1396r-4(g).

K. If making the DSH payments prescribed in this chapter would exceed the DSH allotment, DMAS shall adjust DSH payments to Type One hospitals. Any DSH payment not made as prescribed in the State Plan as a result of the DSH allotment shall be made upon a determination that an available allotment exists.

L. Effective July, 1, 2020, a supplemental DSH payment shall be made quarterly for non-state government, public acute care hospitals up to its hospital-specific DSH (Omnibus Reconciliation Act 1993 DSH limit) as determined pursuant to 42 USC § 1396r-4(g)(1). The annual payment total shall be based upon the hospital's disproportionate share limit for the most recent year for which the disproportionate share limit has been calculated subject to the availability of DSH funds under the federal allotment of such funds to the department.

12VAC30-80-30. Fee-for-service providers.

A. Payment for the following services, except for physician services, shall be the lower of the state agency fee schedule (12VAC30-80-190 has information about the state agency fee schedule) or actual charge (charge to the general public). Except as otherwise noted in this section, state developed fee schedule rates are the same for both governmental and private individual practitioners. The state agency fee schedule is published on the Department of Medical Assistance Services (DMAS) website at http://www.dmas.virginia.gov/#/searchcptcodes.

1. Physicians' services. Payment for physician services shall be the lower of the state agency fee schedule or actual charge (charge to the general public).

2. Dentists' services. Dental services, dental provider qualifications, and dental service limits are identified in 12VAC30-50-190. Dental services are paid based on procedure codes, which are listed in the agency's fee schedule. Except as otherwise noted, state-developed fee schedule rates are the same for both governmental and private individual practitioners.

3. Mental health services.

a. Professional services furnished by nonphysicians as described in 12VAC30-50-150. These services are reimbursed using current procedural technology (CPT) codes. The agency's fee schedule rate is based on the methodology as described in subsection A of this section.

(1) Services provided by licensed clinical psychologists shall be reimbursed at 90% of the reimbursement rate for psychiatrists in subdivision A 1 of this section.

(2) Services provided by independently enrolled licensed clinical social workers, licensed professional counselors, licensed clinical nurse specialists-psychiatric, or licensed marriage and family therapists shall be reimbursed at 75% of the reimbursement rate for licensed clinical psychologists.

b. Intensive in-home services are reimbursed on an hourly unit of service. The agency's rates are set as of July 1, 2011, and are effective for services on or after that date.

c. Therapeutic day treatment services are reimbursed based on the following units of service: one unit equals two to 2.99 hours per day; two units equals three to 4.99 hours per day; three units equals five or more hours per day. No room and board is included in the rates for therapeutic day treatment. The agency's rates are set as of July 1, 2011, and are effective for services on or after that date.

d. Therapeutic group home services (formerly called level A and level B group home services) shall be reimbursed based on a daily unit of service. The agency's rates are set as of July 1, 2011, and are effective for services on or after that date.

e. Therapeutic day treatment or partial hospitalization services shall be reimbursed based on the following units of service: one unit equals two to three hours per day; two units equals four to 6.99 hours per day; three units equals seven or more hours per day. The agency's rates are set as of July 1, 2011, and are effective for services on or after that date.

f. Psychosocial rehabilitation services shall be reimbursed based on the following units of service: one unit equals two to 3.99 hours per day; two units equals four to 6.99 hours per day; three units equals seven or more hours per day. The agency's rates are set as of July 1, 2011, and are effective for services on or after that date.

g. Crisis intervention services shall be reimbursed on the following units of service: one unit equals two to 3.99 hours per day; two units equals four to 6.99 hours per day; three units equals seven or more hours per day. The agency's rates are set as of July 1, 2011, and are effective for services on or after that date.

h. Intensive community treatment services shall be reimbursed on an hourly unit of service. The agency's rates are set as of July 1, 2011, and are effective for services on or after that date.

i. Crisis stabilization services shall be reimbursed on an hourly unit of service. The agency's rates are set as of July 1, 2011, and are effective for services on or after that date.

j. Independent living and recovery services (previously called mental health skill building services) shall be reimbursed based on the following units of service: one unit equals one to 2.99 hours per day; two units equals three to 4.99 hours per day. The agency's rates are set as

of July 1, 2011, and are effective for services on or after that date.

4. Podiatry.

5. Nurse-midwife services.

6. Durable medical equipment (DME) and supplies.

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

"DMERC" means the Durable Medical Equipment Regional Carrier rate as published by the Centers for Medicare and Medicaid Services at http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/DMEPOSFeeSched/DMEPOS-Fee-Schedule.html.

"HCPCS" means the Healthcare Common Procedure Coding System, Medicare's National Level II Codes, HCPCS 2006 (Eighteenth edition), as published by Ingenix, as may be periodically updated.

a. Obtaining prior authorization shall not guarantee Medicaid reimbursement for DME.

b. The following shall be the reimbursement method used for DME services:

(1) If the DME item has a DMERC rate, the reimbursement rate shall be the DMERC rate minus 10%. For dates of service on or after July 1, 2014, DME items subject to the Medicare competitive bidding program shall be reimbursed the lower of:

(a) The current DMERC rate minus 10%; or

(b) The average of the Medicare competitive bid rates in Virginia markets.

(2) For DME items with no DMERC rate, the agency shall use the agency fee schedule amount. The reimbursement rates for DME and supplies shall be listed in the DMAS Medicaid Durable Medical Equipment (DME) and Supplies Listing and updated periodically. The agency fee schedule shall be available on the agency website at www.dmas.virginia.gov.

(3) If a DME item has no DMERC rate or agency fee schedule rate, the reimbursement rate shall be the manufacturer's net charge to the provider, less shipping and handling, plus 30%. The manufacturer's net charge to the provider shall be the cost to the provider minus all available discounts to the provider. Additional information specific to how DME providers, including manufacturers who are enrolled as providers, establish and document their costs for DME codes that do not have established rates can be found in the relevant agency guidance document.

c. DMAS shall have the authority to amend the agency fee schedule as it deems appropriate and with notice to providers. DMAS shall have the authority to determine alternate pricing, based on agency research, for any code that does not have a rate.

d. The reimbursement for incontinence supplies shall be by selective contract. Pursuant to § 1915(a)(1)(B) of the Social Security Act and 42 CFR 431.54(d), the Commonwealth assures that adequate services or devices shall be available under such arrangements.

e. Certain durable medical equipment used for intravenous therapy and oxygen therapy shall be bundled under specified procedure codes and reimbursed as determined by the agency. Certain services or durable medical equipment such as service maintenance agreements shall be bundled under specified procedure codes and reimbursed as determined by the agency.

(1) Intravenous therapies. The DME for a single therapy, administered in one day, shall be reimbursed at the established service day rate for the bundled durable medical equipment and the standard pharmacy payment, consistent with the ingredient cost as described in 12VAC30-80-40, plus the pharmacy service day and dispensing fee. Multiple applications of the same therapy shall be included in one service day rate of reimbursement. Multiple applications of different therapies administered in one day shall be reimbursed for the bundled durable medical equipment service day rate as follows: the most expensive therapy shall be reimbursed at 100% of cost; the second and all subsequent most expensive therapies shall be reimbursed at 50% of cost. Multiple therapies administered in one day shall be reimbursed at the pharmacy service day rate plus 100% of every active therapeutic ingredient in the compound (at the lowest ingredient cost methodology) plus the appropriate pharmacy dispensing fee.

(2) Respiratory therapies. The DME for oxygen therapy shall have supplies or components bundled under a service day rate based on oxygen liter flow rate or blood gas levels. Equipment associated with respiratory therapy may have ancillary components bundled with the main component for reimbursement. The reimbursement shall be a service day per diem rate for rental of equipment or a total amount of purchase for the purchase of equipment. Such respiratory equipment shall include oxygen tanks and tubing, ventilators, noncontinuous ventilators, and suction machines. Ventilators, noncontinuous ventilators, and suction machines may be purchased based on the individual patient's medical necessity and length of need.

(3) Service maintenance agreements. Provision shall be made for a combination of services, routine maintenance, and supplies, to be known as agreements, under a single reimbursement code only for equipment that is recipient owned. Such bundled agreements shall be reimbursed either monthly or in units per year based on the individual agreement between the DME provider and DMAS. Such

bundled agreements may apply to, but not necessarily be limited to, either respiratory equipment or apnea monitors.

7. Local health services.

8. Laboratory services (other than inpatient hospital). The agency's rates for clinical laboratory services were set as of July 1, 2014, and are effective for services on or after that date.

9. Payments to physicians who handle laboratory specimens, but do not perform laboratory analysis (limited to payment for handling).

10. X-ray services.

11. Optometry services.

12. Reserved.

13. Home health services. Effective June 30, 1991, cost reimbursement for home health services is eliminated. A rate per visit by discipline shall be established as set forth by 12VAC30-80-180.

14. Physical therapy; occupational therapy; and speech, hearing, language disorders services when rendered to noninstitutionalized recipients.

15. Clinic services, as defined under 42 CFR 440.90, except for services in ambulatory surgery clinics reimbursed under 12VAC30-80-35.

16. Supplemental payments for services provided by Type I physicians.

a. In addition to payments for physician services specified elsewhere in this chapter, DMAS provides supplemental payments to Type I physicians for furnished services provided on or after July 2, 2002. A Type I physician is a member of a practice group organized by or under the control of a state academic health system or an academic health system that operates under a state authority and includes a hospital, who has entered into contractual agreements for the assignment of payments in accordance with 42 CFR 447.10.

b. The methodology for determining the Medicare equivalent of the average commercial rate is described in 12VAC30-80-300.

c. Supplemental payments shall be made quarterly no later than 90 days after the end of the quarter.

d. Effective May 1, 2017, the supplemental payment amount for Type I physician services shall be the difference between the Medicaid payments otherwise made for physician services and 258% of Medicare rates.

17. Supplemental payments for services provided by physicians at Virginia freestanding children's hospitals.

a. In addition to payments for physician services specified elsewhere in this chapter, DMAS provides supplemental payments to Virginia freestanding children's hospital physicians providing services at freestanding children's hospitals with greater than 50% Medicaid inpatient utilization in state fiscal year 2009 for furnished services provided on or after July 1, 2011. A freestanding children's hospital physician is a member of a practice group (i) organized by or under control of a qualifying Virginia freestanding children's hospital, or (ii) who has entered into contractual agreements for provision of physician services at the qualifying Virginia freestanding children's hospital and that is designated in writing by the Virginia freestanding children's hospital as a practice plan for the quarter for which the supplemental payment is made subject to DMAS approval. The freestanding children's hospital physicians also must have entered into contractual agreements with the practice plan for the assignment of payments in accordance with 42 CFR 447.10.

b. Effective July 1, 2015, the supplemental payment amount for freestanding children's hospital physician services shall be the difference between the Medicaid payments otherwise made for freestanding children's hospital physician services and 178% of Medicare rates as defined in the supplemental payment calculation for Type I physician services. Payments shall be made on the same schedule as Type I physicians.

18. Supplemental payments for services provided by physicians affiliated with Eastern Virginia Medical Center.

a. In addition to payments for physician services specified elsewhere in this chapter, the Department of Medical Assistance Services provides supplemental payments to physicians affiliated with Eastern Virginia Medical Center for furnished services provided on or after October 1, 2012. A physician affiliated with Eastern Virginia Medical Center is a physician who is employed by a publicly funded medical school that is a political subdivision of the Commonwealth of Virginia, who provides clinical services through the faculty practice plan affiliated with the publicly funded medical school, and who has entered into contractual arrangements for the assignment of payments in accordance with 42 CFR 447.10.

b. Effective November 1, 2018, the supplemental payment amount shall be the difference between the Medicaid payments otherwise made for physician services and 145% of the Medicare rates. The methodology for determining the Medicare equivalent of the average commercial rate is described in 12VAC30-80-300.

c. Supplemental payments shall be made quarterly, no later than 90 days after the end of the quarter.

19. Supplemental payments for services provided by physicians at freestanding children's hospitals serving children in Planning District 8.

a. In addition to payments for physician services specified elsewhere in this chapter, DMAS shall make supplemental payments for physicians employed at a freestanding children's hospital serving children in Planning District 8 with more than 50% Medicaid inpatient utilization in fiscal year 2014. This applies to physician practices affiliated with Children's National Health System.

b. The supplemental payment amount for qualifying physician services shall be the difference between the Medicaid payments otherwise made and 178% of Medicare rates but no more than $551,000 for all qualifying physicians. The methodology for determining allowable percent of Medicare rates is based on the Medicare equivalent of the average commercial rate described in this chapter.

c. Supplemental payments shall be made quarterly no later than 90 days after the end of the quarter. Any quarterly payment that would have been due prior to the approval date shall be made no later than 90 days after the approval date.

20. Supplemental payments to nonstate government-owned or operated clinics.

a. In addition to payments for clinic services specified elsewhere in this chapter, DMAS provides supplemental payments to qualifying nonstate government-owned or government-operated clinics for outpatient services provided to Medicaid patients on or after July 2, 2002. Clinic means a facility that is not part of a hospital but is organized and operated to provide medical care to outpatients. Outpatient services include those furnished by or under the direction of a physician, dentist, or other medical professional acting within the scope of his license to an eligible individual. Effective July 1, 2005, a qualifying clinic is a clinic operated by a community services board. The state share for supplemental clinic payments will be funded by general fund appropriations.

b. The amount of the supplemental payment made to each qualifying nonstate government-owned or government-operated clinic is determined by:

(1) Calculating for each clinic the annual difference between the upper payment limit attributed to each clinic according to subdivision 20 d of this subsection and the amount otherwise actually paid for the services by the Medicaid program;

(2) Dividing the difference determined in subdivision 20 b (1) of this subsection for each qualifying clinic by the aggregate difference for all such qualifying clinics; and

(3) Multiplying the proportion determined in subdivision 20 b (2) of this subsection by the aggregate upper payment limit amount for all such clinics as determined in accordance with 42 CFR 447.321 less all payments made to such clinics other than under this section.

c. Payments for furnished services made under this section will be made annually in a lump sum during the last quarter of the fiscal year.

d. To determine the aggregate upper payment limit referred to in subdivision 20 b (3) of this subsection, Medicaid payments to nonstate government-owned or government-operated clinics will be divided by the "additional factor" whose calculation is described in 12VAC30-80-190 B 2 in regard to the state agency fee schedule for Resource Based Relative Value Scale. Medicaid payments will be estimated using payments for dates of service from the prior fiscal year adjusted for expected claim payments. Additional adjustments will be made for any program changes in Medicare or Medicaid payments.

21. Personal assistance services (PAS) or personal care services for individuals enrolled in the Medicaid Buy-In program described in 12VAC30-60-200 or covered under Early and Periodic Screening, Diagnosis, and Treatment (EPSDT), and respite services covered under EPSDT. These services are reimbursed in accordance with the state agency fee schedule described in 12VAC30-80-190. The state agency fee schedule is published on the DMAS website at http://www.dmas.virginia.gov. The agency's rates, based upon one-hour increments, were set as of July 1, ~~2019~~ 2020, and shall be effective for services on and after that date.

22. Supplemental payments to state-owned or state-operated clinics.

a. Effective for dates of service on or after July 1, 2015, DMAS shall make supplemental payments to qualifying state-owned or state-operated clinics for outpatient services provided to Medicaid patients on or after July 1, 2015. Clinic means a facility that is not part of a hospital but is organized and operated to provide medical care to outpatients. Outpatient services include those furnished by or under the direction of a physician, dentist, or other medical professional acting within the scope of his license to an eligible individual.

b. The amount of the supplemental payment made to each qualifying state-owned or state-operated clinic is determined by calculating for each clinic the annual difference between the upper payment limit attributed to each clinic according to subdivision 19 b of this subsection and the amount otherwise actually paid for the services by the Medicaid program.

c. Payments for furnished services made under this section shall be made annually in lump sum payments to each clinic.

d. To determine the upper payment limit for each clinic referred to in subdivision 19 b of this subsection, the state payment rate schedule shall be compared to the Medicare resource-based relative value scale nonfacility fee schedule per Current Procedural Terminology code for a

base period of claims. The base period claims shall be extracted from the Medical Management Information System and exclude crossover claims.

