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REGISTER OF REGULATIONS

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Virginia Code Commission

<http://register.dls.virginia.gov>

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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.virginia.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.

Members of the Virginia Code Commission: **John S. Edwards**, Chair; **Marcus B. Simon**, Vice Chair; **Ward L. Armstrong**; **Nicole Cheuk**; **Rita Davis**; **Leslie L. Lilley**; **Jennifer L. McClellan**; **Christopher R. Nolen**; **Don L. Scott, Jr.**; **Charles S. Sharp**; **Samuel T. Towell**; **Malfourd W. Trumbo**.

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

PUBLICATION SCHEDULE AND DEADLINES

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

March 2021 through April 2022

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
37:16	March 10, 2021	March 29, 2021
37:17	March 24, 2021	April 12, 2021
37:18	April 7, 2021	April 26, 2021
37:19	April 21, 2021	May 10, 2021
37:20	May 5, 2021	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 15, 2021 (Monday)	December 6, 2021
38:9	December 1, 2021	December 20, 2021
38:10	December 15, 2021	January 3, 2022
38:11	December 29, 2021	January 17, 2022
38:12	January 12, 2022	January 31, 2022
38:13	January 26, 2022	February 14, 2022
38:14	February 9, 2022	February 28, 2022
38:15	February 23, 2022	March 14, 2022
38:16	March 9, 2022	March 28, 2022
38:17	March 23, 2022	April 11, 2022

*Filing deadlines are Wednesdays unless otherwise specified.

PETITIONS FOR RULEMAKING

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF PHARMACY

Initial Agency Notice

Title of Regulation: **18VAC110-20. Regulations Governing the Practice of Pharmacy.**

Statutory Authority: §§ 54.1-2400 and 54.1-3307 of the Code of Virginia.

Name of Petitioner: Leslie DuVal.

Nature of Petitioner's Request: To require prescriptions for opioids to be valid for a shorter period of time than the current six-month expiration standard for all controlled substances.

Agency Plan for Disposition of Request: In accordance with Virginia law, the petition has been filed with the Virginia Registrar of Regulations and will be published on March 15, 2021. Comment on the petition may be sent by email or postal mail or posted on the Virginia Regulatory Town Hall at www.townhall.virginia.gov. Public comment will be received until April 14, 2021.

Following receipt of all comments on the petition to amend regulations, the board will decide whether to make any changes to the regulatory language in Regulations Governing the Practice of Pharmacy. This matter will be on the board's agenda for its meeting scheduled for June 4, 2021, and the petitioner will be informed of the board's decision after that meeting.

Public Comment Deadline: April 14, 2021.

Agency Contact: Caroline Juran, RPh, Executive Director, Board of Pharmacy, 9960 Mayland Drive, Suite 300, Richmond, VA, 23233, telephone (804) 367-4456, or email caroline.juran@dhp.virginia.gov.

VA.R. Doc. No. PFR21-20; Filed February 23, 2021, 11:32 a.m.

PERIODIC REVIEWS AND SMALL BUSINESS IMPACT REVIEWS

TITLE 4. CONSERVATION AND NATURAL RESOURCES

VIRGINIA SOIL AND WATER CONSERVATION BOARD

Agency Notice

Pursuant to Executive Order 14 (as amended July 16, 2018) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the following regulation is undergoing a periodic review and a small business impact review: **4VAC50-11, 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 March 15, 2021, and ends April 5, 2021.

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: Lisa McGee, Policy and Planning Director, Department of Conservation and Recreation, 600 East Main Street, 24th Floor, Richmond, VA 23219, telephone (804)786-4378.

TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

CRIMINAL JUSTICE SERVICES BOARD

Agency Notice

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Criminal Justice Services Board is conducting a periodic review and a small business impact review of **6VAC20-20, Rules Relating to Compulsory Minimum Training Standards for Law-Enforcement Officers**, to determine whether this regulation should be amended, repealed, or retained in its current form.

The Notice of Intended Regulatory Action to amend 6VAC20-20, which is published in this issue of the Virginia Register, serves as notice of announcement.

Contact Information: Kristi Shalton, Law Enforcement Program Coordinator, Department of Criminal Justice Services, 1100 Bank Street, Richmond, VA 23219, telephone (804) 786-7801, FAX (804) 786-0410, or email kristi.shalton@dcjs.virginia.gov.

Agency Notice

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Criminal Justice Services Board is conducting a periodic review and a small business impact review of **6VAC20-100, Rules Relating to Compulsory Minimum Training Standards for Correctional Officers of the Department of Corrections, Division of Adult Institutions**, to determine whether this regulation should be amended, repealed, or retained in its current form.

The Notice of Intended Regulatory Action to amend 6VAC20-100, which is published in this issue of the Virginia Register, serves as the notice of announcement.

Contact Information: Kristi Shalton, Law Enforcement Program Coordinator, Department of Criminal Justice Services, 1100 Bank Street, Richmond, VA 23219, telephone (804) 786-7801, FAX (804) 786-0410, or email kristi.shalton@dcjs.virginia.gov.

TITLE 9. ENVIRONMENT

DEPARTMENT OF ENVIRONMENTAL QUALITY

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of Environmental Quality conducted a periodic review and a small business impact review of **9VAC15-60, Small Renewable Energy Projects (Solar) Permit by Rule**, and determined that this regulation should be amended. The regulation is necessary for the protection of public health, safety, and welfare or for the economic performance of important governmental functions and requires updating.

The proposed regulatory action to amend 9VAC15-60, which is published in this issue of the Virginia Register, serves as the report of findings.

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

Periodic Reviews and Small Business Impact Reviews

STATE WATER CONTROL BOARD

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Water Control Board conducted a periodic review and a small business impact review of **9VAC25-415, Policy for the Potomac River Embayments**, and determined that this regulation should be amended.

The final regulatory action to amend 9VAC25-415, which is published in this issue of the Virginia Register, serves as the report of findings.

Contact Information: Melissa Porterfield, State Water Control Board, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4238, or email melissa.porterfield@deq.virginia.gov.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board of Audiology and Speech-Language Pathology conducted a periodic review and a small business impact review of **18VAC30-21, Regulations Governing Audiology and Speech-Language Pathology**, and determined that this regulation should be retained in its current form. The department is publishing its report of findings dated February 1, 2021, to support this decision.

By adoption of statutory mandates, the General Assembly concluded that licensure is essential for the protection of public health and safety when receiving services provided by audiologists, speech-language pathologists, or school speech-language pathologists.

There is a continued need for the regulation since the Code of Virginia requires practitioners in these professions to hold licenses issued by the board. The board has not received any of complaints or comments concerning the regulation. Practitioners do not find the regulation to be overly complex, but the board will consider whether requirements for endorsement and reinstatement could be simplified. There is no overlap, duplication, or conflict with federal or state law or regulation. This chapter has been amended nine times in the past five years, including a complete review and reorganization into a new chapter in 2016. Since then, the board has incorporated requirements for cerumen management by audiologists and supervision of speech-language pathology assistants to conform to changes in practice and in the law. It

enacted a one-time reduction in renewal fees in 2018 and fast-tracked changes to endorsement and reinstatement regulations and credit for continuing education.

Contact Information: Leslie L. Knachel, Executive Director, Board of Audiology and Speech-Language Pathology, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 597-4130.

TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

DEPARTMENT OF MOTOR VEHICLES

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of Motor Vehicles conducted a periodic review and a small business impact review of **24VAC20-80, Overload Permit Regulations**, and **24VAC20-81, Hauling Permit Regulation**, and determined that the regulations should be repealed.

The Notice of Intended Regulatory Action to repeal 24VAC20-80 and 24VAC20-81, which is published in this issue of the Virginia Register, serves as the report of findings.

Contact Information: Melissa Velazquez, Legislative Services Manager, Department of Motor Vehicles, P.O. Box 27412, Richmond, VA 23269, telephone (804) 367-1844, FAX (804) 367-6631, TDD (800) 272-9268, or email melissa.velazquez@dmv.virginia.gov.

NOTICES OF INTENDED REGULATORY ACTION

TITLE 1. ADMINISTRATION

TREASURY BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Treasury Board intends to consider amending **1VAC75-20, Virginia Security for Public Deposits Act Regulations**. The purpose of the proposed action is to conform the regulation to the Security for Public Deposits Act (SPDA) (§ 2.2-4400 et seq. of the Code of Virginia). In addition, changes will be made to further safeguard Virginia public funds held as deposits in Virginia financial institutions. The intended amendments, resulting from a periodic review of the regulation, (i) update the statutory authority, (ii) bring the regulatory language in line with the SPDA as amended in 2008 and 2010 and newly approved board guidelines, and (iii) make other changes determined to be necessary to better administer the SPDA to accommodate the needs of Virginia's banking community and public institutions while ensuring the protection of public funds.

The agency does not intend to hold a public hearing following the publication of the proposed stage in the Virginia Register.