B. Hospice services payments must be no lower than the amounts using the same methodology used under Part A of Title XVIII, and take into account the room and board furnished by the facility. As of July 1, 2019, payments for hospice services in a nursing facility are 100% of the rate that would have been paid by the state under the plan for facility services in that facility for that individual. Hospice services shall be paid according to the location of the service delivery and not the location of the agency's home office.

C. Effective July 1, 2019, the telehealth originating site facility fee shall be increased to 100% of the Medicare rate and shall reflect changes annually based on changes in the Medicare rate. Federally qualified health centers and rural health centers are exempt from this reimbursement change.

12VAC30-90-264. Specialized care services.

Specialized care services provided in conformance with 12VAC30-60-40 E and H, 12VAC30-60-320, and 12VAC30-60-340 shall be reimbursed under the following methodology. The nursing facilities that provide adult specialized care for the categories of Ventilator Dependent Care, will be placed in one group for rate determination. The nursing facilities that provide pediatric specialized care in a dedicated pediatric unit of eight beds or more will be placed in a second group for rate determination.

1. Routine operating cost. Routine operating cost shall be defined as in 12VAC30-90-271 and 12VAC30-90-272. To calculate the routine operating cost reimbursement rate, routine operating cost shall be converted to a per diem amount by dividing it by actual patient days. Effective July 1, 2016, the base year for routine operating cost shall be the most recently settled cost reports with a fiscal year ending in a calendar year for all specialized care facilities as of the end of the calendar year prior to the prospective rate year.

2. Allowable cost identification and cost reimbursement limitations. The provisions of Article 5 (12VAC30-90-50 et seq.) of Subpart II of Part II of this chapter and of Appendix III (12VAC30-90-290) of Part III of this chapter shall apply to specialized care cost and reimbursement.

3. Routine operating cost rates. Each facility shall be reimbursed a prospective rate for routine operating costs. This rate will be the lesser of the facility-specific prospective routine operating ceiling, or the facility-specific prospective routine operating cost per day plus an efficiency incentive. This efficiency incentive shall be calculated by the same method as in 12VAC30-90-41.

4. Facility-specific prospective routine operating ceiling. Each nursing facility's prospective routine operating ceiling shall be calculated as:

a. Statewide ceiling. The statewide routine operating ceiling shall be $415 as of July 1, 2002. This routine operating ceiling amount shall be adjusted for inflation based on 12VAC30-90-41. Effective July 1, 2016, the routine operating ceiling shall be $573.09 as of state fiscal year 2015 and shall be adjusted for inflation based on 12VAC-30-90-44 to the upcoming state fiscal year, the prospective rate year.

b. The portion of the statewide routine operating ceiling relating to nursing salaries (as determined by the 1994 audited cost report data, or 67.22%) will be wage adjusted using a normalized wage index. The normalized wage index shall be the wage index applicable to the individual provider's geographic location under Medicare rules of reimbursement for skilled nursing facilities, divided by the statewide average of such wage indices across the state. This normalization of wage indices shall be updated January 1, after each time the CMS publishes wage indices for skilled nursing facilities. Updated normalization shall be effective for fiscal years starting on and after the January 1 for which the normalization is calculated. Effective July 1, 2016, the normalized wage index for the federal fiscal year following the base year shall be applied to the state fiscal year ceiling.

5. Facility-specific prospective routine operating base cost per day. The facility-specific routine operating cost per day to be used in the calculation of the routine operating rate and the efficiency incentive shall be the actual routine cost per day from the most recent fiscal year's cost report, adjusted for inflation based on 12VAC30-90-41. Effective July 1, 2016, the routine operating base cost per day in subdivision 1 of this subsection shall be adjusted for inflation based on 12VAC30-90-44 to the upcoming state fiscal year, the prospective rate year.

6. Interim rates. Interim rates, for processing claims during the year, shall be calculated from the most recent settled cost report available at the time the interim rates must be set, except that failure to submit a cost report timely may result in adjustment to interim rates as provided elsewhere. Effective July 1, 2016, this subdivision is no longer applicable.

7. Ancillary costs. Specialized care ancillary costs will be paid on a pass-through basis for those Medicaid specialized care patients who do not have Medicare or any other sufficient third-party insurance coverage. Ancillary costs will be reimbursed as follows:

a. All covered ancillary services, except kinetic therapy devices, will be reimbursed for reasonable costs as defined in the current NHPS. Effective for specialized care days on or after January 15, 2007, reimbursement for reasonable costs shall be subject to a ceiling. The ceiling shall be $238.81 per day for calendar year 2004 (150% of average costs) and shall be inflated to the appropriate

provider fiscal year. For cost report years beginning in each calendar year, ancillary ceilings will be inflated based on 12VAC30-90-41. See 12VAC30-90-290 for the cost reimbursement limitations. Effective July 1, 2016, the ancillary ceiling of $300.38 in state fiscal year 2015, inclusive of kinetic therapy devices, shall be adjusted for inflation to the prospective rate year based on 12VAC30-90-44.

b. Kinetic therapy devices will have a limit per day (based on 1994 audited cost report data inflated to the rate period). See 12VAC30-90-290 for the cost reimbursement limitations.

c. Kinetic therapy devices will be reimbursed only if a resident is being treated for wounds that meet the following wound care criteria. Residents receiving this wound care must require kinetic bed therapy (that is, low air loss mattresses, fluidized beds, or rotating or turning beds) and require treatment for a grade (stage) IV decubitus, a large surgical wound that cannot be closed, or second to third degree burns covering more than 10% of the body.

8. Covered ancillary services are defined as follows: laboratory, X-ray, medical supplies (e.g., infusion pumps, incontinence supplies), physical therapy, occupational therapy, speech therapy, inhalation therapy, IV therapy, enteral feedings, and kinetic therapy. The following are not specialized care ancillary services and are excluded from specialized care reimbursement: physician services, psychologist services, total parenteral nutrition (TPN), and drugs. These services must be separately billed to DMAS. An interim rate for the covered ancillary services will be determined (using data from the most recent settled cost report) by dividing allowable ancillary costs by the number of patient days for the same cost reporting period. The interim rate will be retroactively cost settled based on the specialized care nursing facility cost reporting period.

9. Capital costs. Effective July 1, 2016, capital cost reimbursement rate shall be based on subsection C of 12VAC30-90-44 in accordance with 12VAC30-90-35, 12VAC30-90-36, and 12VAC30-90-37, except that the required occupancy percentage shall not be separately applied to specialized care. To determine the capital cost related to specialized care patients, the following calculation shall be applied.

a. Licensed beds, including specialized care beds, multiplied by days in the cost reporting period, shall equal available days.

b. The required occupancy days shall equal the required occupancy percentage multiplied by available days.

c. The required occupancy days minus actual resident days, including specialized care days, shall equal the shortfall of days. If the shortfall of days is negative, the shortfall of days shall be zero.

d. Actual resident days, not including specialized care days, plus the shortfall of days shall equal the minimum number of days to be used to calculate the capital cost per day.

10. Nurse aide training and competency evaluation programs (NATCEP) costs. NATCEP costs will be paid on a pass-through basis in accordance with the current NHPS. Effective July 1, 2016, NATCEP costs shall be paid on a prospective basis in accordance with 12VAC30-90-170.

11. Pediatric routine operating cost rate. For pediatric specialized care in a distinct part pediatric specialized care unit, one routine operating cost ceiling will be developed. The routine operating cost ceiling will be $418 as of July 1, 2002. Effective July 1, 2016, the pediatric routine operating cost ceiling shall be $577.24.

a. The statewide operating ceiling shall be adjusted for each nursing facility in the same manner as described in subdivision 4 of this section.

b. The final routine operating cost reimbursement rate shall be computed as described for other than pediatric units in subdivision 3 of this section.

12. Pediatric unit capital cost. Pediatric unit capital costs will be reimbursed in accordance with subdivision 9 of this section, except that the occupancy requirement shall be 70% rather than the required occupancy percentage.

13. The cost reporting requirements of 12VAC30-90-70 and 12VAC30-90-80 shall apply to specialized care providers.

14. Effective July 1, 2020, through June 30, 2022, specialized care operating rates shall be increased annually by inflation based on 12VAC30-90-44.

VA.R. Doc. No. R21-6419; Filed October 21, 2020.

TITLE 14. INSURANCE

STATE CORPORATION COMMISSION

Final Regulation

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

Title of Regulation: **14VAC5-405. Rules Governing Balance Billing for Out-of-Network Health Care Services (adding 14VAC5-405-10 through 14VAC5-405-90).**

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

Effective Date: January 1, 2021.

Agency Contact: Jackie Myers, Chief Insurance Market Examiner, Bureau of Insurance, State Corporation Commission, P.O. Box 1157, Richmond, VA 23218, telephone (804) 371-9630, FAX (804) 371-9944, or email jackie.myers@scc.virginia.gov.

Summary:

Pursuant to Chapters 1080 and 1081 of the 2020 Acts of Assembly, the amendments add Rules Governing Balance Billing for Out-of-Network Health Care Services (14VAC5-405). The new regulation establishes requirements and processes to protect consumers from surprise balance billing from out-of-network providers for emergency health care services or nonemergency ancillary and surgical services received at an in-network facility, including procedures for the use of arbitration between health carriers and out-of-network providers to address reimbursement disputes concerning balance billing.

As a result of comments received and additional review, the following substantive revisions have been made to the proposed new rules: (i) the definition of "arbitrator" has been revised to allow only individuals, not entities, to apply as an arbitrator; the definition of "clean claim" has been revised to remove the timeframe requirement to file a claim; the definition of "geographic area" has been removed to allow carriers, providers, and arbitrators more flexibility in resolving balance billing disputes; and the definitions of "self-funded group health plan" and "group health plan" have been removed and replaced with "elective group health plan" to avoid confusion about the types of group health plans that may opt-in to the balance billing requirements; (ii) for consistency with statute, language limiting the prohibition on balance billing to out-of-network providers "located in Virginia" has been removed, a notice of intent to arbitrate form has been developed, and timeframes have been clarified or changed; (iii) for consistency within the regulation text, arbitrator qualifications for applications can come from individuals only, conflict of interest requirements have been clarified and revised to require disclosure to the parties, the commission will not request adjustments to the data set but will instead accept and implement adjustments in accordance with statutory requirements, and references to "self-funded group health plan" are changed to "elective group health plan"; and (iv) related forms are added or updated.

AT RICHMOND, OCTOBER 23, 2020

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. INS-2020-00136

Ex Parte: In the matter of Adopting
New Rules Governing Balance Billing for
Out-of-Network Health Care Services

ORDER ADOPTING RULES

By Order to Take Notice ("Order") entered July 10, 2020, insurers, health care providers, and all other interested persons were ordered to take notice that subsequent to September 1, 2020, the State Corporation Commission ("Commission") would consider the entry of an order adopting new rules in Chapter 405 of Title 14 of the Virginia Administrative Code, entitled "Rules Governing Balance Billing for Out-of-Network Health Care Services" (hereinafter referred to as "Rules"), recommended to be set out at 14 VAC 5-405-10 through 14 VAC 5-405-90, unless on or before September 1, 2020 any person objecting to the adoption of said Rules filed a request for hearing with the Clerk of the Commission ("Clerk").

The Order also required insurers, health care providers, and all other interested persons to file their comments in support of or in opposition to the proposed Rules with the Clerk on or before September 1, 2020.

The proposed Rules are necessary as a result of action by the 2020 General Assembly, specifically Acts of Assembly Chapter 1080 (HB 1251) and Chapter 1081 (SB 172). This legislation, in part, adds §§ 38.2-3445.01 through 38.2-3445.07 to Chapter 34 of Title 38.2 of the Code. These sections become effective January 1, 2021. The provisions of the Bureau's proposed Rules are intended to establish requirements and processes to carry out the provisions of these new Code sections, which protect consumers from "surprise" balance billing from out-of-network providers for emergency health care services or nonemergency ancillary and surgical services received at an in-network facility. The proposed Rules also set forth procedures for the use of arbitration between health carriers and out-of-network providers to address reimbursement disputes concerning balance billing.

Following entry of the Order to Take Notice, the Bureau received comments from twenty-four (24) stakeholders, including health insurance carriers, health insurance providers, a consumer advocacy organization, and individual citizens. The comments generally were supportive of the proposed Rules and some addressed certain issues for further consideration. No requests for a hearing were filed with the Clerk.

The majority of comments received related to the following three categories: (i) the definitions of "clean claim" and "geographic area" as set forth in 14 VAC 5-405-20; (ii) the jurisdictional scope of balance billing protections as set forth in 14 VAC 5-405-30 A and G; and (iii) the arbitration process as set forth in 14 VAC 5-405-40. The Bureau carefully evaluated all comments and developed a Response to Comments ("Response"), which was filed with the Clerk on October 16, 2020.

As a result of comments filed and additional review by the Bureau, the Response recommends several amendments to the proposed Rules.

First, the Response revises definitions in 14 VAC 5-405-20, including the following:

• "Arbitrator" has been revised to allow only individuals – instead of entities – to apply as an arbitrator;

• "Clean claim" has been revised to remove the timeframe requirement to file a claim;

• The definition of "geographic area" has been removed to allow carriers, providers, and arbitrators more flexibility in resolving balance billing disputes; and

• The definitions of "self-funded group health plan" and "group health plan" have been removed and replaced with "elective group health plan" to avoid confusion about the types of group health plans that may opt-in to the balance billing requirements.

Second, the Response amends 14 VAC 5-405-30 by removing language limiting the prohibition on balance billing to out-of-network providers "located in Virginia." This language has been removed from subsection A for consistency with the statute as written, and subsection G has been removed.

Third, regarding 14 VAC 5-405-40, the Response notes that a Notice of Intent to Arbitrate form has been developed and timeframes have been clarified or changed for consistency with the statute.

Fourth, the Response revises arbitrator qualifications in 14 VAC 5-405-50 to allow for applications from individuals only, consistent with the revised definition of "arbitrator." Additionally, the Response clarifies and revises the conflict of interest requirements to require disclosure to the parties.

Fifth, the Response revises 14 VAC 5-405-60 C to indicate that the Commission will not request adjustments to the data set but will instead accept and implement adjustments in accordance with statutory requirements.

Sixth, consistent with the removal of the definition of "self-funded group plan" and inclusion of the definition of "elective group health plan," the Response replaces reference in 14 VAC 5-405-80 from "self-funded group health plan" to "elective group health plan."

Finally, the Response includes other technical amendments to the proposed Rules for clarification or correction, revises the Notice of Consumer Rights based on comments received, and now includes other related forms that were not developed previously.

NOW THE COMMISSION, having considered the proposal to adopt new Rules, the comments filed, the Bureau's Response and the amendments recommended by the Bureau as a result of the comments, is of the opinion that the attached new Rules and appurtenant forms should be adopted, effective January 1, 2021.

Accordingly, IT IS ORDERED THAT:

(1) Chapter 405 of the new Rules entitled "Rules Governing Balance Billing for Out-of-Network Health Care Services," set out at 14 VAC 5-405-10 through 14 VAC 5-405-90 and forms which are attached hereto and made a part hereof, are hereby ADOPTED effective January 1, 2021.

(2) The Bureau of Insurance forthwith shall give notice of the adoption of the new Rules to all carriers licensed in Virginia to write accident and sickness insurance and to all Life & Health interested persons.

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

(4) The Commission's Division of Information Resources shall make available this Order and the attached amendments to the Rules on the Commission's website: scc.virginia.gov/pages/Case-Information.

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

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

A COPY hereof shall be sent electronically by the Clerk of the Commission to: C. Meade Browder, Jr., Senior Assistant Attorney General, Office of the Attorney General, Division of Consumer Counsel, at mbrowder@oag.state.va.us, 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.

CHAPTER 405
RULES GOVERNING BALANCE BILLING FOR OUT-OF-NETWORK HEALTH CARE SERVICES

14VAC5-405-10. Purpose and scope.

The purpose of this chapter is to set forth rules and procedures that address balance billing and the use of arbitration between health carriers and out-of-network providers pursuant to the provisions of §§ 38.2-3445 through 38.2-3445.07 of Chapter 34 (§ 38.2-3400 et seq.) of Title 38.2 of the Code of Virginia. This chapter shall apply to all health benefit [and managed care] plans [~~that use a provider network offered~~ issued and delivered] in this Commonwealth except as provided for in § 38.2-3445.06 of the Code of Virginia.

14VAC5-405-20. Definitions.

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

"Allowed amount" means the maximum portion of a billed charge a health carrier will pay, including any applicable cost-

sharing requirements, for a covered service or item rendered by a participating provider or by a nonparticipating provider.

"Arbitrator" means an individual [~~or entity~~] included on a list of arbitrators approved by the commission pursuant to [~~14VAC5-405-40~~ 14VAC5-405-50].

"Balance bill" means a bill sent to an enrollee by an out-of-network provider for health care services provided to the enrollee after the provider's billed amount is not fully reimbursed by the carrier, exclusive of applicable cost-sharing requirements.

"Child" means a son, daughter, stepchild, adopted child, including a child placed for adoption, foster child, or any other child eligible for coverage under the health benefit plan.

"Clean claim" means a claim (i) [~~that is received by the carrier within 90 days of the service being provided to the enrollee unless submission of the claim within 90 days is not possible due to the provider receiving inaccurate information about the enrollee or the enrollee's coverage; (ii)~~] that has no material defect or impropriety, including any lack of any reasonably required substantiation documentation, that substantially prevents timely payment from being made on the claim; and [~~(iii)~~ (ii)] that includes [~~appropriate~~ required] Internal Revenue Service documentation [~~necessary~~] for the carrier to process payment. A [~~failure by the provider to submit a clean claim will not remove the claim from being subject to this chapter~~ carrier shall notify the person submitting the claim of any defect or impropriety].

"Commercially reasonable payment" or "commercially reasonable amount" means payments or amounts a carrier is required to reimburse a health care provider for out-of-network services pursuant to §§ 38.2-3445.01 [and 38.2-3445.02] of the Code of Virginia.

"Commission" means the State Corporation Commission.

"Cost-sharing requirement" means an enrollee's deductible, copayment amount, or coinsurance rate.

"Covered benefits" or "benefits" means those health care services to which an individual is entitled under the terms of a health benefit plan.

"Dependent" means the spouse or child of an eligible employee, subject to the applicable terms of the policy, contract, or plan covering the eligible employee.

["Elective group health plan" means (i) a self-funded group health plan providing or administering an employee welfare benefit plan as defined in § 3(1) of ERISA, 29 USC § 1002(1), that is self-insured or self-funded with respect to such plan and that establishes for its enrollees a network of participating providers, or a self-funded group health plan for local government employees, local officers, teachers, and retirees, and the dependents of such employees, officers, teachers, and retirees; and (ii) elects to participate in the requirements of §§ 38.2-3445 through 38.2-3445.07 of the Code of Virginia by notifying the commission in accordance with 14VAC5-405-80.]

"Emergency medical condition" means, regardless of the final diagnosis rendered to an enrollee, a medical condition manifesting itself by acute symptoms of sufficient severity, including severe pain, so that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in (i) serious jeopardy to the mental or physical health of the individual, (ii) danger of serious impairment to bodily functions, (iii) serious dysfunction of any bodily organ or part, or (iv) in the case of a pregnant woman, serious jeopardy to the health of the fetus.

"Emergency services" means with respect to an emergency medical condition (i) a medical screening examination as required under § 1867 of the Social Security Act (42 USC § 1395dd) that is within the capability of the emergency department of a hospital, including ancillary services routinely available to the emergency department to evaluate such emergency medical condition and (ii) such further medical examination and treatment, to the extent they are within the capabilities of the staff and facilities available at the hospital, as are required under § 1867 of the Social Security Act (42 USC § 1395dd (e)(3)) to stabilize the patient.

"Enrollee" means a policyholder, subscriber, covered person, participant, or other individual covered by a health benefit plan.

"ERISA" means the Employee Retirement Income Security Act of 1974 (29 USC § 1001 et seq.).

"Facility" means an institution providing health care related services or a health care setting, including hospitals and other licensed inpatient centers; ambulatory surgical or treatment centers; skilled nursing centers; residential treatment centers; diagnostic, laboratory, and imaging centers; and rehabilitation and other therapeutic health settings.

[~~"Geographic area" means any of the following: (i) for the purpose of determining a cost-sharing requirement under a health benefit plan, a geographic rating area established by the commission; or (ii) for the purpose of providing data to assist in determining a commercially reasonable amount and resolving payment disputes, the health planning region as defined at § 32.1-102.1 of the Code of Virginia, the geographic rating area established by the commission, or other geographic region representative of a market for health care services as determined by a working group established pursuant to § 38.2-3445.03 of the Code of Virginia.~~

~~"Group health plan" means an employee welfare benefit plan as defined in § 3(1) of ERISA to the extent that the plan provides medical care within the meaning of § 733(a) of ERISA to employees, including both current and former employees, or their dependents as defined under the terms of the plan directly or through insurance, reimbursement, or otherwise.~~]

"Health benefit plan" means a policy, contract, certificate, or agreement offered by a health carrier to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care

services. "Health benefit plan" includes short-term and catastrophic health insurance policies, and a policy that pays on a cost-incurred basis, except as otherwise specifically exempted in this definition. ["Health benefit plan" also includes an elective group health plan.] "Health benefit plan" does not include the "excepted benefits" as defined in § 38.2-3431 of the Code of Virginia.

"Health care professional" means a physician or other health care practitioner licensed, accredited, or certified to perform specified health care services consistent with state law.

"Health care provider" or "provider" means a health care professional or facility.

"Health care services" means services for the diagnosis, prevention, treatment, cure, or relief of a health condition, illness, injury, or disease.

"Health carrier" means an entity subject to the insurance laws and regulations of the Commonwealth and subject to the jurisdiction of the commission that contracts or offers to contract to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services, including an insurer licensed to sell accident and sickness insurance, a health maintenance organization, a health services plan, or any other entity providing a plan of health insurance, health benefits, or health care services.

"Initiating party" means the health carrier or out-of-network provider that requests arbitration pursuant to § 38.2-3445.02 of the Code of Virginia and 14VAC5-405-40.

"In-network" or "participating" means a provider that has contracted with a carrier or a carrier's contractor or subcontractor to provide health care services to enrollees and be reimbursed by the carrier at a contracted rate as payment in full for the health care services, including applicable cost-sharing requirements.

"Managed care plan" means a health benefit plan that either requires an enrollee to use, or creates incentives, including financial incentives, for an enrollee to use health care providers managed, owned, under contract with, or employed by the health carrier.

"Network" means the group of participating providers providing services to a managed care plan.

"Offer to pay" or "payment notification" means a claim that has been adjudicated and paid by a carrier or determined by a carrier to be payable by an enrollee to an out-of-network provider for services described in subsection A of § 38.2-3445.01 of the Code of Virginia.

"Out-of-network" or "nonparticipating" means a provider that has not contracted with a carrier or a carrier's contractor or subcontractor to provide health care services to enrollees.

"Out-of-pocket maximum" or "maximum out-of-pocket" means the maximum amount an enrollee is required to pay in the form of cost-sharing requirements for covered benefits in a plan year, after which the carrier covers the entirety of the allowed amount of covered benefits under the contract of coverage.

"Provider group" means a group of multispecialty or single specialty health care [~~providers~~ professionals] who contract with a facility to exclusively provide multispecialty or single specialty health care services at the facility.

["Receipt" means five calendar days after mailing or the date of electronic transmittal.]

[~~"Self-funded group health plan" means an entity providing or administering an employee welfare benefit plan, as defined in ERISA, 29 USC § 1002(1), that is self-insured or self-funded with respect to such plan and that establishes for its enrollees a network of participating providers. A self-funded group health plan also includes the state employee health plan and group health plans for local governments, local officers, teachers, and retirees, and the dependents of such employees, officers, teachers, and retirees.~~]

"Surgical or ancillary services" means any professional services, including surgery, anesthesiology, pathology, radiology, or hospitalist services and laboratory services.

"Written" or "in writing" means a written communication that is [~~only~~] electronically transmitted. [Paper communication is discouraged.]

14VAC5-405-30. Balance billing for out-of-network services.

A. Pursuant to § 38.2-3445.01 of the Code of Virginia, no out-of-network provider shall balance bill or attempt to collect payment amounts from an enrollee other than those described in subsection B of this section for:

1. Emergency services provided to an enrollee by an out-of-network provider [~~located in Virginia~~]; or

2. Nonemergency services provided to an enrollee at an in-network facility [~~located in Virginia~~] if the nonemergency services involve [otherwise] covered surgical or ancillary services provided by an out-of-network provider.

B. An enrollee who receives services described in subsection A of this section is obligated to pay the in-network cost-sharing requirement specified in the enrollee's or applicable group health plan contract, which shall be determined using the carrier's median in-network contracted rate for the same or similar service in the same or similar geographic area. When there is no median in-network contracted rate for the specific services provided, the enrollee's cost-sharing requirement shall be determined as provided in § 38.2-3407.3 of the Code of Virginia. An enrollee who is enrolled in a high deductible health plan associated with a Health Savings Account or other health plan for which the carrier is prohibited from providing first-dollar coverage prior to the enrollee meeting the deductible requirement under 26 USC § 223(c)(2) or any other applicable federal or state law may be responsible for any additional amounts necessary to meet deductible requirements beyond those described in this subsection, including additional

amounts pursuant to subsection E of this section and owed to the out-of-network provider in 14VAC5-405-40, but only to the extent that the deductible has not yet been met and not to exceed the deductible amount.

C. When a clean claim is received pursuant to the provisions of subsection A of this section, the health carrier shall be responsible for:

1. Providing an explanation of benefits to the enrollee and the out-of-network provider that reflects the cost-sharing requirement determined under this subsection;

2. Applying the in-network cost-sharing requirement under subsection B of this section and any cost-sharing requirement paid by the enrollee for such services toward the in-network maximum out-of-pocket payment obligation;

3. Making commercially reasonable payments for services other than cost-sharing requirements directly to the out-of-network provider without requiring the completion of any assignment of benefits or other documentation by the provider or enrollee;

4. Paying any additional amounts owed to the out-of-network provider through good faith negotiation or arbitration directly to the out-of-network provider; and

5. Making available to a provider through electronic or other method of communication generally used by a provider to verify enrollee eligibility and benefits information regarding whether an enrollee's health benefit plan is subject to the requirements of this section.

D. If the enrollee pays the out-of-network provider an amount that exceeds the amount determined under subsection B of this section, the out-of-network provider shall be responsible for:

1. Refunding to the enrollee the excess amount that the enrollee paid to the provider within 30 business days of receipt [of the later of payment or notice that the enrollee's managed care plan is subject to the requirements of this section]; and

2. Paying the enrollee interest computed daily at the legal rate of interest stated in § 6.2-301 of the Code of Virginia beginning on the first calendar day after the 30 business days for any unrefunded payments.

E. The amount paid to an out-of-network provider for health care services described in subsection A of this section shall be a commercially reasonable amount [, based on payments for the same or similar services provided in a similar geographic area]. Within 30 calendar days of receipt of a clean claim from an out-of-network provider, the carrier shall offer to pay the provider a commercially reasonable amount. Disputes between the out-of-network provider and the carrier regarding the commercially reasonable amount shall be handled as follows:

1. If the out-of-network provider disputes the carrier's payment, the provider shall notify the carrier in writing [and negotiate in good faith] no later than 30 calendar days after [the earlier of] receipt of payment or payment notification from the carrier; [~~2. The carrier and provider shall have 30 calendar days from the date of the notice described in subdivision E 1 of this subsection to negotiate in good faith;~~] and

[~~3.~~ 2.] If the carrier and provider do not agree to a commercially reasonable payment amount within the good faith negotiation period and either party [~~chooses~~ acts within the required timeframes] to pursue further action to resolve the dispute, the dispute shall be resolved through arbitration as provided in § 38.2-3445.02 of the Code of Virginia and 14VAC5-405-40. A carrier may not require a provider to reject or return claim payment as a condition of pursuing further arbitration.

F. A health carrier shall not be prohibited from [(i)] informing enrollees in a nonemergency situation of the availability of in-network facilities that employ or contract with only in-network providers that render surgical and ancillary services [; or (ii) offering plan designs that encourage enrollees to utilize specific in-network health care providers].

[~~G. The requirements of this chapter only apply to out-of-network services rendered in Virginia. A carrier's payment for covered services received outside Virginia by an out-of-network provider shall be in accordance with 45 CFR §147.138. An enrollee's payment responsibility for services received by an out-of-network provider outside Virginia may be based on such federal rules that allow balance billing.~~]

14VAC5-405-40. Arbitration process.

A. If a good faith negotiation does not result in resolution of the dispute, the health carrier or provider may initiate arbitration by providing [~~written~~ the] notice of intent to arbitrate [form] to the commission and the non-initiating party within 10 calendar days following completion of the good faith negotiation period. The notice shall state the initiating party's final payment offer. [Failure to timely submit the notice of intent to arbitrate form shall negate the party's opportunity to seek arbitration for the claim that was the subject of the untimely notice.]

B. [~~Within 30 calendar days following receipt of the notice of intent to arbitrate, the non-initiating party shall provide its final payment offer to the initiating party.~~] Agreement between the parties may be reached at any time in the process. [The arbitration will then be terminated.] The claim shall [then] be paid within 10 calendar days and the matter closed upon agreement [~~or after the arbitration decision~~].

C. The commission shall maintain a list of qualified arbitrators and each arbitrator's fixed fee on its website.

1. Within five calendar days of the notice of intent to arbitrate, the initiating party shall notify the commission of either agreement on an arbitrator from the list or that the parties cannot agree on an arbitrator.

2. If the parties cannot agree on an arbitrator, within [~~three business~~ five calendar] days the commission shall provide the parties with the names of five arbitrators from the list. Within five calendar days, each party is responsible for reviewing the list of five arbitrators and notifying the commission if there is an apparent conflict of interest with any of the arbitrators on the list. Each party may veto up to two of the named arbitrators. If one name remains, that arbitrator shall be chosen. If more than one name remains, the commission shall choose the arbitrator from the remaining names.

3. Once the arbitrator is chosen, the commission shall notify the parties and the arbitrator within [~~three business~~ five calendar] days.

4. The arbitrator's fee is payable within 10 calendar days of the assignment of the arbitrator with the health carrier and the provider to divide the fee equally.

D. Both parties shall agree to [and execute] a nondisclosure agreement [~~provided by the commission and executed~~] within 10 business days following receipt of the notice of intent to arbitrate.