Statutory Authority: § 2.2-4405 of the Code of Virginia.

Public Comment Deadline: April 14, 2021.

Agency Contact: Kristin A. Reiter, Director of Operations, Department of the Treasury, James Monroe Building, 101 North 14th Street, 3rd Floor, Richmond, VA 23219, telephone (804) 225-3240, FAX (804) 225-3187, or email kristin.reiter@trs.virginia.gov.

VA.R. Doc. No. R21-6701; Filed February 18, 2021, 10:05 a.m.

TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

CRIMINAL JUSTICE SERVICES BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Criminal Justice Services Board intends to consider amending **6VAC20-20, Rules Relating to Compulsory Minimum Training Standards for Law-Enforcement Officers**. The purpose of the proposed action is to amend the minimum training standards to enhance both officer and public safety in the Commonwealth of Virginia by improving performance outcomes by amending testing criteria and lesson plan guides and including increased training in community policing, verbal de-escalation, implicit bias, duty to intervene, and conflict resolution skills with a concentration on individuals with mental illness and historical events.

In addition, pursuant to Executive Order 14 (as amended, July 16, 2018) and § 2.2-4007.1 of the Code of Virginia, the agency is conducting a periodic review and small business impact review of this regulation to determine whether this regulation should be terminated, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare; (ii) minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

The agency does not intend to hold a public hearing following the publication of the proposed stage in the Virginia Register.

Statutory Authority: § 9.1-102 of the Code of Virginia.

Public Comment Deadline: April 14, 2021.

Agency Contact: Kristi Shalton, Law Enforcement Program Coordinator, Department of Criminal Justice Services, 1100 Bank Street, Richmond, VA 23219, telephone (804) 786-7801, FAX (804) 786-0410, or email kristi.shalton@dcjs.virginia.gov.

VA.R. Doc. No. R21-6607; Filed February 11, 2021, 8:41 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Criminal Justice Services Board intends to consider amending **6VAC20-100, Rules Relating to Compulsory Minimum Training Standards for Correctional Officers of the Department of Corrections, Division of Adult Institutions**. The purpose of the proposed action is to amend the minimum training standards to improve performance outcomes, adjust minimum number of training hours, and update language for effectiveness and efficiency in training new academy recruits within the Department of Corrections (DOC). Substantial changes are proposed to the performance outcomes, training objectives, testing criteria, and lesson plan guides in each individual category of training. The required number of training hours, including field training, for new correctional officers will also be amended. Additionally, legislation from the 2020 Session of the General Assembly requires specific training for and means of dealing with pregnant inmates at DOC facilities. This regulatory action will incorporate this into the revised training standards.

In addition, pursuant to Executive Order 14 (as amended, July 16, 2018) and § 2.2-4007.1 of the Code of Virginia, the agency is conducting a periodic review and small business impact review of this regulation to determine whether this regulation should be terminated, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare; (ii) minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

Notices of Intended Regulatory Action

The agency does not intend to hold a public hearing following the publication of the proposed stage in the Virginia Register.

Statutory Authority: § 9.1-102 of the Code of Virginia.

Public Comment Deadline: April 14, 2021.

Agency Contact: Kristi Shalton, Law Enforcement Program Coordinator, Department of Criminal Justice Services, 1100 Bank Street, Richmond, VA 23219, telephone (804) 786-7801, FAX (804) 786-0410, or email kristi.shalton@dcjs.virginia.gov.

VA.R. Doc. No. R21-6569; Filed February 11, 2021, 8:41 a.m.

The agency does not intend to hold a public hearing following the publication of the proposed stage in the Virginia Register.

Statutory Authority: §§ 46.2-203, 46.2-1128, and 46.2-1139 of the Code of Virginia.

Public Comment Deadline: April 14, 2021.

Agency Contact: Melissa Velazquez, Legislative Services Manager, Department of Motor Vehicles, P.O. Box 27412, Richmond, VA 23269-0001, telephone (804) 367-1844, FAX (804) 367-6631, TDD (800) 272-9268, or email melissa.velazquez@dmv.virginia.gov.

VA.R. Doc. No. R21-6542; Filed February 10, 2021, 2:51 p.m.

TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

DEPARTMENT OF MOTOR VEHICLES

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Department of Motor Vehicles (DMV) intends to consider repealing **24VAC20-80, Overload Permit Regulations**, and **24VAC20-81, Hauling Permit Regulation**, and promulgating **24VAC20-82, Permit Regulations**. DMV concluded a periodic review of 24VAC20-80 and 24VAC20-81 and determined the regulations should be repealed and combined into a new chapter with revisions to bring them into conformity with law and current practices. The purpose of the proposed action is to repeal both chapters, which prescribe requirements for obtaining permits to operate overweight vehicles, and promulgate a new set of regulations that update and combine the existing regulations into one new chapter to more clearly describe permitting requirements, to bring the regulations into conformity with existing law, and to incorporate procedural changes adopted to enhance efficiency and user experience. Considered amendments to the regulations include clarifying the regulations as necessary, deleting obsolete or duplicative information, and updating processes to make them more efficient and cost effective, while maintaining the safety of the traveling public and the integrity of the Commonwealth's transportation infrastructure.

Technology changes have provided an opportunity for DMV to update the way the agency accepts and processes permit applications and issues permits, making the system more efficient for consumers and the agency, and new processes for permitting will be reflected in proposed regulations. DMV is currently preparing a Request for Proposals for a new Virginia Automated Permitting System to issue oversize and overweight permits and expects that procedural changes associated with a new Virginia Automated Permitting System may require revisions to the regulations. DMV may propose other changes it identifies as necessary during the regulatory review process.

REGULATIONS

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

Symbol Key

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

TITLE 4. CONSERVATION AND NATURAL RESOURCES

DEPARTMENT OF CONSERVATION AND RECREATION

Proposed Regulation

Title of Regulation: **4VAC5-30. Virginia State Parks Regulations (amending 4VAC5-30-10 through 4VAC5-30-32, 4VAC5-30-50, 4VAC5-30-150 through 4VAC5-30-190, 4VAC5-30-220, 4VAC5-30-230, 4VAC5-30-250, 4VAC5-30-260, 4VAC5-30-274 through 4VAC5-30-300, 4VAC5-30-370, 4VAC5-30-390 through 4VAC5-30-420; adding 4VAC5-30-95; repealing 4VAC5-30-180).**

Statutory Authority: § 10.1-104 of the Code of Virginia.

Public Hearing Information: No public hearings are currently scheduled.

Public Comment Deadline: May 14, 2021.

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

Basis: Section 10.1-104 of the Code of Virginia authorizes the Department of Conservation and Recreation "to prescribe rules and regulations necessary or incidental to the performance of duties or execution of powers conferred by law"; authorizes the department to promulgate regulations, pursuant to the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) as necessary to carry out the purposes and provisions of the subtitle; and establishes that any violation of the Virginia State Park Regulations shall constitute a Class 3 misdemeanor.

Purpose: 4VAC5-30, Virginia State Parks Regulations, governs the behavior of all individuals visiting department-owned or department-operated properties, which includes all state parks, historical and natural areas, natural area preserves, and other recreational areas in the Commonwealth. The regulation also controls the types of activities allowed on those properties and protects public safety.

This regulatory action updates definitions to ensure consistency with the Code of Virginia, modernizes procedures to accurately reflect current technologies and policies, and refines existing language to clarify the intent and expectations for individuals visiting department properties or using department facilities.

Many sections of this regulation use out-of-date terms and technologies. For example, 4VAC5-30-400 (Aviation) currently prohibits the use of "flying machine" within a park; however, there is no reference to drones or other types of unmanned aerial systems. The specific inclusion of "drones" and "unmanned aerial system" clarifies the prohibition for the public. Similarly, 4VAC5-30-230 (Smoking) prohibits smoking but is silent on the use of electronic vaporizing devices; amendments to this section will prohibit the use of vaporizing devices.

Substance: The amendments update definitions to ensure consistency with the Code of Virginia, modernize procedures to accurately reflect current technologies and policies, and refine existing language to clarify the intent and expectations for individuals visiting department properties or using department facilities. The amendments add 4VAC5-30-95 prohibiting public urination or defecation. Currently, § 18.2-387 of the Code of Virginia prohibits the intentional obscene display or exposure of a person or private parts. An individual arrested for public urination or defecation by a department conservation officer, even though there may have been no intentional obscene display, would be charged in accordance with § 18.2-387. Under § 18.2-387, the individual could be found guilty of a Class I misdemeanor and required to register on Virginia's Sex Offender and Crimes Against Minors Registry. According to § 10.1-104 of the Code of Virginia, a violation of the Virginia State Park Regulations constitutes a Class 3 misdemeanor. Class 3 misdemeanors are eligible to be resolved without a pretrial and may allow for prepayment of the violation by the individual. The department believes that, in some situations, charging an individual with a Class 3 misdemeanor is more appropriate for this type of behavior than charging an individual under § 18.2-387. Any more significant or serious violation will be charged in accordance with other sections of the Code of Virginia. An amendment to 4VAC5-30-150 (Camping) expands the prohibition on the use of generators in a campsite. Currently, the use of generators is prohibited during quiet hours (from 10 p.m. until 6 a.m.). The amendment prohibits the use of generators at all times.