E. Within [~~five calendar days after receiving notification of the final selection of an arbitrator~~ 30 calendar days following receipt of the notice of intent to arbitrate], each party shall provide written submissions in support of its position [as well as the final payment offers] directly to the arbitrator. [At this time, the non-initiating party also shall provide its final offer to the initiating party.] Each party shall include in its written submission the evidence and methodology for asserting that the amount proposed to be paid is or is not commercially reasonable. Any party that fails to make a written submission required by this subsection without good cause shown will be in default. The arbitrator shall require the defaulting party to pay or accept the final payment offer of the non-defaulting party and may require the defaulting party to pay the entirety of the arbitrator's fee.

F. The arbitrator shall consider the following factors in reviewing the submissions of the parties and making a decision requiring payment of the final offer amount of either the initiating or non-initiating party:

1. The evidence and methodology submitted by the parties to assert that their final offer amount is reasonable;

2. Patient characteristics and the circumstances and complexity of the case, including time and place of service and type of facility, that are not already reflected in the provider's billing code for the service;

3. The arbitrator may also consider other information that a party believes is relevant as part of their original written submission, including data sets developed pursuant to § 38.2-3445.03 of the Code of Virginia. The arbitrator shall not require extrinsic evidence of authenticity for admitting such data sets.

G. Within 15 calendar days after receipt of the parties' written submissions, the arbitrator shall issue a written decision requiring payment of the final offer amount of either of the parties. The arbitrator shall notify the parties and the commission of this decision. The decision shall include an explanation by the arbitrator of the basis for the decision and factors relied upon in making the decision and copies of all written submissions by each party. The decision shall also include information required to be reported to the commission, including the name of the health carrier, the name of the provider, the provider's employer or business entity in which the provider has an ownership interest, the name of the facility where services were provided, and the type of health care service at issue. [The claim shall be paid within 10 calendar days after the arbitration decision.]

H. Within 30 calendar days of receipt of the arbitrator's decision, either party may appeal to the commission in accordance with the provisions of 5VAC5-20-100 B based only on one of the following grounds: (i) the decision was substantially influenced by corruption, fraud, or other undue means; (ii) there was evident partiality, corruption, or misconduct prejudicing the rights of any party; (iii) the arbitrator exceeded his powers; or (iv) the arbitrator conducted the proceeding contrary to the provisions of § 38.2-3445.02 of the Code of Virginia, and commission rules in such a way as to materially prejudice the rights of the party.

I. A single provider is permitted to bundle claims for arbitration. Multiple claims may be addressed in a single arbitration proceeding if the claims at issue (i) involve identical health carrier or administrator and provider parties; (ii) involve claims with the same or related Current Procedural Technology (CPT) codes, Healthcare Common Procedure Coding System (HCPCS) codes, or in the case of facility services, Diagnosis Related Group (DRG) codes, Revenue Codes, or other procedural codes relevant to a particular procedure, and (iii) occur within a period of two months of one another. Provider groups are not permitted to bundle claims for arbitration if the [health care] professional providing the service is not the same.

J. All written submissions and notifications required under this section shall be submitted electronically. Individual information related to any arbitration is confidential and not subject to disclosure.

14VAC5-405-50. Arbitrator qualifications and application.

A. Any person meeting the minimum qualifications of an arbitrator may submit an application on a form prescribed by the commission. An application fee of up to $500 may be required. The commission shall review the application within 30 days of receipt and notify the arbitrator of its decision.

B. An arbitrator approved by the commission shall meet the following minimum qualifications:

1. Any professional license the arbitrator has is in good standing;

2. Training in the principles of arbitration or dispute resolution by an organization recognized by the commission;

3. Experience in matters related to medical or health care services;

4. Completion of any training made available to the applicants by the commission;

5. Experience in arbitration or dispute resolution; and

6. Any other information deemed relevant by the commission.

C. The applicant shall supply the following information to the commission as part of the application process:

1. Number of years of experience in arbitrations or dispute resolutions;

2. Number of years of experience engaging in the practice of medicine, law, or administration responsible for one or more of the following issues: health care billing disputes, carrier and provider or facility contract negotiations, health services coverage disputes, or other applicable experience;

3. The names of the health carriers for which the arbitrator has conducted arbitrations or dispute resolutions;

4. Membership in an association related to health care, arbitration or dispute resolutions and any association training related to health care or arbitration or dispute resolution;

5. A list of specific areas of expertise in which the applicant conducts arbitrations;

6. Fee to be charged for arbitration that shall reflect the total amount that will be charged by the proposed arbitrator, inclusive of indirect costs, administrative fees, and incidental expenses; and

7. Any other information deemed relevant by the commission.

D. Before accepting any appointment, an arbitrator shall [~~ensure that there is no~~ disclose to the parties any potential] conflict of interest that would adversely impact the arbitrator's independence and impartiality in rendering a decision in the arbitration. A conflict of interest [~~includes~~ may include] (i) current or recent ownership or employment [~~of the arbitrator or a close family member by~~ with] any health carrier; (ii) [~~serving as or having been employed by~~ current or recent ownership or employment with] a physician, health care provider, or a health care facility; or (iii) having a material professional, familial, or financial conflict of interest with a party to the arbitration to which the arbitrator is assigned. [~~A close family member is generally a spouse, child, or other person living in your home for whom you provide more than half of their financial support.~~]

E. An arbitrator shall ensure that arbitrations are conducted within the specified timeframes and that required notices are provided in a timely manner.

F. The arbitrator shall maintain records and provide reports to the commission as requested in accordance with the requirements set out in § 38.2-3445.02 of the Code of Virginia and 14VAC5-405-40.

G. The commission shall immediately terminate the approval of an arbitrator who no longer meets the qualifications or requirements to serve as an arbitrator. Failure to disclose any known facts that a reasonable person would consider likely to affect the impartiality of the arbitrator in the arbitration proceeding shall serve as potential grounds for termination.

14VAC5-405-60. Data sets.

A. The commission shall contract with Virginia Health Information or its successor to establish a data set and business process to provide health carriers, health care providers, and arbitrators with data to assist in determining commercially reasonable payments and resolving payment disputes for out-of-network medical services rendered by health care providers. This contractor will develop the data sets and business process in collaboration with health carriers and health care providers. The data set shall be reviewed by the advisory committee established pursuant to § 32.1-276.7:1 of the Code of Virginia.

B. The 2020 data set shall be based upon the most recently available full calendar year of claims data drawn from commercial health plan claims and shall not include claims paid under Medicare or Medicaid or other claims paid on other than a fee-for-service basis. The 2020 data set shall be adjusted annually for inflation by applying the Consumer Price Index-Medical Component as published by the Bureau of Labor Statistics of the U.S. Department of Labor to the previous year's data set.

C. The commission may [~~request~~ implement] other adjustments to the data sets [~~as it deems necessary~~ in accordance with § 38.2-3445.03 of the Code of Virginia].

14VAC5-405-70. Notification to consumers.

A. The notice of consumer rights shall be in a standard format provided by the commission and available on the commission's website.

B. A health carrier shall provide an enrollee with:

1. A clear description of the [~~health~~ managed care] plan's out-of-network health benefits outlined in the plan documents that also explains the circumstances under which the enrollee may have payment responsibility in excess of cost-sharing amounts for services provided out-of-network;

2. The notice of consumer rights delivered with the plan documents; and

3. An explanation of benefits [~~containing claims from out-of-network providers~~] that clearly indicates whether the

enrollee may or may not be subject to balance billing [if it contains claims from out-of-network providers].

C. A health carrier shall update its website and provider directory no later than 30 days after the addition or termination of a participating provider.

D. A health care facility shall provide the notice of consumer rights to an enrollee at the time any nonemergency service is scheduled and also along with the bill. A health care facility shall provide the notice of consumer rights to an enrollee with any bill for an emergency service. The notice may be provided electronically. However, a posted notice on a website will not satisfy this requirement.

E. A health care provider shall provide a notice of consumer rights upon request and post the notice on its website, along with a list of carrier provider networks with which it contracts. If no website is available, a health care provider shall provide to each consumer a list of carrier provider networks with which it contracts and the notice of consumer rights. [This list shall be updated on a regular basis.]

14VAC5-405-80. [Self-funded Elective] group health plans may opt-in.

A. [~~A self-funded~~ An elective] group health plan [~~that elects to participate in §§ 38.2-3445 through 38.2-3445.07 of the Code of Virginia,~~] shall provide notice to the commission and to [~~the~~ its] third-party administrator [~~of the self-funded group health plan~~] of [~~their election~~ its opt-in] decision on a form prescribed by the commission. The completed form must include an attestation that the [~~self-funded~~ elective] group health plan has elected to participate in and be bound by §§ 38.2-3445 through 38.2-3445.07 of the Code of Virginia and this chapter, except as described in subsection E of this section. The form will be posted on the commission's public website for use by [~~self-funded~~ elective] group health plans.

B. [~~A self-funded~~ An elective] group health plan [~~that elects to opt in~~] shall reflect in its coverage documents its participation pursuant to subsection A of this section. The [~~self-funded~~ elective] group health plan or plan administrator shall submit the required form electronically to the commission at least 30 days prior to the effective date. No other documents are required to be filed with the commission.

C. [~~A self-funded~~ An elective] group health plan may elect to initiate its participation on January [~~1st~~ 1] of any year or in any year on the first day of the [~~self-funded~~ elective] group health plan's plan year.

D. [~~A self-funded~~ An elective] group health plan's election occurs on an annual basis. [~~A~~ An elective] group [health plan] may choose to automatically renew its election to opt in to §§ 38.2-3445 through 38.2-3445.07 of the Code of Virginia on an annual basis or it may choose to renew on an annual basis until the commission receives advance notice from the plan that it is terminating its election as of either December 31 of a calendar year or the last day of its plan year. Notices under this subsection must be submitted to the commission at least 30 days in advance of the effective date of the election to initiate participation and the effective date of the termination of participation.

E. [~~Self-funded~~ Elective] group health plan sponsors and their third-party administrators may develop their own internal processes related to member notification, member appeals, and other functions associated with any fiduciary duty to enrollees under ERISA [, if applicable].

F. A list of all [~~participating entities~~ elective group health plans] shall be posted on the commission's public website, to be updated at least each quarter. Posted information shall include relevant plan information.

G. A carrier that administers [~~a self-funded~~ an elective] group health plan shall, at the time of coverage verification [through electronic and other methods of communication generally used by a provider to verify enrollee eligibility and benefits information], make information available to a provider of the [~~group's~~ elective group health plan's] participation in the provisions of this chapter.

14VAC5-405-90. Severability.

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

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.

FORMS (14VAC5-405)

Notice of Consumer Rights [~~(URL to be provided),~~ Form 405-A (eff. 1/2021)

Elective Group Health Plan Opt-In , Form 405-B (eff. 1/2021)

Elective Group Health Plan Change/Termination, Form 405-C (eff. 1/2021)

Notice of Intent to Arbitrate, Form 405-D (eff. 1/2021)

Arbitrator Application, Form 405-E (eff. 1/2021)]

VA.R. Doc. No. R20-6423; Filed October 26, 2020.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF OPTOMETRY

Final Regulation

REGISTRAR'S NOTICE: The Board of Optometry is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 A 14 of the Code of Virginia, which exempts the Board of Optometry from the Administrative Process Act when specifying therapeutic pharmaceutical agents, treatment guidelines, and diseases and abnormal conditions of the human eye and its adnexa for TPA-certification of optometrists pursuant to Article 5 (§ 54.1-3222 et seq.) of Chapter 32 of Title 54.1 of the Code of Virginia.

Title of Regulation: **18VAC105-20. Regulations Governing the Practice of Optometry (amending 18VAC105-20-47).**

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

Effective Date: December 9, 2020.

Agency Contact: Leslie L. Knachel, Executive Director, Board of Optometry, 9960 Mayland Drive Suite 300, Richmond, VA 23233, telephone (804) 597-4130, FAX (804) 527-4471, or email leslie.knachel@dhp.virginia.gov.

Summary:

The amendment adds alpha-adrenergic agonists to the therapeutic pharmaceutical agent formulary in the category of a topically administered Schedule VI medication.

18VAC105-20-47. Therapeutic pharmaceutical agents.

A. A TPA-certified optometrist, acting within the scope of his practice, may procure, administer, and prescribe medically appropriate therapeutic pharmaceutical agents (or any therapeutically appropriate combination thereof) to treat diseases and abnormal conditions of the human eye and its adnexa within the following categories:

1. Oral analgesics - Schedule II controlled substances consisting of hydrocodone in combination with acetaminophen and Schedule III, IV, and VI narcotic and nonnarcotic agents.

2. Topically administered Schedule VI agents:

a. Alpha-adrenergic blocking agents;

b. Alpha-adrenergic agonists;

c. Anesthetic (including esters and amides);

~~c.~~ d. Anti-allergy (including antihistamines and mast cell stabilizers);

~~d.~~ e. Anti-fungal;

~~e.~~ f. Anti-glaucoma (including carbonic anhydrase inhibitors and hyperosmotics);

~~f.~~ g. Anti-infective (including antibiotics and antivirals);

~~g.~~ h. Anti-inflammatory;

~~h.~~ i Cycloplegics and mydriatics;

~~i.~~ j. Decongestants; and

~~j.~~ k. Immunosuppressive agents.

3. Orally administered Schedule VI agents:

a. Aminocaproic acids (including antifibrinolytic agents);

b. Anti-allergy (including antihistamines and leukotriene inhibitors);

c. Anti-fungal;

d. Anti-glaucoma (including carbonic anhydrase inhibitors and hyperosmotics);

e. Anti-infective (including antibiotics and antivirals);

f. Anti-inflammatory (including steroidal and nonsteroidal);

g. Decongestants; and

h. Immunosuppressive agents.

B. Schedule I, II, and V drugs are excluded from the list of therapeutic pharmaceutical agents with the exception of controlled substances in Schedule II consisting of hydrocodone in combination with acetaminophen and gabapentin in Schedule V.

C. Over-the-counter topical and oral medications for the treatment of the eye and its adnexa may be procured for administration, administered, prescribed, or dispensed.

VA.R. Doc. No. 21-6523; Filed 11/2/2020 4:13:29 PM.

REAL ESTATE APPRAISER 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 Real Estate Appraiser Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **18VAC130-20. Real Estate Appraiser Board Rules and Regulations (amending 18VAC130-20-10).**

Statutory Authority: § 54.1-2013 of the Code of Virginia.

Effective Date: January 1, 2021.

Agency Contact: Christine Martine, Executive Director, Real Estate Appraiser Board, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8552, FAX (804) 527-4298, or email reappraisers@dpor.virginia.gov.

Summary:

Federal law authorizes the Appraisal Qualifications Board (AQB) to set the minimum criteria for states to license and certify real estate appraisers. The AQB's minimum qualification requirements are expressed in The Real Property Appraiser Qualification Criteria. The AQB revised the definition of licensed residential real estate appraiser. The amendments conform the Virginia regulations to comply with the January 1, 2021, AQB Criteria changes.

18VAC130-20-10. Definitions.

Part I
General

The following words and terms when used in this chapter, unless a different meaning is provided or is plainly required by the context, shall have the following meanings:

"Accredited colleges, universities, junior and community colleges" means those accredited institutions of higher learning approved by the State Council of Higher Education for Virginia or listed in the Transfer Credit Practices of Designated Educational Institutions, published by the American Association of Collegiate Registrars and Admissions Officers or a recognized international equivalent.

"Adult distributive or marketing education programs" means those programs offered at schools approved by the Virginia Department of Education or any other local, state, or federal government agency, board or commission to teach adult education or marketing courses.

"Analysis" means a study of real estate or real property other than the estimation of value.

"Appraisal Foundation" means the foundation incorporated as an Illinois Not for Profit Corporation on November 30, 1987, to establish and improve uniform appraisal standards by defining, issuing, and promoting such standards.

"Appraisal subcommittee" means the designees of the heads of the federal financial institutions regulatory agencies established by the Federal Financial Institutions Examination Council Act of 1978 (12 USC § 3301 et seq.), as amended.