Issues: The primary advantage of this rulemaking for the public is that it clarifies the activities and behaviors that are limited or prohibited within facilities and properties owned or operated by the department. The primary advantage of this rulemaking for the department is that the revisions reflect current terminology, technology, and procedures used by the public and the department. There are no disadvantages to the public or the department.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Department of Conservation and Recreation (DCR) proposes to add language prohibiting public urination or defecation on properties subject to its purview and to make numerous clarifications to reflect current statutes, practices, and policies.

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

Estimated Economic Impact. This regulation governs the behavior of all individuals visiting DCR owned or operated properties including all state parks, historical and natural areas, natural area preserves, and other recreational areas in the Commonwealth. The regulation also controls the types of activities allowed on those properties.

DCR proposes to add regulatory language prohibiting public urination or defecation on properties subject to this regulation in order to avoid dire consequences on offenders. Currently, an individual arrested for public urination or defecation by a DCR officer, even though there may have been no intentional obscene display, would be charged in accordance with § 18.2-387 (indecent exposure) of the Code of Virginia. Under § 18.2-387, the individual could be found guilty of a Class 1 misdemeanor and required to register on Virginia's Sex Offender and Crimes Against Minors Registry. Section 10.1-104.B of the Code of Virginia, on the other hand, calls for a Class 3 misdemeanor charge for any violation of this regulation. Class 3 misdemeanors may be resolved without a pre-trial and may allow for prepayment of the violation by the individual. DCR believes that, in some situations, charging an individual with a Class 3 misdemeanor is more appropriate for this type of behavior than charging an individual under § 18.2-387. This proposed change will allow for a Class 3 misdemeanor charge where appropriate. This change does not prevent DCR from bringing other charges in accordance with other sections of the Code of Virginia for more significant or serious violations.

The main economic impact of this particular change is avoidance of possibly lifelong significant adverse consequences of having an indecent exposure conviction on an individual's past who has no ill intentions, but who simply has to relieve himself. Under the proposed change, DCR officers will have the flexibility to bring a lesser charge as appropriate.

The remaining proposed changes are mainly clarifications of existing laws, practice, or policy. Most significant of these include that the use of generators is prohibited at all times, not just during quiet hours (from 10:00 p.m. until 6:00 a.m.); that the portion of Breaks Interstate Park on Virginia soil is subject to this regulation; that the use of drones and unmanned aerial systems are prohibited; that the use of electronic vaporizing devices are prohibited; that the use of wheelchairs and other power-driven mobility devices on trails, paths, and other designated areas are allowed. These clarifications are beneficial in that they will better inform visitors on what is

prohibited or allowed and will likely improve compliance and avoid possible misinterpretation of the regulation.

Businesses and Entities Affected. The proposed regulation applies to all visitors to Virginia State Parks and Natural Area Preserves. Virginia State Parks had 10,474,134 visitors during 2017. There were two summons issued for indecent exposure (due to urinating in public) in the last 3 years.

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

Projected Impact on Employment. The proposed regulation does not have a direct impact on employment. However, an individual who has to relieve himself in state parks or natural preserves but has no intention of indecent exposure would avoid having a criminal conviction on his record and maintain being employable for all employment opportunities that individual otherwise qualifies for.

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

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

Small Businesses:

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

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

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

Adverse Impacts:

Businesses. The proposed amendments do not adversely affect businesses.

Localities. The proposed amendments do not adversely affect localities.

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

Agency's Response to Economic Impact Analysis: The Department of Conservation and Recreation generally concurs with the economic impact analysis performed by the Department of Planning and Budget.

Summary:

The proposed amendments (i) add 4VAC5-30-95, prohibiting public urination or defecation, and repeal 4VAC30-180 regarding dressing and undressing; (ii) prohibit the use of generators at campsites and in the campground at all times; (iii) update definitions to reflect current statutory definitions; (iv) update procedures to accurately reflect current technologies; and (v) clarify rules

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for individuals visiting department properties or using department facilities.

4VAC5-30-10. Definition of terms Definitions.

Whenever used in this chapter, the following ~~respective words and terms, unless otherwise therein expressly defined, shall mean and include each of~~ have the following meanings herein respectively set forth, unless the context clearly indicates otherwise:

~~"Bathing area" means any beach or water area designated by the department as a bathing area.~~

"Bicycle path" means any path or trail maintained for bicycles.

"Bridle path or trail" means any path or trail maintained for persons riding on horseback.

"Camping ~~Unit~~ unit" means a tent, tent trailer, travel trailer, camping trailer, pick-up camper, motor ~~homes~~ home, or any other portable device or vehicular-type structure as may be developed, marketed, or used for temporary living quarters or shelter during periods of recreation, vacation, leisure time, or travel.

"Department" means the Department of Conservation and Recreation.

"Electric power assisted bicycle" means a vehicle that travels on not more than three wheels in contact with the ground and is equipped with (i) pedals that allow propulsion by human power, (ii) a seat for the use of the rider, and (iii) an electric motor with an input of no more than 750 watts.

"Foot path or trail" means any path or trail maintained for pedestrians or disabled persons.

"Immediate family" means relatives living at the same common household of residence.

"Motor vehicle" means any vehicle ~~which that~~ possesses a motor of any description used for propulsion or to assist in the propulsion of the vehicle.

"Owner" means any person, firm, association, copartnership, or corporation owning, leasing, operating, or having the exclusive use of a vehicle, animal, or any other property under a lease or otherwise.

"Park" means, unless specifically limited, all designated state parks, recreational areas, parkways, historical and natural areas, natural area preserves, sites, and other areas under the jurisdiction or management of the Department of Conservation and Recreation.

"Permits" means ~~any all~~ written license licenses issued by or under authority of the department, permitting the performance of a specified act ~~or acts~~.

"Person" means any corporation, company, association, firm, an individual, proprietorship, partnership, joint venture, joint

stock company, syndicate, business trust, estate, club, committee, organization, or group of persons acting in concert.

"Power-driven mobility device" means any mobility device powered by batteries, fuel, or other engines, whether or not designed primarily for use by individuals with mobility disabilities, that is used by individuals with mobility disabilities for the purpose of locomotion, including golf carts, electronic personal assistance mobility devices (EPAMDs), such as the Segway® PT, or any mobility device designed to operate in areas without defined pedestrian routes, but that is not defined as a "wheelchair."

"Swimming area" means any beach or water area designated by the department as a swimming area.

"Wheelchair" means a manually-operated or power-driven device designed primarily for use by an individual with a mobility disability for the main purpose of both indoor and outdoor locomotion.

4VAC5-30-20. Construction of regulations.

In the interpretation of ~~the Virginia State Parks Regulations~~ this chapter, ~~their~~ the provisions shall be construed as follows: (i) any terms in the singular shall include the plural; (ii) any term in the masculine shall include the feminine and the neuter; (iii) any requirements or prohibition of any act shall, respectively, extend to and include the causing or procuring, directly or indirectly, of such act; (iv) no provision hereof shall make unlawful any act necessarily performed by any law-enforcement officer as defined by § 9.1-101 of the Code of Virginia or employee of the department in line of duty or work as such, or by any person, his agents or employees, in the proper and necessary execution of the terms of any agreement with the department; (v) any act otherwise prohibited by ~~Virginia State Parks Regulations~~ this chapter, provided it is not otherwise prohibited by law or local ordinance, shall be lawful if performed under, by virtue of, and strictly within the provisions of a permit so to do, and to the extent authorized thereby; and (vi) ~~this chapter are is~~ this chapter are is in addition to and a supplement to the state vehicle and traffic laws set out in the Code of Virginia, which are in force in all parks and which are incorporated herein and made a part hereof.

4VAC5-30-30. Territorial scope.

~~All Virginia State Parks Regulations~~ This chapter shall be effective within and upon all state parks, recreational areas, historical and natural areas, natural area preserves, roads, sites, and other areas in the Commonwealth ~~which that~~ may be under the management or control of the Department of Conservation and Recreation and shall regulate the use thereof by all persons. This chapter shall also be effective in any lands operated as Breaks Interstate Park in accordance with the Compact entered into pursuant to § 10.1-205.1 of the Code of Virginia.

4VAC5-30-32. General.

Failure to comply with ~~the Virginia State Parks Regulations~~ this chapter, as well as other applicable laws and regulations, and agency signage, may result in revocation of permits or registrations, forfeiture of applicable prices paid, a Virginia uniform summons, arrest, and prosecution.

4VAC5-30-50. Flowers, plants, minerals, etc.