"Appraiser" means an individual who is expected to perform valuation services competently and in a manner that is independent, impartial, and objective.

"Appraiser classification" means any category of appraiser, which the board creates by designating criteria for qualification for such category and by designating the scope of practice permitted for such category.

"Appraiser Qualifications Board" means the board created by the Appraisal Foundation to establish appropriate criteria for the certification and recertification of qualified appraisers by defining, issuing, and promoting such qualification criteria; to disseminate such qualification criteria to states, governmental entities, and others; and to develop or assist in the development of appropriate examinations for qualified appraisers.

"Appraiser trainee" means an individual who is licensed as an appraiser trainee to appraise those properties that the supervising appraiser is permitted to appraise.

"Business entity" means any corporation, partnership, association, or other business entity under which appraisal services are performed.

"Certified general real estate appraiser" means an individual who meets the requirements for licensure that relate to the appraisal of all types of real estate and real property and is licensed as a certified general real estate appraiser.

"Certified instructor" means an individual holding an instructor certificate issued by the Real Estate Appraiser Board to act as an instructor.

"Certified residential real estate appraiser" means an individual who meets the requirements for licensure for the appraisal of or the review appraisal of any residential real estate or real property of one to four residential units regardless of transaction value or complexity. Certified residential real estate appraisers may also appraise or provide a review appraisal of nonresidential properties with a transaction value or market value as defined by the Uniform Standards of Professional Appraisal Practice up to $250,000, whichever is the lesser.

"Classroom hour" means 50 minutes out of each 60-minute segment. The prescribed number of classroom hours includes time devoted to tests which are considered to be part of the course.

"Distance education" means an educational process based on the geographical separation of provider and student (i.e., CD-ROM, online learning, correspondence courses, etc.).

"Experience" as used in this chapter includes experience gained in the performance of traditional appraisal assignments, or in the performance of the following: fee and staff appraisals, ad valorem tax appraisal, review appraisal, appraisal analysis, real estate consulting, highest and best use analysis, and feasibility analysis or study.

For the purpose of this chapter, experience has been divided into four major categories: (i) fee and staff appraisal, (ii) ad valorem tax appraisal, (iii) review appraisal, and (iv) real estate consulting.

1. "Fee and staff appraiser experience" means experience acquired as a sole appraiser, as a cosigner, or through disclosure of assistance in the certification in accordance with the Uniform Standards of Professional Appraisal Practice.

Sole appraiser experience is experience obtained by an individual who makes personal inspections of real estate, assembles and analyzes the relevant facts, and by the use of reason and the exercise of judgment forms objective opinions and prepares reports as to the market value or other properly defined value of identified interests in said real estate.

Cosigner appraiser experience is experience obtained by an individual who signs an appraisal report prepared by another, thereby accepting full responsibility for the content and conclusions of the appraisal.

To qualify for fee and staff appraiser experience, an individual must have prepared written appraisal reports after January 30, 1989, that comply with the Uniform Standards of Professional Appraisal Practice in the edition in effect at the time of the reports' preparation, including Standards 1 and 2.

2. "Ad valorem tax appraisal experience" means experience obtained by an individual who assembles and analyzes the relevant facts and who correctly employs those recognized methods and techniques that are necessary to produce and communicate credible appraisals within the context of the real property tax laws. Ad valorem tax appraisal experience may be obtained either through individual property appraisals or through mass appraisals as long as applicants under this category of experience can demonstrate that they are using techniques to value real property similar to those being used by fee and staff appraisers and that they are effectively utilizing the appraisal process.

To qualify for ad valorem tax appraisal experience for individual property appraisals, an individual must have prepared written appraisal reports after January 30, 1989, that comply with the Uniform Standards of Professional Appraisal Practice in the edition in effect at the time of the reports' preparation.

To qualify for ad valorem tax appraisal experience for mass appraisals, an individual must have prepared mass appraisals or have documented mass appraisal reports after January 30, 1989, that comply with the Uniform Standards of Professional Appraisal Practice in the edition in effect at the time of the reports' preparation, including Standard 6.

In addition to the preceding, to qualify for ad valorem tax appraisal experience, the applicant's experience log must be attested to by the applicant's supervisor.

3. "Reviewer experience" means experience obtained by an individual who examines the reports of appraisers to determine whether their conclusions are consistent with the data reported and other generally known information. An individual acting in the capacity of a reviewer does not necessarily make personal inspection of real estate but does review and analyze relevant facts assembled by fee and staff appraisers and by the use of reason and exercise of judgment forms objective conclusions as to the validity of fee and staff appraisers' opinions. Reviewer experience shall not constitute more than 1,000 hours of total experience claimed, and at least 50% of the review experience claimed must be in field review wherein the individual has personally inspected the real property which is the subject of the review.

To qualify for reviewer experience, an individual must have prepared written reports after January 30, 1989, recommending the acceptance, revision, or rejection of the fee and staff appraiser's opinions that comply with the Uniform Standards of Professional Appraisal Practice in the edition in effect at the time of the reports' preparation, including Standard 3.

Signing as "Review Appraiser" on an appraisal report prepared by another will not qualify an individual for experience in the reviewer category. Experience gained in this capacity will be considered under the cosigner subcategory of fee and staff appraiser experience.

4. "Real estate consulting experience" means experience obtained by an individual who assembles and analyzes the relevant facts and by the use of reason and the exercise of judgment forms objective opinions concerning matters other than value estimates relating to real property. Real estate consulting experience includes the following:

Absorption Study
Ad Valorem Tax Study
Annexation Study
Assemblage Study
Assessment Study
Condominium Conversion Study
Cost-Benefit Study
Cross Impact Study
Depreciation/Cost Study
Distressed Property Study
Economic Base Analysis
Economic Impact Study
Economic Structure Analysis
Eminent Domain Study
Feasibility Study
Highest and Best Use Study
Impact Zone Study
Investment Analysis Study
Investment Strategy Study
Land Development Study
Land Suitability Study
Land Use Study
Location Analysis Study
Market Analysis Study
Market Strategy Study
Market Turning Point Analysis
Marketability Study
Portfolio Study
Rehabilitation Study
Remodeling Study
Rental Market Study
Right of Way Study
Site Analysis Study
Utilization Study
Urban Renewal Study
Zoning Study

To qualify for real estate consulting experience, an individual must have prepared written reports after January 30, 1989, that comply with the Uniform Standards of Professional Appraisal Practice in the edition in effect at the time of the reports' preparation, including Standards 4 and 5. Real estate consulting shall not constitute more than 500 hours of experience for any type of appraisal license.

"Inactive license" means a license that has been renewed without meeting the continuing education requirements specified in this chapter. Inactive licenses do not meet the requirements set forth in § 54.1-2011 of the Code of Virginia.

"Licensed residential real estate appraiser" means an individual who meets the requirements for licensure for the appraisal of or the review appraisal of any noncomplex, residential real estate or real property of ~~one to four~~ one-to-four residential units, including federally related transactions, where the transaction value or market value as defined by the Uniform Standards of Professional Appraisal Practice is less than $1 million, and complex one-to-four residential units having a transaction value less than $400,000. Licensed residential real estate appraisers may also appraise or provide a review appraisal of noncomplex, nonresidential properties with a transaction value or market value as defined by the Uniform Standards of Professional Appraisal Practice up to $250,000, whichever is the lesser.

"Licensee" means any individual holding an active license issued by the Real Estate Appraiser Board to act as a certified general real estate appraiser, certified residential real estate appraiser, licensed residential real estate appraiser, or appraiser trainee as defined, respectively, in § 54.1-2009 of the Code of Virginia and in this chapter.

"Local, state or federal government agency, board or commission" means an entity established by any local, federal, or state government to protect or promote the health, safety, and welfare of its citizens.

"Proprietary school" means a privately owned school offering appraisal or appraisal related courses approved by the board.

"Provider" means accredited colleges, universities, junior and community colleges; adult distributive or marketing education programs; local, state or federal government agencies, boards or commissions; proprietary schools; or real estate appraisal or real estate related organizations.

"Real estate appraisal activity" means the act or process of valuation of real property or preparing an appraisal report.

"Real estate appraisal" or "real estate related organization" means any appraisal or real estate related organization formulated on a national level, where its membership extends to more than one state or territory of the United States.

"Reciprocity agreement" means a conditional agreement between two or more states that will recognize one another's regulations and laws for equal privileges for mutual benefit.

"Registrant" means any corporation, partnership, association, or other business entity that provides appraisal services and that is registered with the Real Estate Appraiser Board in accordance with § 54.1-2011 E of the Code of Virginia.

"Reinstatement" means having a license or registration restored to effectiveness after the expiration date has passed.

"Renewal" means continuing the effectiveness of a license or registration for another period of time.

"Sole proprietor" means any individual, but not a corporation, partnership, or association, who is trading under his own name, or under an assumed or fictitious name pursuant to the provisions of §§ 59.1-69 through 59.1-76 of the Code of Virginia.

"Substantially equivalent" means any educational course or seminar, experience, or examination taken in this or another jurisdiction that is equivalent in classroom hours, course content and subject, and degree of difficulty, respectively, to those requirements outlined in this chapter and Chapter 20.1 (§ 54.1-2009 et seq.) of Title 54.1 of the Code of Virginia for licensure and renewal.

"Supervising appraiser" means any individual holding a license issued by the Real Estate Appraiser Board to act as a certified general real estate appraiser or certified residential real estate appraiser who supervises any unlicensed individual acting as a real estate appraiser or an appraiser trainee as specified in this chapter.

"Transaction value" means the monetary amount of a transaction that may require the services of a certified or licensed appraiser for completion. The transaction value is not always equal to the market value of the real property interest involved. For loans or other extensions of credit, the transaction value equals the amount of the loan or other extensions of credit. For sales, leases, purchases, and investments in or exchanges of real property, the transaction value is the market value of the real property interest involved. For the pooling of loans or interests in real property for resale or purchase, the transaction value is the amount of the loan or the market value of real property calculated with respect to each such loan or interest in real property.

"Uniform Standards of Professional Appraisal Practice" means the 2020-2021 edition of those standards promulgated by the Appraisal Standards Board of the Appraisal Foundation for use by all appraisers in the preparation of appraisal reports.

"Valuation" means an estimate or opinion of the value of real property.

"Valuation assignment" means an engagement for which an appraiser is employed or retained to give an analysis, opinion, or conclusion that results in an estimate or opinion of the value of an identified parcel of real property as of a specified date.

"Waiver" means the voluntary, intentional relinquishment of a known right.

VA.R. Doc. No. R21-6551; Filed October 27, 2020.

TITLE 20. PUBLIC UTILITIES AND TELECOMMUNICATIONS

STATE CORPORATION COMMISSION

Proposed Regulation

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

Title of Regulation: **20VAC5-315. Regulations Governing Net Energy Metering (amending 20VAC5-315-20, 20VAC5-315-40, 20VAC5-315-50).**

Statutory Authority: §§ 12.1-13 and 56-594 of the Code of Virginia.

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

Public Comment Deadline: December 22, 2020.

Agency Contact: Neil Joshipura, Utility Engineer, Public Utility Regulation Division, State Corporation Commission, P.O. Box 1197, Richmond, VA 23218, telephone (804) 225-3201, FAX (804) 371-9350, or email neil.joshipura@scc.virginia.gov.

Summary:

The proposed amendments implement provisions enacted in Chapter 1188 of the 2020 Acts of Assembly, including (i) increasing the caps on participation in net metering by residential and nonresidential customers and (ii) adding the parameters under which the commission will conduct a net metering proceeding and establish the rules under which certain localities will be permitted to install solar-powered or wind-powered facilities.

AT RICHMOND, OCTOBER 21, 2020

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. PUR-2020-00195

Ex Parte: In the matter of amending regulations governing net energy metering

ORDER ESTABLISHING PROCEEDING

The Regulations Governing Net Energy Metering, 20 VAC 5-315-10 et seq. ("Net Energy Metering Rules"), adopted by the State Corporation Commission ("Commission") pursuant to § 56-594 of the Virginia Electric Utility Regulation Act, Chapter 23 (§ 56-576 et seq.) of Title 56 of the Code of Virginia ("Code"), establish the requirements for participation by an eligible customer-generator in net energy metering in the Commonwealth. The Net Energy Metering Rules include conditions for interconnection and metering, billing, and contract requirements between net metering customers, electric distribution companies, and energy service providers.

Chapter 1188 of the 2020 Acts of Assembly amended § 56-594 of the Code to (1) increase the caps on participation in net metering by residential and non-residential customers; (2) establish revised limits on capacity on net metering facilities based on the customer's expected annual energy consumption; (3) require the Commission to conduct a net metering proceeding under parameters set by the Code when certain criteria have been met; and (4) permit localities meeting criteria established in the Code to install solar or wind-powered facilities under parameters set forth in the statute. The current Net Energy Metering Rules thus must be revised to reflect the changes set forth in Chapter 1188.

NOW THE COMMISSION, upon consideration of the matter, is of the opinion and finds that a proceeding should be established to amend the Net Energy Metering Rules to provide for net metering by eligible customer-generators, as defined in the Code.

To initiate this proceeding, the Commission Staff has prepared proposed rules ("Proposed Rules") which are appended to this Order. We will direct that notice of the Proposed Rules be given to the public and that interested persons be provided an opportunity to file written comments on, propose modifications or supplements to, or request a hearing on the Proposed Rules. We will further direct that each Virginia electric distribution company within the meaning of 20 VAC 5-315-20 serve a copy of this Order upon each of their respective net metering customers and file a certificate of service. Individuals should be specific in their comments, proposals, or supplements to the Proposed Rules and address only those issues pertaining to the amendment of § 56-594 of the Code pursuant to Chapter 1188 of the 2020 Acts of Assembly. Issues outside the scope of implementing these amendments will not be open for consideration.

The Commission takes judicial notice of the ongoing public health emergency related to the spread of the novel coronavirus, or COVID-19, and the declarations of emergency issued at both the state and federal levels.[1]The Commission has taken certain actions, and may take additional actions going forward, that could impact the procedures in this proceeding.[2]

Accordingly, IT IS ORDERED THAT:

(1) This case is docketed and assigned Case No. PUR-2020-00195.

(2) The Commission's Division of Information Resources shall forward a copy of this Order Establishing Proceeding to the Registrar of Regulations for publication in the Virginia Register of Regulations.

(3) On or before November 20, 2020, each Virginia electric distribution company shall serve a copy of this Order upon each of their respective net metering customers and file a

certificate of service no later than December 11, 2020, consistent with the findings above.

(4) On or before December 22, 2020, any interested person may comment on, propose modifications or supplements to, or request a hearing on the Proposed Rules following the instructions on the Commission's website: scc.virginia.gov/casecomments/Submit-Public-Comments. All comments shall refer to Case No. PUR-2020-00195. Individuals should be specific in their comments, proposals, or supplements to the Proposed Rules and address only those issues pertaining to the amendment of § 56-594 of the Code pursuant to Chapter 1188 of the 2020 Acts of Assembly. Issues outside the scope of implementing this amendment will not be open for consideration. Any request for hearing shall state with specificity why the issues raised in the request for hearing cannot be adequately addressed in written comments. If a sufficient request for hearing is not received, the Commission may consider the matter and enter an order based upon the comments, documents or other pleadings filed in this proceeding.

(5) All comments and other documents and pleadings filed in this matter shall be submitted electronically to the extent authorized by Rule 5 VAC 5-20-150, Copies and format, of the Commission's Rules of Practice and Procedure ("Rules of Practice"),[3] as modified herein.[4] Confidential and Extraordinarily Sensitive Information shall not be submitted electronically and shall comply with Rule 5 VAC 5-20-170, Confidential information. For the duration of the COVID-19 emergency, any person seeking to hand deliver and physically file or submit any pleading or document shall contact the Clerk's Office Document Control Center at (804) 371-9838 to arrange the delivery.[5]

(6) This matter is continued for further orders of the Commission.

A COPY hereof shall be sent electronically by the Clerk of the Commission to all persons on the official Service List in this matter. The Service List is available from the Clerk of the Commission.

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[1]See, e.g., Executive Order No. 51, Declaration of a State of Emergency Due to Novel Coronavirus, COVID-19, issued March 12, 2020, by Gov. Ralph S. Northam. See also, Executive Order No. 53, Temporary Restrictions on Restaurants, Recreational, Entertainment, Gatherings, Non-Essential Retail Businesses, and Closure of K-12 Schools Due to Novel Coronavirus (COVID-19), issued March 23, 2020, by Governor Ralph S. Northam, and Executive Order No. 55, Temporary Stay At Home Order Due to Novel Coronavirus (COVID-19), issued March 30, 2020, by Governor Ralph S. Northam. These and subsequent Executive Orders related to COVID-19 may be found at: https://www.governor.virginia.gov/executive-actions/.

[2]See, e.g., Commonwealth of Virginia, ex rel. State Corporation Commission, Ex Parte: Electronic Service of Commission Orders, Case No. CLK-2020-00004, Doc. Con. Cen. No. 200330035, Order Concerning Electronic Service of Commission Orders (Mar. 19, 2020), extended by Doc. Con. Cen. No. 200520105, Order Regarding the State Corporation Commission's Revised Operating Procedures During COVID-19 Emergency (May 11, 2020); Commonwealth of Virginia, ex rel., State Corporation Commission, Ex Parte: Revised Operating Procedures During COVID-19 Emergency, Case No. CLK-2020-00005, Doc. Con. Cen. No. 200330042, Order Regarding the State Corporation Commission's Revised Operating Procedures During COVID-19 Emergency (Mar. 19, 2020) ("Revised Operating Procedures Order"), extended by Doc. Con. Cen. No. 200520105, Order Regarding the State Corporation Commission's Revised Operating Procedures During COVID-19 Emergency (May 11, 2020); Commonwealth of Virginia, ex rel. State Corporation Commission, Ex Parte: Electronic service among parties during COVID-19 emergency, Case No. CLK-2020-00007, Doc. Con. Cen. No. 200410009, Order Requiring Electronic Service (Apr. 1, 2020).

[3]5 VAC 5-20-10 et seq.

[4]See supra, note 2.

[5]As noted in the Revised Operating Procedures Order, submissions to the Commission's Clerk's Office via U.S. mail or commercial mail equivalents may not be processed for an indefinite period of time due to the COVID-19 emergency. See supra, note 2.

20VAC5-315-20. Definitions.

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

"Agricultural business" means any sole proprietorship, corporation, partnership, electing small business (Subchapter S) corporation, or limited liability company engaged primarily in the production and sale of plants and animals, products collected from plants and animals, or plant and animal services that are useful to the public.

"Agricultural net metering customer" means a customer that operates an electrical generating facility consisting of one or more agricultural renewable fuel generators having an aggregate generation capacity of not more than 500 kilowatts as part of an agricultural business under a net metering service arrangement. An agricultural net metering customer may be served by multiple meters ~~of one utility~~ serving the agricultural net metering customer that are located at ~~separate but contiguous~~ the same or adjacent sites and that may be aggregated into one account. This account shall be served under the appropriate tariff.

"Agricultural renewable fuel generator" or "agricultural renewable fuel generating facility" means one or more electrical generators that:

1. Use as their sole energy source solar power, wind power, or aerobic or anaerobic digester gas;

2. The agricultural net metering customer owns and operates, or has contracted with other persons to own or operate, or both;

3. Are located on land owned or controlled by the agricultural business;

4. Are connected to the agricultural net metering customer's wiring on the agricultural net metering customer's side of the agricultural net metering customer's interconnection with the distributor;

5. Are interconnected and operated in parallel with an electric company's distribution facilities; and

6. Are used primarily to provide energy to metered accounts of the agricultural business.

"Billing period" means, as to a particular agricultural net metering customer or a net metering customer, the time period between the two meter readings upon which the electric distribution company and the energy service provider calculate the agricultural net metering customer's or net metering customer's bills.

"Billing period credit" means, for a nontime-of-use agricultural net metering customer or a nontime-of-use net metering customer, the quantity of electricity generated and fed back into the electric grid by the agricultural net metering customer's agricultural renewable fuel generator or by the net metering customer's renewable fuel generator in excess of the electricity supplied to the customer over the billing period. For time-of-use agricultural net metering customers or time-of-use net metering customers, billing period credits are determined separately for each time-of-use tier.

"Competitive service provider" means a person, licensed by the State Corporation Commission, that sells or offers to sell a competitive energy service within the Commonwealth. This term includes affiliated competitive service providers but does not include a party that supplies electricity or natural gas, or both, exclusively for its own consumption or the consumption of one or more of its affiliates. For the purpose of this chapter, competitive service providers include aggregators.

"Contiguous sites" means a group of land parcels in which each parcel shares at least one boundary point with at least one other parcel in the group. Property whose surface is divided only by public right-of-way is considered contiguous.

"Customer" means a net metering customer or an agricultural net metering customer.

"Demand charge-based time-of-use tariff" means a retail tariff for electric supply service that has two or more time-of-use tiers for energy-based charges and an electricity supply demand (kilowatt) charge.

"Electric cooperative" means an electric distribution company organized pursuant to Chapter 9.1 (§ 56-231.15 et seq.) of Title 56 of the Code of Virginia, owned by its members.

"Electric distribution company" means the entity that owns or operates the distribution facilities delivering electricity to the premises of an agricultural net metering customer or a net metering customer.

"Energy service provider (supplier)" means the entity providing electricity supply service, either tariffed or competitive service, to an agricultural net metering customer or a net metering customer.

"Excess generation" means the amount of electrical energy generated in excess of the electrical energy consumed by the agricultural net metering customer or net metering customer over the course of the net metering period. For time-of-use agricultural net metering customers or net metering customers, excess generation is determined separately for each time-of-use tier.

"Generator" or "generating facility" means an electrical generating facility consisting of one or more renewable fuel generators or one or more agricultural renewable fuel generators that meet the criteria under the definition of "net metering customer" and "agricultural net metering customer," respectively.

"Low-income utility customer" means the same as that term is defined in § 56-576 of the Code of Virginia.

"Net metering customer" means a customer owning and operating, or contracting with other persons to own or operate, or both, an electrical generating facility consisting of one or more renewable fuel generators having an aggregate generation capacity of not more than ~~20~~ 25 kilowatts for residential customers and not more than ~~one megawatt~~ three megawatts for nonresidential customers. The generating facility shall be operated under a net metering service arrangement.

"Net metering period" means each successive 12-month period beginning with the first meter reading date following the final interconnection of an agricultural net metering customer or a net metering customer's generating facility consisting of one or more agricultural renewable fuel generators or one or more renewable fuel generators, respectively, with the electric distribution company's distribution facilities.

"Net metering service" means providing retail electric service to an agricultural net metering customer operating an agricultural renewable fuel generating facility or a net metering customer operating a renewable fuel generating facility and measuring the difference, over the net metering period, between the electricity supplied to the customer from the electric grid and the electricity generated and fed back to the electric grid by the customer.

"Nonprofit customer" or "not-for-profit customer" means a person that is exempt from federal income taxation, including (without limitation) schools, hospitals, institutions of higher education, public charities, and churches and other houses of religious worship, as determined by the Internal Revenue Service.

"Person" means any individual, sole proprietorship, corporation, limited liability company, partnership, association, company, business, trust, joint venture, or other private legal entity, the Commonwealth, or any city, county, town, authority, or other political subdivision of the Commonwealth.

"Phase I Utility" shall be defined in accordance with subdivision A 1 of § 56-585.1 of the Code of Virginia.

"Phase II Utility" shall be defined in accordance with subdivision A 1 of § 56-585.1 of the Code of Virginia.

"Purchase power agreement provider" or "PPA provider" means, in an electric cooperative service territory, a person

registered with the commission's Division of Public Utility Regulation pursuant to 20VAC5-315-77 to offer third-party partial requirements power purchase agreements to customers.

"Registry" means, in reference to a PPA provider, the list of those persons registered with the commission's Division of Public Utility Regulation as PPA providers.

"Renewable Energy Certificate" or "REC" represents the renewable energy attributes associated with the production of one megawatt-hour (MWh) of electrical energy by a generator.

"Renewable fuel generator" or "renewable fuel generating facility" means one or more electrical generators that:

1. Use renewable energy, as defined by § 56-576 of the Code of Virginia, as their total fuel source;

2. The net metering customer owns and operates, or has contracted with other persons to own or operate, or both;

3. Are located on ~~the net metering customer's premises~~ land owned or leased by the net metering customer and connected to the net metering customer's wiring on the net metering customer's side of its interconnection with the distributor;

4. Are interconnected pursuant to a net metering arrangement and operated in parallel with the electric distribution company's distribution facilities; and

5. Are intended primarily to offset all or part of the net metering customer's own electricity requirements. ~~The capacity of any generating facility installed on or after July 1, 2015, shall not exceed the expected annual energy consumption based on the previous 12 months of billing history or an annualized calculation of billing history if 12 months of billing history is not available.~~

"Small agricultural generating facility" means an electrical generating facility that:

1. Has a capacity of not more than 1.5 megawatts and does not exceed 150% of the customer's expected annual energy consumption based on the previous 12 months of billing history or an annualized calculation of billing history if 12 months of billing history is not available;

2. Uses as its total source of fuel renewable energy;

3. Is located on the customer's premises and is interconnected with the utility's distribution system through a separate meter;

4. Is interconnected and operated in parallel with an electric utility's distribution system but not transmission facilities;

5. Is designed so that the electricity generated is expected to remain on the utility's distribution system; and

6. Is a qualifying small power production facility pursuant to the Public Utility Regulatory Policies Act of 1978 (P.L. 95-617).

"Small agricultural generator" means a customer that:

1. Is not an eligible agricultural customer-generator pursuant to § 56-594 of the Code of Virginia;

2. Operates a small agricultural generating facility as part of an agricultural business;

3. May be served by multiple meters that are located at separate but contiguous sites;

4. May aggregate the electricity consumption measured by the meters, solely for purposes of calculating 150% of the customer's expected annual energy consumption but not for billing or retail service purposes, provided that the same utility serves all of its meters;

5. Uses not more than 25% of the contiguous land owned or controlled by the agricultural business for purposes of the renewable energy generating facility; and

6. Provides the electric utility with a certification, attested under oath, as to the amount of land being used for renewable generation.

"System peak" for an electric cooperative, means the highest peak, based on the noncoincident peak of the electric cooperative or the coincident peak of all of the electric cooperative's customers of the past three years listed in Part O, Line 20 of Form 7 (Financial And Operating Report - Electric Distribution) filed with the U.S. Department of Agriculture's Rural Utilities Service (RUS), or an equivalent form if a cooperative is not an RUS borrower, less any portion of the cooperative's total load that is served by a competitive service provider or by a market-based rate.

"Third-party partial requirements power purchase agreement" or "third-party PPA" means, for an electric cooperative, an agreement entered into pursuant to § 56-594.01 K of the Code of Virginia between a customer engaging in net energy metering and a registered PPA provider pursuant to 20VAC5-315-77.

"Time-of-use customer" means an agricultural net metering customer or net metering customer receiving retail electricity supply service under a demand charge-based time-of-use tariff.

"Time-of-use period" means an interval of time over which the energy (kilowatt-hour) rate charged to a time-of-use customer does not change.

"Time-of-use tier" or "tier" means all time-of-use periods given the same name (e.g., on-peak, off-peak, critical peak, etc.) for the purpose of time-differentiating energy (kilowatt-hour)-based charges. The rates associated with a particular tier may vary by day and by season.

20VAC5-315-40. Conditions of interconnection.

A. A prospective customer may begin operation of the generating facility on an interconnected basis when:

1. The customer has properly notified both the electric distribution company and energy service provider (in

accordance with 20VAC5-315-30) of the customer's intent to interconnect.

2. If required by the electric distribution company's tariff, the customer has installed a lockable, electric distribution company accessible, load breaking manual disconnect switch at each of the facility's generators.

3. The licensed electrician who installs the customer's generator certifies, by signing the commission-approved notification form, that any required manual disconnect switch is being installed properly and that the generator has been installed in accordance with the manufacturer's specifications as well as all applicable provisions of the National Electrical Code. If the customer or licensed Virginia Class A or B general contractor installs the customer's generator, the signed final electrical inspection can be used in lieu of the licensed electrician's certification.

4. The vendor certifies by signing the commission-approved notification form that the generator being installed is in compliance with the requirements established by Underwriters Laboratories or other national testing laboratories in accordance with IEEE Standard 1547, Standard for Interconnecting Distributed Resources with Electric Power Systems, July 2003.

5. In the case of static inverter-connected generators with an alternating current capacity in excess of 10 kilowatts, the customer has had the inverter settings inspected by the electric distribution company. The electric distribution company may impose a fee on the customer of no more than $50 for each generator that requires this inspection.

6. In the case of nonstatic inverter-connected generators, the customer has interconnected according to the electric distribution company's interconnection guidelines and the electric distribution company has inspected all protective equipment settings. The electric distribution company may impose a fee on the customer of no more than $50 for each generator that requires this inspection.

7. The following requirements shall be met before interconnection may occur:

a. Electric distribution facilities and customer impact limitations. A customer's generator shall not be permitted to interconnect to distribution facilities if the interconnection would reasonably lead to damage to any of the electric distribution company's facilities or would reasonably lead to voltage regulation or power quality problems at other customer revenue meters due to the incremental effect of the generator on the performance of the electric distribution system, unless the customer reimburses the electric distribution company for its cost to accommodate the interconnection, including the reasonable cost of equipment required for the interconnection.

b. Secondary~~,~~ service, and service entrance limitations. The capacity of the generators at any one service location shall be less than the capacity of the electric distribution company-owned secondary~~,~~ service, and service entrance cable connected to the point of interconnection, unless the customer reimburses the electric distribution company for the reasonable cost of equipment required for the interconnection.

c. Transformer loading limitations. A customer's generator shall not have the ability to overload the electric distribution company's transformer, or any transformer winding, beyond manufacturer or nameplate ratings, unless the customer reimburses the electric distribution company for the reasonable cost of equipment required for the interconnection.

d. Integration with electric distribution company facilities grounding. The grounding scheme of each generator shall comply with IEEE 1547, Standard for Interconnecting Distributed Resources with Electric Power Systems, July 2003, and shall be consistent with the grounding scheme used by the electric distribution company. If requested by a prospective customer, the electric distribution company shall assist the prospective customer in selecting a grounding scheme that coordinates with its distribution system.

e. Balance limitation. The generator shall not create a voltage imbalance of more than 3.0% at any other customer's revenue meter if the electric distribution company transformer, with the secondary connected to the point of interconnection, is a three-phase transformer, unless the customer reimburses the electric distribution company for the reasonable cost of equipment required for the interconnection.