No person shall remove, destroy, cut down, scar, mutilate, injure, deface, take, or gather in any manner any tree, flower, fern, shrub, rock or plant, historical artifact, or mineral in any park unless a special permit has been obtained for scientific collecting. Edible fruits, berries, fungi, or nuts may be collected for personal or individual use only. To obtain a special permit for scientific collecting in a state park, a natural area, or a natural area preserve, a Research and Collecting Permit Application must be completed and provided to the department ~~at:~~ in a manner specified by the department.

~~Department of Conservation and Recreation
203 Governor Street, Suite 306
Richmond, Virginia 23219-2010.~~

~~To obtain a special permit for scientific collecting in a natural area or natural area preserve, a Research and Collecting Permit Application must be completed and provided to the department at:~~

~~Department of Conservation and Recreation
Division of Natural Heritage
217 Governor Street, Third Floor
Richmond, Virginia 23219.~~

4VAC5-30-95. Public urination or defecation.

Urinating or defecating other than at the places provided therefore is prohibited, with the exception for path or trail areas or other remote sites that may not have utilities provided. In such cases, urinating or defecating should not be seen by the public and should take place at least 200 feet from any waterway or trail.

4VAC5-30-150. Camping.

A. ~~Permit Reservation.~~ Camping will be conducted only under permit a valid reservation. A permit reservation is obtained by completing a valid Virginia State Parks Camping Permit Form or Honor Camping Application and submitting payment from the individual park office, through the department's designated reservation system, or through the completion of the self-pay process. Payment must be submitted in accordance with all applicable prices and payment policies. ~~A camping permit can only be issued by the park management.~~ Only an individual 18 years of age or older who is a member of and accepts responsibility for the camping party may be issued a camping permit reservation. ~~The act of placing a~~

~~reservation through the state parks reservation center does not constitute a camping permit.~~

Camping may only be performed in strict accordance with the terms and conditions of the permit reservation. Any violation of the ~~permit by the permittee or terms of the reservation by~~ any member of the party shall constitute grounds for permit reservation revocation by the department, or by its authorized representative, whose action shall be final. In case of revocation of any permit reservation, all moneys paid for or on account thereof shall at the option of the department be forfeited and retained by the department.

B. Occupancy. Occupancy of each campsite shall be limited to not more than six persons or one immediate family, or other maximum occupancy permitted through an approved special use permit. ~~The term immediate family shall mean relatives living at the same common household of residence.~~

C. Camping units, equipment, and vehicles. All camping units, equipment, and vehicles shall be placed within the perimeter of the designated campsite without infringing on adjoining campsites or vegetation. Where high impact areas have been designated, all camping units, equipment, and vehicles shall be placed within the defined borders of the high impact area. There is a maximum of two camping units allowed per campsite; no more than one axled camping unit is allowed per campsite.

D. Camping periods. No camping shall be permitted in excess of 14 nights within a 30-day period. Park managers shall have the authority to increase the number of nights permitted by an approved special use permit. ~~Check-in time shall be 4 p.m. Check-out time is 3 p.m. Campers may be permitted to occupy campsites prior to 4 p.m., but no earlier than 8 a.m., if campsites are available.~~ Any personal property left at the campsite after the reservation period check-out time shall be removed by park staff at the owner's expense.

E. Motor vehicles. Only two motor vehicles in addition to the camping unit allowed under subsection C of this section are permitted on a campsite with no additional prices. All motor vehicles shall be parked in the designated parking area of each campsite. Any additional vehicles beyond two are subject to daily parking prices and shall be parked at designated overflow parking areas.

F. Visitors. ~~All visitors shall register on the visitors register.~~ No visitor shall be allowed before 6 a.m. and all visitors must leave the campground area by 10 p.m. All visitors shall be charged the appropriate daily parking or admissions prices prior to entering the park.

G. Quiet hours. Quiet hours in the campgrounds shall be from 10 p.m. to 6 a.m. ~~Generators~~ Excessive noise, amplified music, or other disturbances that can be heard outside the perimeters of the user's campsite are prohibited during the designated quiet hours.

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H. Pets. Domestic and household pets are permitted in campgrounds ~~only with payment of all applicable prices~~. Owners are responsible for cleaning up after their pets and for ensuring their pets do not disturb other campers. Horses and other livestock are not permitted unless facilities are specifically provided for them.

I. Generators. The use of combustion generators at campsites and in the campground is prohibited except when used by the department to perform necessary construction, maintenance, or repairs or for an activity approved by special permit.

J. Damage to any campground or campsite, not considered normal wear and tear, may be billed to the person registering for the campground or campsite on an itemized cost basis in accordance with the reservation acknowledgment or reservation confirmation.

4VAC5-30-160. Cabins.

A. Use of state park cabins, camping cabins, lodges, and yurts shall only be permitted pursuant to the reservation acknowledgment, reservation confirmation, or established department regulations (4VAC5-36) and policy dealing with reservations, registration, occupancy, prices, length of stay, and rental period.

B. Damage to any park cabin, camping cabin, lodge, or yurt not considered normal wear and tear may be billed to the person registering for the cabin on an itemized cost basis in accordance with the reservation acknowledgment or reservation confirmation.

4VAC5-30-170. ~~Bathing~~ Swimming, where permitted.

No person shall bathe, wade, or swim in any ~~department-owned~~ waters in any park except at such times, and in such places, as the department may designate as ~~bathing swimming~~ areas, ~~and unless so covered with a bathing suit as to prevent any indecent exposure of the person.~~

4VAC5-30-180. ~~Dressing and undressing.~~ (Repealed.)

~~Dressing and undressing, except in bathhouses, camping units or cabins is prohibited.~~

4VAC5-30-190. Boating.

Boating of any kind in a ~~bathing swimming~~ area is prohibited.

4VAC5-30-220. Fires.

No person shall kindle, build, maintain, or use a fire other than in places provided or designated for such purposes in any park. Any fire shall be continuously under the care and direction of a competent person ~~over sixteen~~ older than 16 years of age from the time it is kindled until it is extinguished. No person within the confines of any park shall throw away or discard any lighted match, cigarette, cigar, charcoal, or other burning object. Any lighted match, cigarette, cigar, charcoal, or other burning object must be entirely extinguished before being thrown away or discarded.

4VAC5-30-230. Smoking.

No person shall smoke or use electronic vaporizing devices in any structure or place in any park where smoking is prohibited. Smoking or the use of electronic vaporizing devices may be forbidden by the department or its authorized agent in any part of any park.

4VAC5-30-250. Fishing.

The taking of fish by hook and line, the taking of bait fish by cast net, and crabbing by line and net is permitted in the designated areas in each park, the only stipulations being that persons taking fish by hook and line must have a state fishing license required by law and comply with the applicable Department of ~~Game and Inland Fisheries~~ Wildlife Resources or Marine Resources Commission rules and regulations. This is intended to be a complete list of authorized fishing activities in parks and does not allow other activities requiring fishing licenses such as bow-fishing or the taking of amphibians, which are prohibited.

4VAC5-30-260. Animals at large.

No person shall cause or permit any animal owned by him, in his custody, or under his control, except an animal restrained by a leash not exceeding six feet in length, to enter any park, and each such animal found at large may be seized and disposed of as provided by the law or ordinance covering disposal of stray animals on highways or public property then in effect at the place where such stray animals may be seized. No animal shall be left unattended by its owner in any park at any time, except for animals in designated stables. Animals shall not be allowed in ~~bathing swimming~~ areas under any circumstances, except for service or hearing dogs identifiable in accordance with § 51.5-44 of the Code of Virginia.

4VAC5-30-274. Foot path or trail use.

Persons shall only use paths, trails, or other designated areas in any park. No person shall engage in an activity expressly prohibited by a trail safety sign. With the exception of wheelchairs, power-driven mobility devices are only allowed on those paths or trails that have been designated by the department as appropriate for such use.

4VAC5-30-276. Bicycle path use.

No person shall use a bicycle, an electric power-assisted bicycle, or a similarly propelled ~~devices~~ device in any area other than designated bicycle paths in any park. Any authorized use of an electric power-assisted bicycle will be limited to class one or class two bicycles as defined in § 46.2-100 of the Code of Virginia. No person shall engage in an activity expressly prohibited by ~~a trail safety sign~~ park rules and regulations.

4VAC5-30-280. Bridle path use.

No person shall use, ride, or drive a horse or other animal in any park except along a bridle path, to or from a parking area

associated with such bridle path, or other designated area. No person shall engage in an activity expressly prohibited by a trail safety sign park rules and regulations.

4VAC5-30-290. Vehicles; where prohibited.

No person shall drive a motor vehicle in any park within or upon a safety zone, walk, bicycle or bridle path, fire truck trail, service road or any part of any park not designated for, or customarily used by motor vehicles, except properly authorized individuals engaged in fire ~~control~~ management, park maintenance, or other necessary park-related activities.

4VAC5-30-300. Parking.

No owner or driver shall cause or permit a vehicle to stand anywhere in any park outside of designated parking spaces, except ~~a reasonable time in a drive~~ to receive or discharge passengers in a reasonable amount of time in areas where standing vehicles are not prohibited. Parking in designated camping or cabin parking spaces is prohibited unless the individual is registered as an occupant of or a visitor to that specific campsite or cabin.

4VAC5-30-370. Advertising.

No sign, notice, or advertisements of any nature shall be erected or posted at any place within any park, nor shall any noise be made for the purpose of attracting attention to any exhibition of any kind except for services, programs, and events approved by the park management.

4VAC5-30-390. Alms and contributions.

No person or organization shall within any park solicit alms or contributions for any purpose unless approved by the park management.

4VAC5-30-400. Aviation.

No person shall voluntarily ~~bring, land, or cause to descend or alight~~ unlawfully operate within or upon any park, any airplane, remote control model aircraft, ~~flying machine~~ helicopter, unmanned aerial system, drone, balloon, parachute, or other apparatus for aviation. "Voluntarily" in this connection shall mean anything other than a forced landing. Rescue and evacuation aircraft are exempt for emergencies and approved training exercises.

4VAC5-30-410. Importation of firewood.

A. The Director of the Department of Conservation and Recreation may prohibit the importation of firewood or certain types of firewood into any park or allow such entry only under specified conditions when such firewood may be infected or infested with a species of concern. Any firewood transported to the park by a person found to be in violation of such prohibition shall be confiscated and destroyed. Should any person charged under this section be found not guilty, the person shall be reimbursed for only the cost of the firewood.

B. When the director makes a written determination to implement subsection A of this section, the following minimum requirements apply:

1. Such determination shall be posted to the department's website and posted at the park where applicable.
2. Firewood to be used by any person within a park must be purchased from the park, must be proven to be from a certified source in accordance with subdivision 3 of this subsection if transported to the park, or may be collected from within the confines of the park in accordance with park policy. The department may allow for the sale or distribution of firewood within the park with prior written agreement that it has been treated in accordance with subdivision 3 of this subsection. Firewood includes all wood, processed or unprocessed, meant for use in a campfire. Such ban shall not include scrap building materials, such as ~~2x4s~~ two-by-fours, but may extend to wood pallets and other wood product packing materials as determined by the director.
3. Firewood certified to be sold and distributed within the park by a firewood dealer shall be subject to at least one of the following conditions:
 - a. Exclude all ~~ash tree material~~ quarantined tree species from the firewood production area. Dealers will have to demonstrate ability to identify and separate firewood species.
 - b. Remove bark and outer half inch of sapwood off of all nonconiferous firewood.
 - c. Kiln dry all nonconiferous firewood to USDA specifications.
 - d. Heat treat all nonconiferous firewood to USDA specifications.
 - e. Fumigate all nonconiferous firewood to USDA specifications.
 - f. Offer conclusive proof demonstrating to the satisfaction of the department that the origin of the wood was from a noninfected area.
 - g. Offer conclusive proof demonstrating to the satisfaction of the department that the wood containing the infecting or infesting species of concern has been properly treated and the species is controlled by an alternative control mechanism.

The director may eliminate or restrict conditions offered in this subsection as determined to be necessary to properly address the infecting or infesting species of concern to the satisfaction of the department.

4VAC5-30-420. Release of domestic animals or wildlife on park property.

No person shall release domestic animals, fish, or wildlife captured or propagated elsewhere into any park, unless approved by the park management.

Regulations

NOTICE: The following forms used in administering the regulation have been filed by the agency. Amended or added forms are reflected in the listing and are published following the listing. Online users of this issue of the Virginia Register of Regulations may also click on the name to access a form. The forms are also available from the agency contact or may be viewed at the Office of Registrar of Regulations, 900 East Main Street, 11th Floor, Richmond, Virginia 23219.

FORMS (4VAC5-30)

~~[Natural Area Preserve Research and Collecting Permit Application, DCR 199-003 \(11/07\)](#)~~

~~[Research and Collecting Permit Application, DCR 199-043 \(12/00\)](#)~~

~~[Cabin & Camping Permit \(1/10\)](#)~~

[Research and Collecting Permit Application, DCR 199-043 \(rev. 7/2014\)](#)

VA.R. Doc. No. R20-4581; Filed February 11, 2021, 4:39 p.m.

MARINE RESOURCES COMMISSION

Final Regulation

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

Title of Regulation: **4VAC20-751. Pertaining to the Setting and Mesh Size of Gill Nets (amending 4VAC20-751-15, 4VAC20-751-20).**

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

Effective Date: March 1, 2021.

Agency Contact: Jennifer Farmer, Regulatory Coordinator, Marine Resources Commission, 380 Fenwick Road, Fort Monroe, VA 23551, telephone (757) 247-2248, or email jennifer.farmer@mrc.virginia.gov.

Summary:

The amendments modify the dates of unlawful gill net mesh sizes within the restricted areas of the tributaries in the Chesapeake Bay.

4VAC20-751-15. Definitions.

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

"Assateague Island Small-Mesh Gill Net Area" shall consist of all tidal waters of Virginia's portion of the federal territorial sea that are bounded by a line beginning in Accomack County from a point at the mean low water line at the southwestern most tip of Fishing Point, at the mouth of Chincoteague Inlet, at Latitude 37-52.34584 N., Longitude 75-24.02333 W.;

thence southwesterly 1,500 feet to a point at Latitude 37-52.19158 N., Longitude 75-24.26693 W.; thence in a line towards Chincoteague Shoals maintaining a distance of 1,500 feet from the mean low water line to a point northeast of Chincoteague Shoals at Latitude 37-51.12484 N., Longitude 75-22.23021 W.; thence westerly to a point at Latitude 37-51.30530 N., Longitude 75-22.44331 W.; thence along the mean low water line in a southerly and then westerly direction to the point of beginning.

"Restricted areas" means sections within the tributaries of the Chesapeake Bay as follows:

1. In James River, those tidal waters upstream of a line connecting Willoughby Spit and Old Point Comfort;
2. In Back River, those tidal waters upstream of a line connecting Factory Point and Plumtree Point;
3. In Poquoson River, those tidal waters upstream of a line connecting Marsh Point and Tue Point;
4. In York River, those tidal waters upstream of a line connecting Tue Point and Guinea Marshes;
5. In Mobjack Bay, those tidal waters upstream of a line connecting Guinea Marshes and New Point Comfort;
6. In Milford Haven, those tidal waters upstream of a line connecting Rigby Island and Sandy Point;
7. In Piankatank River, those tidal waters upstream of a line connecting Cherry Point and Stingray Point; and
8. In Rappahannock River, those tidal waters upstream of a line connecting Stingray Point to Windmill Point.

"Small-mesh gill net" means any gill net with a stretched mesh of equal to or less than five inches.

"Unattended gill net" means any gill net set in Virginia tidal waters, described in 4VAC20-751-20 E, that is located more than one mile from the licensee of that gill net.

4VAC20-751-20. Gill net mesh sizes, restricted areas, and season.

~~A. From January 1 through March 25 of each year, it shall be unlawful for any person to place, set, or fish any gill net with a stretched mesh size between 3 3/4 inches and six inches within the restricted areas as set forth below, except that from January 16 through the end of February any legally licensed fisherman may place, set, or fish any gill net with a stretched mesh size from five inches to six inches within the restricted areas described in this subsection. From March 26 through June 15 of each year, it shall be unlawful for any person to place, set, or fish any gill net with a stretched mesh size greater than six inches within the restricted areas set forth below, except as described in 4VAC20-252-135. In the restricted areas as described in 4VAC20-751-15, it shall be unlawful to do any of the following:~~

~~1. In James River, those tidal waters upstream of a line connecting Willoughby Spit and Old Point Comfort; From January 1 through March 25 of each year, for any person to place, set, or fish any gill net with a stretched mesh size greater than 3-3/4 inches and less than five inches.~~

~~2. In Back River, those tidal waters upstream of a line connecting Factory Point and Plumtree Point; From March 26 through June 15 of each year, for any person to place, set, or fish any gill net with a stretched mesh size greater than six inches.~~

~~3. In Poquoson River, those tidal waters upstream of a line connecting Marsh Point and Tue Point;~~

~~4. In York River, those tidal waters upstream of a line connecting Tue Point and Guinea Marshes;~~

~~5. In Mobjack Bay, those tidal waters upstream of a line connecting Guinea Marshes and New Point Comfort;~~

~~6. In Milford Haven, those tidal waters upstream of a line connecting Rigby Island and Sandy Point;~~

~~7. In Piankatank River, those tidal waters upstream of a line connecting Cherry Point and Stingray Point; and~~

~~8. In Rappahannock River, those tidal waters upstream of a line connecting Stingray Point to Windmill Point.~~

B. During the period May 1 through June 30, it shall be unlawful for any person to have aboard any vessel or to place, set, or fish more than 8,400 feet of gill net.