B. For an investor-owned electric distribution company, a prospective customer or small agricultural generator shall not be allowed to interconnect a generator to the distribution system if doing so will cause the total rated generating alternating current capacity of all interconnected net metered generators, as defined in 20VAC5-315-20, within that customer's electric distribution company's Virginia service territory to exceed ~~1.0%~~ 6.0%, in the aggregate, 5.0% that is available to all customers and 1.0% that is available only to low-income utility customers of that company's adjusted Virginia peak-load forecast for the previous year. In any case where a prospective customer has submitted a notification form required by 20VAC5-315-30 and that customer's interconnection would cause the total rated generating alternating current capacity of all interconnected net metered generators, as defined in 20VAC5-315-20, within that investor-owned electric distribution company's service territory to exceed ~~1.0% of that company's Virginia peak-load forecast for the previous year~~ the limitations described in this subsection, the electric distribution company shall, at the time it becomes aware of the fact, send written notification to the

prospective customer and to the commission's Division of Public Utility Regulation that the interconnection is not allowed. In addition, upon request from any customer, the electric distribution company shall provide to the customer the amount of capacity still available for interconnection pursuant to § 56-594 D of the Code of Virginia.

C. For an electric cooperative, a prospective customer shall not be allowed to interconnect a generator to the distribution system if doing so will cause the total rated generating alternating current capacity of all interconnected net metered generators, as defined in 20VAC5-315-20, within the cooperative's Virginia service territory to exceed the following percentages of system peak: (i) for nonjurisdictional and nonprofit customers, 2.0% of the cooperative's system peak; (ii) for residential customers, 2.0% of the cooperative's system peak; or (iii) for other nonresidential customers, 1.0% of the cooperative's system peak. Such caps shall not decrease but may increase if the system peak in any year exceeds the previous year's system peak. For purposes of calculating the caps established in this subsection, all net energy metering shall be counted, whenever interconnected, and shall include net energy metering interconnected pursuant to § 56-594 of the Code of Virginia, agricultural net energy metering, and any net energy metering entered into with a third-party PPA provider registered pursuant to § 56-594.01 K of the Code of Virginia. Net energy metering with nonjurisdictional customers entered into prior to July 1, 2019, may be counted toward the caps, in the discretion of the cooperative, as net energy metering if the nonjurisdictional customer takes service pursuant to a cooperative's net energy metering rider. Net energy metering with nonjurisdictional customers entered into on or after July 1, 2019, shall be counted toward the caps by default unless the cooperative has reason to exclude such net energy metering as subject to a separate contract or arrangement. Each electric cooperative governed by this section shall publish information regarding the calculation and status of its caps, or the electric cooperative's systemwide cap established via § 56-585.4 or 56-594.01 G of the Code of Virginia if applicable, on the electric cooperative's website. In any case where a prospective customer has submitted a notification form required by 20VAC5-315-30 and that customer's interconnection would cause the total rated generating alternating current nameplate capacity of all interconnected net metered generators to exceed the percentages stated in this subsection, the electric cooperative shall, at the time it becomes aware of the fact, send written notification to the prospective customer and to the commission's Division of Public Utility Regulation that the interconnection is not allowed and shall update its website. In addition, upon request from any customer, the electric distribution company shall provide to the customer the amount of capacity still available for interconnection pursuant to § 56-594.01 F of the Code of Virginia.

D. Neither the electric distribution company nor the energy service provider shall impose any charges upon a customer for any interconnection requirements specified by this chapter, except as provided under subdivisions A 5, A 6, and A 7 of this section, 20VAC5-315-50, and 20VAC5-315-70 as related to additional metering.

E. A customer shall immediately notify the electric distribution company of any changes in the ownership of, operational responsibility for, or contact information for any of the customer's generators.

F. The capacity of any generating facility installed between July 1, 2015, and July 1, 2020, shall not exceed the expected annual energy consumption based on the previous 12 months of billing history or an annualized calculation of billing history if 12 months of billing history is not available. In the certificated service territory of a Phase I Utility, the capacity of any generating facility installed pursuant to this section after July 1, 2020, shall not exceed 100% of the expected annual energy consumption based on the previous 12 months of billing history or an annualized calculation of billing history if 12 months of billing history is not available. In the certificated service territory of a Phase II Utility, the capacity of any generating facility installed pursuant to this section after July 1, 2020, shall not exceed 150% of the expected annual energy consumption based on the previous 12 months of billing history or an annualized calculation of billing history if 12 months of billing history is not available.

20VAC5-315-50. Metering, billing, payment and contract or tariff considerations.

Net metered energy shall be measured in accordance with standard metering practices by metering equipment capable of measuring (but not necessarily displaying) power flow in both directions. Each contract or tariff governing the relationship between a customer, electric distribution company, or energy service provider shall be identical, with respect to the rate structure, all retail rate components, and monthly charges, to the contract or tariff under which the same customer would be served if such customer were not an agricultural net metering customer or a net metering customer with the exceptions that a residential net metering customer or an agricultural net metering customer in the service territory of a Phase II Utility whose generating facility has a capacity that exceeds ~~10~~ 15 kilowatts shall pay any applicable tariffed monthly standby charges to the supplier, and that time-of-use metering under an electricity supply service tariff having no demand charges is not permitted. Said contract or tariff shall be applicable to both the electric energy supplied to, and consumed from, the grid by that customer. For customers of all other investor-owned utilities, on and after July 1, 2020, standby charges are prohibited for any residential net metering customer or agricultural net metering customer.

In instances where a customer's metering equipment is of a type for which meter readings are made off site and where this equipment has, or will be, installed for the convenience of the electric distribution company, the electric distribution company shall provide the necessary additional metering equipment to enable net metering service at no charge to the

customer. In instances where a customer has requested, and where the electric distribution company would not have otherwise installed, metering equipment that is intended to be read off site, the electric distribution company may charge the customer its actual cost of installing any additional equipment necessary to implement net metering service. A time-of-use customer shall bear the incremental metering costs associated with net metering. Any incremental metering costs associated with measuring the output of any generator for the purposes of receiving renewable energy certificates shall be installed at the customer's expense unless otherwise negotiated between the customer and the REC purchaser. Agricultural net metering customers may be responsible for the cost of additional metering equipment necessary to accomplish account aggregation.

The customer shall receive no compensation for excess generation unless the customer has entered into a power purchase agreement with its supplier.

Upon the written request of the customer, the customer's supplier shall enter into a power purchase agreement for the excess generation for one or more net metering periods, as requested by the customer. The written request of the customer shall be submitted prior to the beginning of the first net metering period covered by the power purchase agreement. The power purchase agreement shall be consistent with this chapter. If the customer's supplier is an investor-owned electric distribution company, the supplier shall be obligated by the power purchase agreement to purchase the excess generation for the requested net metering periods at a price equal to the PJM Interconnection, L.L.C. (PJM) zonal day-ahead annual, simple average LMP (locational marginal price) for the PJM load zone in which the electric distribution company's Virginia retail service territory resides (simple average of hourly LMPs, by tiers, for time-of-use customers), as published by the PJM Market Monitoring Unit, for the most recent calendar year ending on or before the end of each net metering period, unless the electric distribution company and the customer mutually agree to a higher price or unless, after notice and opportunity for hearing, the commission establishes a different price or pricing methodology. If the Virginia retail service territory of the investor-owned electric distribution company does not reside within a PJM load zone, the power purchase agreement shall obligate the electric distribution company to purchase excess generation for the requested net metering periods at a price equal to the systemwide PJM day-ahead annual, simple average LMP (simple average of hourly LMPs, by tiers, for time-of-use customers), as published by the PJM Market Monitoring Unit, for the most recent calendar year ending on or before the end of each net metering period, unless the electric distribution company and the customer mutually agree to a higher price or unless, after notice and opportunity for hearing, the commission establishes a different price or pricing methodology.

If the customer's supplier is a member-owned electric cooperative, the supplier shall be obligated by the power purchase agreement to purchase excess generation for the requested net metering periods at a price equal to the simple average (by tiers for time-of-use customers) of the electric cooperative's hourly avoidable cost of energy, including fuel, based on the energy and energy-related charges of its primary wholesale power supplier for the net metering period, unless the electric distribution company and the customer mutually agree to a higher price or unless, after notice and opportunity for hearing, the commission establishes a different price or pricing methodology.

If the customer's supplier is a competitive service provider, the supplier shall be obligated by the power purchase agreement to purchase the excess generation for the requested net metering periods at a price equal to the systemwide PJM day-ahead annual, simple average LMP (simple average of hourly LMPs, by tiers, for time-of-use customers), as published by the PJM Market Monitoring Unit, for the most recent calendar year ending on or before the end of each net metering period, unless the supplier and the customer mutually agree to a higher price or unless, after notice and opportunity for hearing, the commission establishes a different price or pricing methodology.

The customer's supplier shall make full payment annually to the customer within 30 days following the latter of the end of the net metering period or, if applicable, the date of the PJM Market Monitoring Unit's publication of the previous calendar-year's applicable zonal or systemwide PJM day-ahead annual, simple average LMP, or hourly LMP, as appropriate. The supplier may offer the customer the choice of an account credit in lieu of a direct payment. The option of a customer to request payment from its supplier for excess generation and the price or pricing formula shall be clearly delineated in the net metering tariff of the electric distribution company or timely provided by the customer's competitive supplier, as applicable. A copy of such tariff, or an Internet link to such tariff, at the option of the customer, shall be provided to each prospective customer requesting interconnection of a generating facility. A competitive service provider shall provide in its contract with the customer the price or pricing formula for excess generation.

For a nontime-of-use customer, in any billing period in which there is a billing period credit, the customer shall be required to pay only the nonusage sensitive charges, including any applicable standby charges, for that billing period. For a time-of-use customer, in any billing period for which there are billing period credits in all tiers, the customer shall be required to pay only the demand charges, nonusage sensitive charges, and any applicable standby charges for that billing period. Any billing period credits shall be accumulated, carried forward, and applied at the first opportunity to any billing periods having positive net consumptions (by tiers, in the case of time-of-use customers). However, any accumulated billing period credits remaining unused at the end of a net metering period shall be carried forward into the next net metering period only to the extent that such accumulated billing period credits carried forward do not exceed the customer's billed

consumption for the current net metering period, adjusted to exclude accumulated billing period credits carried forward and applied from the previous net metering period (recognizing tiers for time-of-use customers).

A customer owns any renewable energy certificates (RECs) associated with the total output of its generating facility. A supplier is only obligated to purchase a customer's RECs if the customer has exercised its one-time option at the time of signing a power purchase agreement with its supplier to include a provision requiring the purchase by the supplier of all generated RECs over the duration of the power purchase agreement.

Payment for all whole RECs purchased by the supplier during a net metering period in accordance with the power purchase agreement shall be made at the same time as the payment for any excess generation. The supplier will post a credit to the customer's account, or the customer may elect a direct payment. Any fractional REC remaining shall not receive immediate payment but may be carried forward to subsequent net metering periods for the duration of the power purchase agreement.

The rate of the payment by the supplier for a customer's RECs shall be the daily unweighted average of the "CR" component of Virginia Electric and Power Company's Virginia jurisdiction Rider G tariff in effect over the period for which the rate of payment for the excess generation is determined, unless the customer's supplier is not Virginia Electric and Power Company, and that supplier has an applicable Virginia retail renewable energy tariff containing a comparable REC commodity price component, in which case that price component shall be the basis of the rate of payment. The commission may, with notice and opportunity for hearing, set another rate of payment or methodology for setting the rate of payment for RECs.

To the extent that RECs are not sold to the customer's supplier, they may be sold to any willing buyer at any time at a mutually agreeable price.

VA.R. Doc. No. R21-6241; Filed October 21, 2020.

GUIDANCE DOCUMENTS

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 FOR CONTRACTORS

Title of Document: Board for Contractors Interpretations and Policies.

Public Comment Deadline: December 23, 2020.

Effective Date: December 24, 2020.

Agency Contact: Marjorie King, Regulatory Boards Administrator, Board for Contractors, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-2785, or email contractors@dpor.virginia.gov.

STATE BOARD OF EDUCATION

Title of Document: Guidance and Model Policy for the Notification of Protective Orders in Public Elementary and Secondary Schools.

Public Comment Deadline: December 23, 2020.

Effective Date: December 24, 2020.

Agency Contact: Dr. Samantha Hollins, Assistant Superintendent for Special Education and Student Services, Department of Education, 101 North 14th Street, Richmond, VA 23219, telephone (804)786-8079, or email samantha.hollins@doe.virginia.gov.

DEPARTMENT OF MOTOR VEHICLES

Titles of Documents:

Infracciones de la Circulacion y Calculo de Puntos, Programa de mejoramiento para conductores de Virginia.

Moving Violations and Point Assessments, the Virginia Driver Improvement Program.

Obtaining a Virginia Driver Privilege Card.

Obtencion de una Tarjeta de Privilegio de Conductor en Virginia.

Public Comment Deadline: December 23, 2020.

Effective Date: December 24, 2020.

Agency Contact: Melissa K. Velazquez, Legislative Manager, Department of Motor Vehicles, 2300 West Broad Street, Richmond, VA 23220, telephone (804) 367-1844, or email melissa.velazquez@dmv.virginia.gov.

STATE CORPORATION COMMISSION

AT RICHMOND, OCTOBER 22, 2020

COMMONWEALTH OF VIRGINIA, ex rel.
STATE CORPORATION COMMISSION

CASE NO. PUR-2019-00182

Ex Parte: In the matter
concerning the implementation
of a pilot program for
municipal net energy metering

ORDER REVISING GUIDELINES

Chapters 746 and 747 of the 2019 Virginia Acts of Assembly (the "Act") amended the Code of Virginia by adding a new § 56-585.1:8 to provide for a pilot program for municipal net energy metering ("Pilot Program") in the service territories of Virginia Electric and Power Company d/b/a Dominion Energy Virginia ("Dominion") and Appalachian Power Company ("APCo").[1] The Act became effective July 1, 2019.

The Act instructed the State Corporation Commission ("Commission"), by December 1, 2019, to adopt such rules or establish such guidelines as may be necessary for its general administration of the Pilot Program. On November 1, 2019, the Commission issued an Order for Comments on Draft Guidelines, which included draft guidelines ("Proposed Guidelines") to govern the Pilot Program required by the Act and inviting comments from interested parties on or before November 15, 2019.

The Commission received comments from the Virginia Energy Purchasing Governmental Association ("VEPGA"), the VML/VACo APCo Steering Committee ("Steering Committee"), the Southern Environmental Law Center on behalf of Appalachian Voices ("Appalachian Voices"), and the City of Alexandria ("Alexandria"). Several of these parties proposed modifications to the Proposed Guidelines. In addition, VEPGA proposed that the Commission "provide municipalities impacted by the Proposed Guidelines with the opportunity to propose amendments to such Proposed Guidelines by determining that the guidelines adopted on December 1, 2019 will be subject to amendment after December 1, 2019 based on substantive comments submitted by municipalities or other similarly interested parties in this docket."

On November 25, 2019, the Commission entered an Order adopting the Proposed Guidelines ("Guidelines") and inviting additional comments from interested persons on proposed changes to the Guidelines, to be filed on or before January 15, 2020. The Commission received additional comments from the Steering Committee and Dominion.[2]

On May 18, 2020, the Commission entered an Order directing the Commission's Staff ("Staff") to file a Staff Report in this docket on or before July 31, 2020. Staff filed its Report as directed on July 31, 2020.

Term of the Pilot Program

Several parties suggest that the term of the Pilot Program, as set forth in the Guidelines, is incorrect, as the Guidelines set the term of the program as six years, while the Code states that the Commission may extend the term of the program beyond its initial term, and if the term is not extended, target accounts participating at the end of the initial term shall be permitted to continue to participate under the terms of the Pilot Program that existed during the initial term.[3] We agree and have revised the Guidelines accordingly.

Commencement Date

Appalachian Voices and the Steering Committee recommend that the commencement date of the Pilot Program be revised. Appalachian Voices states that the Guidelines "incorrectly base the commencement of the six year period on the Commission's order adopting the guidelines and not the commencement of the actual Pilot Program," while the Steering Committee recommends that the "Commencement Date for the Pilot Program be set on a date after the approval of the Pilot Program for each Utility, and that the Commission set a deadline for APCo to submit a proposed pilot program to the Commission."[4]

Staff and Dominion each note that the Guidelines themselves represent the Pilot Program proposals from Dominion and APCo as set forth in the statute, and thus recommend that the Guidelines be revised to state that the commencement date be determined by the final order adopting guidelines in this docket.[5] We agree with Staff and Dominion and have revised the Guidelines accordingly.