C. During the period May 1 through June 30, it shall be unlawful for any person to have aboard any vessel or to place, set, or fish any gill net in the Chesapeake Bay or in Virginia's portion of the Territorial Sea, that is made, set, or fished in a tied-down manner, by connecting the net's head rope and foot rope with lines, which cause the net to form a pocket of webbing.

D. During the period June 1 through June 30, it shall be unlawful for any person to have aboard any vessel or to place, set, or fish any gill net with a stretched mesh greater than six inches in the Virginia portion of the Territorial Sea, south of a line connecting Smith Island Light and the three-mile limit line.

E. From June 1 through August 14, it shall be unlawful for any person to place any unattended small-mesh gill net within 500 yards of the mean low-water mark, on the ocean side of Northampton and Accomack Counties, north of a line, beginning at the southern most point of Smith Island and thence extending due east to the three-mile limit line.

F. It shall be unlawful for any person to use any agent to place, set, or fish any gill net within 500 yards of the mean low-water mark within the Assateague Island Small-Mesh Gill Net Area from August 15 through October 31. The commissioner, or his designee, may approve the use of an agent if the legally

licensed person can document a significant hardship on the basis of health that impedes the retrieval of any gill nets within the Assateague Island Small-Mesh Gill Net Area.

VA.R. Doc. No. R21-6703; Filed February 23, 2021, 1:38 p.m.

VIRGINIA SOIL AND WATER CONSERVATION BOARD

Fast-Track Regulation

Title of Regulation: **4VAC50-20. Impounding Structure Regulations (amending 4VAC50-20-20).**

Statutory Authority: § 10.1-605 of the Code of Virginia.

Public Hearing Information: No public hearings are currently scheduled.

Public Comment Deadline: April 14, 2021.

Effective Date: May 1, 2021.

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

Basis: The Virginia Dam Safety Act (§ 10.1-604 et seq. of the Code of Virginia) ensures public safety through the proper and safe design, construction, operation, and maintenance of impounding structures in the Commonwealth. This is accomplished through the effective administration of the Virginia Dam Safety Program (program). Authority for the program rests with the Virginia Soil and Water Conservation Board (board), and the program is administered on behalf of the board by the Department of Conservation and Recreation's Division of Dam Safety and Floodplain Management. The program focuses on enhancing public safety through bringing all impounding structures of regulated size under Regular Operation and Maintenance Certificates. Pursuant to § 10.1-605 of the Code of Virginia the board is directed to promulgate regulations for impounding structures. Further, the board reserves the sole right to promulgate regulations pursuant to § 10.1-605.1 of the Code of Virginia.

Purpose: This regulatory change will require dam owners to ensure that all information that is required to be submitted under this regulation to be submitted through the Dam Safety Inventory System (DSIS). Utilizing DSIS is the most efficient, cost-effective, and thorough method for the submission of the required information. While the initial entries into DSIS may require time, there should be less time required over time to update and revise information to reflect inspections and current dam conditions. Having the required information in DSIS will dramatically increase the department's ability to effectively and accurately provide information to emergency managers or in the case of an imminent dam failure to take actions to protect public safety.

Requiring the dam owner to ensure that all information is provided in DSIS will enable the regional engineers to focus

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on completing comprehensive reviews of the information submitted by the dam owner to ensure statutory and regulatory requirements are met; to ensure engineering analysis were completed using accepted best engineering practices; and to provide opportunity for the regional engineers to be more effective resources for dam owners.

Additionally, the regulatory change will remove a conflict between the regional engineer's regulatory review of information and the need for information to be entered into DSIS. Currently, the regional engineers are entering data into DSIS in order to assist dam owners and to ensure the information is available if needed. The regional engineers are entering data, reviewing the data entered by them, and then approving the data. As the regulator, the regional engineers should only be approving the information entered after careful review of the information to ensure it meets professional standards.

Rationale for Using Fast-Track Rulemaking Process: As many dam owners currently utilize DSIS to submit the required information to the department, this rulemaking is expected to be noncontroversial. The regulatory amendment will ensure consistency in the application of DSIS across the Commonwealth.

Substance: This regulatory action revises the impounding structure regulations to require a dam owner to ensure that all information required to be submitted by the regulations is provided to the department via DSIS, unless prior approval for an alternative method of submission is granted by the department. Many dam owners currently utilize DSIS to submit the required information to the department; this regulatory amendment will allow for a more streamlined and consistent submittal and reporting process through DSIS.

Issues: This regulatory action will increase public safety. This regulatory action will ensure the most accurate and comprehensive data is entered into DSIS, dramatically increasing the department's ability to effectively and accurately provide information to emergency managers or in the case of an imminent dam failure to take actions to protect public safety. In addition to emergency managers, the public will be able to make more accurate determinations about whether they live, work, or drive through a dam break inundation zone. Increasing public awareness of dam break inundation zones and the locations of those zones will be a benefit to having the data in DSIS.

There are no disadvantages to the public with this regulatory change.

The regional engineers are responsible for approximately 420 dams each. This existing workload limits the amount of outreach and assistance the regional engineers are able to provide to dam owners. One of the benefits to this regulatory change is the ability for the regional engineers to be a more effective resource for dam owners. Having additional time to discuss potential funding options for needed repairs, to discuss engineering requirements or expectations, or to complete site

visits all are potential educational outreach opportunities that would benefit the regulated community and the Dam Safety Program.

For dam owners, whether they are state agencies, soil and water conservation districts, local governments, or private entities, the primary disadvantage to this regulatory action is the initial time and financial impacts. Currently, there is a cost in time to dam owners and their engineers to fill out paper forms required by the regulations. This current cost will offset a portion of the costs associated with DSIS entry. After the initial impacts, there should be significantly less time required over time to update and revise information to reflect inspections and current dam conditions.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Virginia Soil and Water Conservation Board (Board) proposes to require that all information required to be submitted under this regulation be provided to the Department of Conservation and Recreation (DCR) via the electronic Dam Safety System (DSIS), unless prior approval for an alternative method of submission is granted by DCR.

Background. DCR defines DSIS as an electronic method of accessing information about dams in Virginia. It also allows dam owners and their professional engineers to submit required documents¹ and information regarding their dam to the department. Before DSIS was first implemented in 2016, all files were in paper format and were located at different sites around the Commonwealth.²

According to DCR, only 526 of the 2,135 dams in the Commonwealth (25%) currently have a registered participant who can enter and submit data into DSIS. As a result, the majority of dam owners still submit required documents via paper forms.

Estimated Benefits and Costs. Having the relevant dam information available through DSIS can greatly aid DCR in accessing the information quickly when it is needed. During weather related emergencies, such as hurricanes or prolonged storms, or in case of a dam failure, the department is utilized as a resource by emergency management officials. According to DCR, having the information in the DSIS dramatically increases the departments ability to effectively and accurately provide information to emergency managers, or in the case of an imminent dam failure to take actions to protect public safety.

There is a cost in time to dam owners and their engineers to fill out paper forms. The initial data entry for first time users of DSIS may require more time compared to filling out paper forms, but DCR believes that there should be significantly less time required to update and revise information to reflect inspections and current dam conditions. DCR believes that once users learn to navigate DSIS, which department staff would help with, no additional time would be required for DSIS entry versus filling out paper forms.

When the dam information is submitted outside of the DSIS system, DCR regional engineers must spend time inputting the data, which impinges on their time conducting reviews of the information provided by the owner or the owner's engineer. The proposal to require that the dam owner use DSIS to submit information would enable the DCR regional engineers to use more of their time on analysis to protect public safety. Additionally, more time could be spent discussing with the owner potential funding options for needed repairs as well as engineering requirements or expectations.

Businesses and Other Entities Affected. The proposed amendments affect the owners of the 2,135 dams in the Commonwealth subject to this regulation.³ State agencies, soil and water conservation districts, local governments, public utilities, and private entities own or maintain the dams.⁴ Some dam owners may employ engineering firms to help provide the required information. Such firms would potentially be affected as well.

Since dams owners have had the opportunity to use DSIS since 2016, and only 25% of dams currently have a registered participant who can enter and submit data into DSIS, it appears that many dam owners would prefer to continue to use paper forms. Adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined. While the benefits of enabling the DCR regional engineers to use more of their time on analysis to protect public safety may be large, there would be some indefinite cost to dam owners who would prefer to continue submitting paper forms.

Small Businesses⁵ Affected:

Types and Estimated Number of Small Businesses Affected. The proposal would affect small businesses that own dams and small engineering firms that help dam owners provide information required by the regulation. Data are not available concerning the number of such small businesses.

Costs and Other Effects. The proposal would likely require some small businesses that own dams to initially have more staff time spent in reporting information or pay for more time of outside engineers to report such information.

Alternative Method that Minimizes Adverse Impact. There are no clear alternative methods that both reduce adverse impact and meet the intended policy goals.