Definition of "Renewable Fuel Generator"

Alexandria and the Steering Committee note that the Guidelines define "Renewable Fuel Generator" in a more restrictive manner than is specified by the enabling statute.[6] Dominion proposes that the Commission eliminate the definition of "Renewable Fuel Generator," as the Guidelines primarily use the term "Municipal Customer-Generator," which is defined in reference to the specific language of the Code.[7] Dominion proposes a modified definition of "Renewable Generating Facility" in Section III of the Guidelines that references Code 56-576. Staff supports Dominion's proposed modifications.[8] We agree with Dominion and Staff. The guidelines adopted herein incorporate Dominion's proposed changes.

Definition of "Target School"

The Steering Committee states in its comments that the definition of "Target School" in the Guidelines excludes public schools that admit students from another school division.[9] Staff states that the Guidelines describe which public school technical centers may be included, not which should be excluded, but nevertheless supports modifying the Guidelines to ensure no public school technical center is excluded based upon the school division from which it accepts public school

students.[10] We agree and will revise the Guidelines as recommended by Staff.

APCo Phase I Utility Agreement

Appalachian Voices requests clarity on whether APCo's Municipal Customer Generators are subject to the three megawatt ("MW") net metering cap for municipalities found in the terms of their "Phase I Utility Agreement," or the higher caps allowable under the Pilot Program. This agreement is a private contract between a utility and its non-jurisdictional customers, and the Commission does not have jurisdiction to modify it. Accordingly, we will not modify the parameters of the Pilot Program set forth in the Guidelines, which are consistent with the directive to the Commission in the Code.

Definition of "Net Metering Customer"

The Steering Committee argues against the Guidelines' adoption of the definition of "Net Metering Customer" from 20 VAC 5-315-20 of the Regulations Governing Net Energy Metering, 20 VAC 5-315-10 et seq., because those limit generation capacity to 1 MW for nonresidential customers, whereas the enabling statute for the Pilot Program defines a Municipal Customer-Generator as having a generation capacity up to 2 MW.[11]

Staff notes that the definition of Municipal Customer-Generator found within the Guidelines correctly establishes the necessary 2 MW capacity limit, and that the reference to Net Metering Customer in Section IV.A.1 of the Guidelines should be removed.[12] We note that the concern regarding an alleged conflict between 20 VAC 5-315-20 and the Pilot Program established by the Code is now moot, as the General Assembly has raised the capacity limit in Code § 56-594 B to 3 MW. We agree with Staff that Section IV.A.1 of the Guidelines should be deleted. We further agree with Staff that other provisions of the Commission's Net Metering Rules are applicable to the Pilot Program and will revise the Guidelines to make clear that 20 VAC 5-315 applies to the extent there is no conflict with the Guidelines.

Administrative Costs

The Steering Committee notes that the Guidelines are silent regarding when administrative costs are to be assessed.[13] Dominion proposes that the Guidelines be revised to require administrative costs be assessed annually, coincident with the Utility's application of bill credits for the Municipal Customer-Generator's Excess Generation.[14] We agree with Dominion and have revised the Guidelines accordingly.

Alexandria proposes that the Commission add a definition of "administrative costs" to the Guidelines, and requests that reasonable administrative costs be subject to Commission review.[15] As Staff notes, no party proposed a definition of administrative costs in this proceeding, and thus we do not have a record upon which to base such a definition. We will, however, modify Sections VI.A.1 and VI.B.l of the Guidelines to specify that administrative costs covered by the Guidelines be reasonable. We will not require that administrative costs be reviewed by the Commission.

Metering Requirements

The Steering Committee and Appalachian Voices both request that the Guidelines be modified to clarify that Municipal Customer-Generators should not be made to pay twice for Advanced Metering Infrastructure ("AMI") meters.[16] We do not believe that modification of the Guidelines is necessary, as the existing language is clear that no customer should be required to pay for AMI meter upgrades more than once.

Renewable Energy Certificates

Alexandria recommends removal of Section VIII.B restricting a Municipal Customer-Generator's ability to sell RECs associated with the Renewable Generation Facility during the Pilot Program, stating that neither "Section § 56-585.1:8(C) of the Code of Virginia (1950) as amended, nor any other section of the Code of Virginia, imposes any restrictions or limitations on the ownership of Renewable Energy Certificates (RECs)."[17] Dominion opposes this request, stating that the Commission "has in its Final Order in Case No. PUR-2018-00039 recognized that when RECs are separated from the energy from which those RECs generated, that energy can no longer be considered renewable."[18]

The Commission continues to find, as we did in our approval of the public school net metering pilot program,[19] that it is reasonable to prohibit a REC from being separated from the energy that created that REC and, thus, to prohibit a municipal customer-generator's ability to sell such RECs. In addition, the Commission notes that no participant identified any provision of Code § 56-585.1:8 that limits the Commission's authority to exercise its discretion thereunder in this manner.

Virginia Tort Claims Act

The Steering Committee considers the last sentence of Section X to be unnecessary and recommends that it be deleted. That section currently states that "[t]o the extent permissible under the Virginia Tort Claims Act, the participating schools and school districts shall be responsible for any negligent acts or omissions of their board members, employees, contractors, agents, students, or other representatives associated with the Pilot Program."[20] We agree with the Steering Committee, as these Guidelines do not address liability.

Reporting Requirements

Section XI of the Guidelines states that "[t]he Utility shall submit a report to the General Assembly by December 1 of each year the Pilot Program is in effect, commencing in 2020, regarding the status of the Pilot Program's enrollment and any other information the Utility deems appropriate." Appalachian Voices believes this requirement does not accurately reflect the requirements of the Code, which requires that the "Commission shall review the pilot programs established pursuant to this section in 2021 and every two years thereafter for the duration of the pilot program."[21] Staff proposes that this

section be revised to provide that each utility contemporaneously provide a copy of its General Assembly report to the Commission by December 1.[22]

The Guidelines we have promulgated cannot limit the reports required by the Code. We agree, however, with Staff that the utility reports to the General Assembly can inform the Commission's own reports to the General Assembly and will adopt the change to the Guidelines proposed by Staff.

NOW THE COMMISSION, upon consideration of the foregoing, finds that it is appropriate to modify the Guidelines as set forth herein.

Accordingly, IT IS ORDERED THAT:

(1) The Commission adopts the revised guidelines attached to this Order to govern the Pilot Program, as discussed herein.

(2) This matter is continued to accept the reports required by this Order.

A COPY HEREOF shall be sent electronically by the Clerk of the Commission to all persons on the official Service List in this matter. The Service List is available from the Clerk of the Commission.

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[1]The Commission was directed to establish rules or guidelines for this Pilot Program in the uncodified Second Enactments of these Acts of Assembly.

[2]The Dominion Comments included proposed changes to the adopted Guidelines. Where necessary, these proposals are referred to herein as the "Dominion Proposal."

[3]Alexandria Comments at 1; Appalachian Voices Comments at 4-5; Steering Committee Comments at 1; Staff Report at 2.

[4]Appalachian Voices Comments at 5-6; Steering Committee Comments at 2.

[5]Dominion Proposal at 5; Staff Report at 6.

[6]Alexandria Comments at 2; Steering Committee Comments at 2.

[7]See generally, Dominion Proposal §§ I and III.

[8]Staff Report at 7.

[9]Steering Committee Comments at 3.

[10]Staff Report at 7.

[11]Steering Committee Comments at 3.

[12]Staff Report at 10.

[13]Steering Committee Comments at 4.

[14] Dominion Proposal, Sections VI.A.1 and VI.B.l.

[15]Alexandria Comments at 2.

[16]Steering Committee Comments at 4; Appalachian Voices Comments at 6.

[17]Alexandria Comments at 2.

[18]Dominion Comments at 6. See also Appalachian Power Company v. Collegiate Clean Energy, LLC, Case No. PUR-2018-00039, 2018 S.C.C. Ann. Rept. 382, Final Order (Sept. 21, 2018).

[19]Commonwealth of Virginia, ex rel., State Corporation Commission, Ex Parte: In the matter concerning the implementation by Virginia Electric and Power Company d/b/a Dominion Energy Virginia of a pilot aggregation program pursuant to House Bill 1451, Case No. PUR-2018-00061, 2018 S.C.C. Ann. Rept. 413, Order Establishing Guidelines (Nov. 26, 2018). Section VIII.B of these guidelines reads, "During the [t]erm of the [p]ilot [p]rogram and continuing after the [t]ermination [d]ate of the [p]ilot [p]rogram, the [h]ost [s]chool agrees to waive any right (i) to sell to the [c]ompany or to any other party or (ii) to offer to market all Renewable Generation Facility RECs which are created and accumulated during the [t]erm of the [p]ilot [p]rogram."

[20]Steering Committee Comments at 4-5.

[21]Appalachian Voices Comments at 6.

[22]Staff Report at 15-16.

STATE WATER CONTROL BOARD

Proposed Enforcement Action for USDA-US Forest Service Grindstone Recreation Area

An enforcement action has been proposed for the USDA-US Forest Service for violations of the State Water Control Law at the Grindstone Recreation Area sewage treatment plant in Smyth County. A description of the proposed action is available at the office named or from the contact person listed. Comments will be accepted by Jonathan Chapman from November 23, 2020, through December 23, 2020.

Contact Information: Jonathan Chapman, Department of Environmental Quality, Southwest Regional Office, 355-A Deadmore Street, Abingdon, VA 24210, or email jonathan.chapman@deq.virginia.gov.

Proposed Amended Enforcement Action for Hampton Roads Sanitation District's Acquisition of the Town of Surry's Wastewater Treatment Plant

An amended enforcement action has been proposed for Hampton Roads Sanitation District's acquisition of the Town of Surry's wastewater treatment plant located at 11463 Rolfe Highway in Surry, VA. The purpose of this amendment is to extend the scheduled date for the town's discharge elimination in the amended consent order issued on March 28, 2018. A description of the proposed action is available at the office named or from the contact person listed. Comments will be accepted by Frank Lupini from November 23, 2020, through December 23, 2020.

Contact Information: Frank Lupini, Enforcement Specialist Senior, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, or email frank.lupini@deq.virginia.gov.

Total Maximum Daily Load for the Mattaponi River and Tributaries

Public Meeting: The Virginia Department of Environmental Quality (DEQ) will virtually host the final public meeting for the Mattaponi River and Tributaries total maximum daily load (TMDL) project on Wednesday, December 9, 2020 at 5:30 p.m. This meeting will be open to the public and all are welcome to participate. Register and gain access to the meeting at https://attendee.gotowebinar.com/register/35421057064917

64495. The webinar ID is: 280-864-043. Please register ahead of the meeting. Given the current State of Emergency related to the COVID-19 pandemic, this meeting will be held entirely virtually. A computer or a telephone are necessary to participate virtually. All participants are encouraged to access the meeting using a computer to view presentations or visual displays, although audio only participation using a phone is also an option.

If you have technical issues registering or difficultly signing on to the meeting please contact Marilee Tretina at (804) 698-4506 or email marilee.tretina@deq.virginia.gov.

In the event that the Governor's State of Emergency is lifted, the meeting will be held on the same date and time in the Training Room of the Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060.

Purpose of Notice: DEQ and its contractors, the Virginia Institute of Marine Sciences and StreamsTech, will present a draft water quality study known as a TMDL for a portion of the Mattaponi River and tributaries located in King and Queen, Essex, Caroline, and King William Counties. The draft study reports the current status of the waterbodies and the possible sources of bacterial contamination. The study recommends TMDLs for the impaired waters. A TMDL is the total amount of a pollutant a water body can contain and still meet water quality standards. To restore water quality, bacterial levels have to be reduced to the TMDL amount. A 30-day public comment period (December 10, 2020, to January 11, 2021) will follow the meeting.

Description of Study: Portions of the Mattaponi River and its tributaries were identified in Virginia's 2016 and 2018 Water Quality Assessment Integrated Report as impaired due to exceedances of the state's water quality standards for E. coli and do not support the Designated Uses of 2018 Primary Contact (recreational or swimming). The specific impairments are listed in the table. Reductions and TMDLs for the causes of the impairments have been developed through the water quality study process.

Affected Waterways: Mattaponi River and Tributaries

Aylett Creek (F23R-04-BAC), 6.83 miles, King William County, Assessment unit VAP-F23R_AYL01A12 headwaters to mouth at Mattaponi River
Courthouse Creek (F24R-03-BAC), 0.72 miles, King and Queen County, Assessment unit VAP-F24R_CTH01A00 extends from King and Queen Courthouse Pond downstream to the tidal limit
Dickeys Swamp, (F23R-08-BAC), 4.33 miles, King and Queen County, Assessment unit VAP-F23R_DKW01B00 begins at Dogwoods Fork and ends at Route 620
Dogwood Fork (F23R-11-BAC), 2.91 miles, King and Queen County, Assessment unit VAP-F23R_DWD01A00 headwaters to its mouth at Dickeys Swamp
Dorrell Creek, (F21R-08-BAC), 4.96 miles, King William County, Assessment unit VAN-F21R_DRL01A18 begins at the confluence with Little Dorrell Creek downstream to the confluence with Herring Creek
Garnetts Creek (F23R-01-BAC), 2.83 miles, King and Queen County, Assessment unit VAP-F23R_GNT01A00 extends from Dickeys Swamp to the tidal limit
Gravel Run (F21R-09-BAC), 3.54 miles, King and Queen County, Assessment unit VAN-F21R_GVL01A18 extends from its perennial headwaters to the confluence with the Mattaponi River
Herring Creek (F21R-05-BAC), 7.23 miles, King William County, Assessment units VAN-F21R_HER01B02 and VAN-F21R_HER01A06 begin at the confluence with Dorrell Creek and continue downstream until the confluence with the Mattaponi River
Market Swamp (F23R-09-BAC), 2.01 miles, King and Queen County, Assessment unit VAP-F23R_MKT01B00 begins at Walker Coleman Pond and extends to mouth at confluence with Dickeys Swamp
Mattaponi River (F21R-06-BAC), 8.00 miles, King William and King and Queen Counties, Assessment Units VAN-F21R_MPN01C02 and VAN-F21R_MPN01B02 begin at the confluence with Maracossic Creek and continue downstream to the confluence with Gravel Run
Mattaponi River (F23E-02-BAC), 3.14 square miles, King William and King and Queen Counties, Assessment units VAP-F24E_MPN03A98 and VAP-F23E_MPN03A06 begin at Aylett Creek and extend to the tidal freshwater boundary (approximately river mile 18), tidal
XDN - Garnetts Creek, UT (F23R-12-BAC), 2.53 miles, King and Queen County, Assessment unit VAP-F23R_XDN01A00 begins at headwaters and extends to mouth at confluence with Garnetts Creek
XJG - Dickeys Swamp, UT (F23R-10-BAC) 1.99 miles, King and Queen County, Assessment unit VAP-F23R_XJG01A14 headwaters to mouth at confluence with Dickeys Swamp

How to Comment and Participate: The meetings of the TMDL process are open to the public and all interested parties are welcome. Written comments will be accepted through January 11, 2021 and should include the name, address, and telephone number of the person submitting the comments. For more information or to submit written comments, contact the staff person listed.

Contact Information: Jen Rogers, Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060, telephone (804) 527-5174, or email jennifer.rogers@deq.virginia.gov.

VIRGINIA CODE COMMISSION

Notice to State Agencies

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

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

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

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