Localities⁶ Affected.⁷ The proposal would particularly affect localities that have dams. Local governments that own dams and are not already inputting the required information through DSIS would likely require some additional staff time to input information. Data are not available concerning the number of such localities.

Projected Impact on Employment. The proposal does not appear likely to substantively affect total employment.

Effects on the Use and Value of Private Property. The proposal would likely require some owners of private property that includes a dam to initially spend more time in reporting

information, or pay for more time of outside engineers to report such information. The proposal does not substantively affect real estate development costs.

¹There are 6 types of regulatory documents that dam owners are required to submit to DCR: record reports, dam break inundation zone studies and maps, emergency action plans, inspection reports, permits, and applications.

²Source: September 23, 2020 Virginia Soil and Water Conservation Board meeting notes. https://townhall.virginia.gov/L/GetFile.cfm?File=Meeting\116\31245\Minutes_DCR_31245_v1.pdf

³Source: DCR

⁴Ibid

⁵Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.

⁶Locality can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

⁷§ 2.2-4007.04 defines particularly affected" as bearing disproportionate material impact.

Agency's Response to Economic Impact Analysis: The Virginia Department for Conservation and Recreation generally concurs with the economic impact analysis performed by the Virginia Department of Planning and Budget.

Summary:

The amendment requires a dam owner to ensure that all information required to be submitted by the regulation is provided to the department via the Dam Safety Inventory System, unless prior approval for an alternative method of submission is granted by the department.

4VAC50-20-20. General provisions.

A. This chapter provides for the proper and safe design, construction, operation and maintenance of impounding structures to protect public safety. This chapter shall not be construed or interpreted to relieve the owner or operator of any impoundment or impounding structure of any legal duties, obligations or liabilities incident to ownership, design, construction, operation or maintenance.

B. Approval by the board of proposals for an impounding structure shall in no manner be construed or interpreted as approval to capture or store waters. For information concerning approval to capture or store waters, see Chapter 8 (§ 62.1-107) of Title 62.1 of the Code of Virginia, and other provisions of law as may be applicable.

C. In promulgating this chapter, the board recognizes that no impounding structure can ever be completely "fail-safe," because of incomplete understanding of or uncertainties associated with natural (earthquakes and floods) and manmade (sabotage) destructive forces; with material behavior and

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response to those forces; and with quality control during construction.

D. All engineering analyses required by this chapter, including but not limited to, plans, specifications, hydrology, hydraulics and inspections shall be conducted or overseen by and bear the seal of a professional engineer licensed to practice in Virginia.

E. Design, inspection and maintenance of impounding structures shall be conducted utilizing competent, experienced, engineering judgment that takes into consideration factors including but not limited to local topography and meteorological conditions.

F. ~~The forms noted in this chapter are available from the department at the department's website. The owner shall ensure all information required to be submitted under this chapter be provided to the department via the electronic Dam Safety System (DSIS), unless prior approval for an alternative method of submission is granted by the department.~~

VA.R. Doc. No. R21-6529; Filed February 22, 2021, 8:19 a.m.

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TITLE 7. ECONOMIC DEVELOPMENT

DEPARTMENT OF SMALL BUSINESS AND SUPPLIER DIVERSITY

Final Regulation

REGISTRAR'S NOTICE: The Department of Small Business and Supplier Diversity is claiming an exemption from the Administrative Process Act in accordance with subdivision 8 of § 2.2-1606 of the Code of Virginia, which exempts regulations implementing certification programs for small, women-owned, and minority-owned businesses and employment services organizations from the Administrative Process Act pursuant to subdivision B 2 of § 2.2-4002 of the Code of Virginia.

Title of Regulation: 7VAC13-20. Regulations to Govern the Certification of Small, Women-Owned, and Minority-Owned Businesses (amending 7VAC13-20-230).

Statutory Authority: § 2.2-1606 of the Code of Virginia.

Effective Date: April 15, 2021.

Agency Contact: Jennifer Mayton, General Administration Manager III, Department of Small Business and Supplier Diversity, 101 North 14th Street, 11th Floor, Richmond, VA 23219, telephone (804) 593-2007, email jennifer.mayton@sbsd.virginia.gov.

Summary:

The amendments clarify the appeals process for an applicant whose application to be certified as a Small,

Women-Owned, or Minority-Owned Business has been denied or revoked by the department.

7VAC13-20-230. Appeals from a denial of certification or recertification or revocation of certification.

A. An applicant whose application for certification or recertification has been denied by the department, or a certified business whose certification has been revoked by the department (complainant), ~~shall have the right to an informal fact finding proceeding~~ may request an informal review before the designated representative of the department to present the grounds upon which the complainant believes the denial of certification should be reconsidered. A decision of the department will only be reconsidered if the complainant can demonstrate that a material mistake of fact formed the basis for the department's ~~review of the application or other relevant record~~ decision, or if the department's decision was not in accordance with applicable laws or regulations.

B. ~~Any~~ A request for an informal ~~fact finding proceeding review~~ review pursuant to subsection A of this section must be submitted in writing to the department within 10 days of the date on which the notice of denial of recertification or the notice of revocation was sent by the department. The request ~~for an informal fact finding proceeding~~ shall include a clear, brief summary of all factual errors and legal grounds upon which the complainant intends to rely. Within 30 days of the receipt of a timely request for an informal ~~fact finding proceeding review~~ review, the department shall issue a notice stating the date and time of the informal ~~fact finding proceeding review~~ review. The informal ~~fact finding proceeding review~~ review will not be scheduled less than seven and not more than 45 days from the date of the notice and may be conducted by telephone, video conference, or in person at the department's offices or such other location as the department deems appropriate. Within 60 days from the date on which the informal ~~fact finding proceeding review~~ review was held, the department shall issue a notice, in writing, stating the final decision of the department.

C. Either party to the informal ~~fact finding proceeding review~~ review is entitled to have counsel present, but no party shall be required to be represented by counsel at or in connection with the informal ~~fact finding proceeding review~~ review.

VA.R. Doc. No. R21-6702; Filed February 18, 2021, 2:17 p.m.

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TITLE 9. ENVIRONMENT

DEPARTMENT OF ENVIRONMENTAL QUALITY

Proposed Regulation

Title of Regulation: 9VAC15-60. Small Renewable Energy Projects (Solar) Permit by Rule (amending 9VAC15-60-10)

through 9VAC15-60-130; adding 9VAC15-60-45, 9VAC15-60-55, 9VAC15-60-65).

Statutory Authority: § 10.1-1197.6 of the Code of Virginia.

Public Hearing Information: No public hearings are currently scheduled.

Public Comment Deadline: May 14, 2021.

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

Basis: The legal basis for the Small Renewable Energy Projects (Solar) Permit by Rule (9VAC15-60) is the Small Renewable Energy Projects Act, Article 5 (§ 10.1-1197.5 et seq.) of Chapter 11.1 of Title 10.1 of the Code of Virginia. Specifically, § 10.1-1197.5 of the Code of Virginia defines small renewable energy projects to be up to and including projects of 150 megawatts or less in the Commonwealth, and § 10.1-1197.6 of the Code of Virginia requires the Department of Environmental Quality (DEQ) to promulgate regulations necessary to carry out appropriate powers and duties for such permitting activities.

Purpose: The purpose of this regulatory action is to clarify the regulatory requirements for applicants and permitted facilities in order to improve the current permitting process. Additionally, an appropriate fee structure is proposed in order to fully support the program, including compliance and enforcement activities. The proposed changes are necessary to provide protection of natural resources and still protect the health, safety, and welfare of citizens.

Substance: The permit by rule (PBR) regulation establishes the specific criteria required for a complete application to construct and operate a small renewable solar project in Virginia. Rules for public notice and public comment, determining potential significant impact to natural and cultural resources, and establishing an appropriate fee structure are also included. Additional substantive provisions that are being considered include (i) clarifying definitions; (ii) clarifying the procedures for natural and cultural resource analysis for project applications submitted after 12 months after the effective date of the amendments; (iii) clarifying size of projects exempt from permitting; (iv) clarifying public participation requirements as part of the application process; (v) specifying operation, recordkeeping, and reporting requirements; (vi) clarifying procedures for modification or transfer of ownership or name change of a permitted facility; and (vii) establishing a new fee structure for project applications submitted after the effective date of the amendments.

Issues: The regulation will enhance protection of significant natural resources while still maintaining a streamlined PBR permitting process for solar development. Public health, safety, and welfare will also be protected while meeting the stated goals for renewable energy throughout the Commonwealth as

mandated by the Small Renewable Energy Projects Act, Article 5 (10.1-1197.5 et seq.) of Chapter 11.1 of Title 10.1 of the Code of Virginia and the Virginia 2018 Energy Plan. The PBR permitting process will not infringe on personal property rights yet will provide additional considerations for impacts to prime forestland, which are vital for the water quality and economic development. The proposed amendments minimize the economic impact on small businesses in a manner consistent with the stated objectives of applicable law while ensuring the identification and protection of valuable natural and cultural resources of the Commonwealth in an efficient, cost-effective manner. Fees are increased to cover the cost of the program, as required by law, including the use of standard forms for some required regulatory activities will make the process more efficient and easier for solar developers, and the information received and made available to the public will be more consistent.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Department of Environmental Quality (DEQ) proposes numerous amendments to the regulation concerning: 1) fees, 2) ecological cores (primarily forests), 3) threatened and endangered insects, 4) planting to attract pollinators, 5) historic resources, 6) timeframes, 7) projects with reduced requirements, and 8) clarifications.

Background. Prior to 2012, the only route to obtaining a permit to construct and operate a solar energy project was through the State Corporation Commission (SCC). Pursuant to Chapters 808 and 854 of the 2009 Acts of Assembly,¹ DEQ promulgated 9VAC15-60 Small Renewable Energy Projects (Solar) Permit by Rule in 2012. Permit by rule (PBR) is defined in the regulation as "provisions of the regulations stating that a project or activity is deemed to have a permit if it meets the requirements of the provision." The 2009 legislation allowed DEQ to issue such permits for solar projects with an electricity generating rated capacity not exceeding 100 megawatts (MW). Legislation in 2017 increased that maximum to 150 MW.² The first solar project was permitted by rule in 2015. Thus far more than 50 PBR permits or modifications have been granted.³

The PBR process allows developers to apply to construct and operate a small solar project when the PBR application meets the regulatory criteria. DEQ has 90 days from the application submittal date to determine if a PBR application is "complete" or "incomplete." Construction cannot begin until the PBR application has been determined to be "complete." Developers must include with the application analyses of preconstruction wildlife, historic resources, and natural heritage resources. If DEQ finds that the project as proposed would likely result in significant adverse impact to either specified wildlife or historic resources, the developer is required to include an acceptable mitigation plan as a component of the application. If DEQ determines that the mitigation plan is inadequate to protect the resource, DEQ provides specific information to the

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applicant to identify necessary requirements for the plan to be approved.

The primary advantage of obtaining a permit through the PBR process is that DEQ has a maximum of 90 days to determine whether the submitted application is complete (i.e., approved). Construction can commence once the application is deemed complete. In contrast, there is no fixed timeframe for application review through SCC.

Each application for a PBR and each modification of a PBR is a separate action and is assessed a separate fee. Under the current regulation, the fees for a permit application or modification are listed in Table 1. There is no maintenance fee.

Table 1: Current Fees

Type of Action	Fee
PBR application: >5 MW up to and including 25 MW	\$8,000
PBR application: >25 MW up to and including 50 MW	\$10,000
PBR application: >50 MW up to and including 75 MW	\$12,000
PBR application: >75 MW up to and including 150 MW	\$14,000
PBR modification >5 MW up to and including 150 MW	\$4,000

The developer of a solar energy project with either a rated capacity greater than 500 kilowatts (KW) and less than or equal to five MW, or a disturbance zone⁴ greater than two acres and less than or equal to 10 acres, must notify DEQ and submit a certification by the governing body of the locality or localities wherein the project will be located that the project complies with all applicable land use ordinances. These projects would not be subject to any other requirements of the regulation.

The developer of a solar energy project is not required to submit any notification or certification, nor be subject to any other requirements of the regulation, if he meets at least one of the following criteria:

1. The small solar energy project has either a rated capacity equal to or less than 500 KW or a disturbance zone equal to or less than two acres; or
2. The small solar project falls within at least one of the following categories, without regard to the rated capacity or the disturbance zone of the project:
 - a. The small solar energy project is mounted on a single-family or duplex private residence.
 - b. The small solar energy project is mounted on one or more buildings less than 50 years old or, if 50 years of age or older,

have been evaluated and determined by the Department of Historic Resources (DHR) within the preceding seven years to be not eligible for listing in the Virginia Landmarks Register.

c. The small solar energy project is mounted over one or more existing parking lots, existing roads, or other previously disturbed areas and any impacts to undisturbed areas do not exceed an additional two acres.

d. The small solar energy project utilizes integrated photovoltaic⁵ only, provided that the building or structure on which the integrated photovoltaic materials are used is less than 50 years old or, if 50 years of age or older, has been evaluated and determined by DHR within the preceding seven years to be not eligible for listing in the Virginia Landmarks Register.

Estimated Benefits and Costs.

Fees: The fees collected thus far have fallen well short of the costs of administering and enforcing the regulation. Thus, DEQ proposes higher application fees, and new fees for: 1) notice of intent (NOI) to submit documentation for a permit, 2) application review after receipt of an incomplete determination, and 3) annual permit maintenance. NOI is required at least 90 days prior to submission of the application and is already required in the current regulation. Only the proposed fee is new. According to the agency, 12% of applications received thus far were deemed incomplete. These were cases where the applicant had not responded or provided the required information within the statutory 90-day review timeframe. Ongoing costs are incurred by the agency such as for inspections and monitoring to ensure compliance with this regulation. The proposed new annual permit maintenance fee would apply to those costs.

The following are the proposed fees related to permit applications or modifications that are submitted after the effective date of the proposed regulation.

Table 2: Proposed Application-related and Modification Fees

Type of Action	Fee
Notice of intent to submit documentation for a permit	\$2,000
PBR application: >5 MW up to and including 20 MW	\$7,500 base fee plus \$150 per MW
PBR application: >20 MW up to and including 150 MW	\$7,500 base fee plus \$165 per MW
PBR modification >5 MW up to and including 150 MW	20% of original application fee
Incomplete fee: assessed for application review after receipt of an incomplete determination	\$4,000

For projects that are large enough to generate fees,⁶ the cost of the application fee combined with the NOI fee would be higher in the proposed regulation versus the current regulation regardless of the electricity generating rated capacity of the project. Table 3 shows the differences for sample megawatt levels.

Table 3: Comparison of Current and Proposed Application plus NOI Fees

Megawatts	Current ⁷	Proposed ⁸	Difference
10	\$8,000	\$11,000	\$3,000
30	\$10,000	\$14,450	\$4,450
50	\$10,000	\$17,750	\$7,750
70	\$12,000	\$21,050	\$9,050
90	\$14,000	\$24,350	\$10,350
110	\$14,000	\$27,650	\$13,650
130	\$14,000	\$30,950	\$16,950
150	\$14,000	\$34,250	\$20,250

As can be seen in Table 4, the proposed modification fee (20% of application fee) is higher than the current \$4,000 modification fee for projects 76 MW and higher, and lower than the current \$4,000 modification fee for projects 75 MW and lower.

Table 4: Comparison of Current and Proposed Modification Fees

Megawatts	Current	Proposed	Difference
10	\$4,000	\$1,800	-\$2,200
30	\$4,000	\$2,490	-\$1,510
50	\$4,000	\$3,216	-\$784
75	\$4,000	\$3,975	-\$25
76	\$4,000	\$4,008	\$8
90	\$4,000	\$4,470	\$470
110	\$4,000	\$5,130	\$1,130
130	\$4,000	\$5,790	\$1,790

150	\$4,000	\$6,450	\$2,450
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All projects that are permitted after the effective date of the proposed regulation would be assessed an annual permit maintenance fee. No maintenance fee would be assessed for projects that were permitted prior to the effective date of the proposed amendments. The initial annual permit maintenance fee would be comprised of a base fee of \$500 plus \$15 per MW of the project. Maintenance fees would be adjusted annually based on the Consumer Price Index. Table 5 shows what the annual permit maintenance fees would be for the first year for a sample of megawatt levels.

Table 5: Annual Permit Maintenance Fee (First Year)

Megawatts	Fee	Megawatts	Fee
10	\$650	90	\$1,850
30	\$950	110	\$2,150
50	\$1,250	130	\$2,450
70	\$1,550	150	\$2,750

It appears that the higher fees are necessary to maintain the small solar project PBR program that ensures protection of existing environmental and historic resources, while permitting the construction and operation of clean energy projects. It is possible that the proposed higher application fees and new NOI and annual permit maintenance fees could potentially discourage some developers from pursuing some solar projects that would have been pursued under the current fee structure, or reduce their electricity generating rated capacity to less than or equal to five MW to avoid owing any fee, or choose to pursue the project in a different state. Alternatively, some developers may decide that with the proposed higher fees that applying for a permit through SCC may be preferable despite the advantage of the guaranteed 90-day determination. SCC does not assess permitting fees for solar projects.⁹

Ecological Cores.

Adverse Impact and Mitigation: The Department of Conservation and Recreation (DCR) and the Department of Forestry have indicated that the impact to forest lands from proposed solar projects, particularly projects east of I-95 that have a greater impact to the Bay watershed are of vital importance both from an environmental and economic perspective and should be assessed during the project development process. The Virginia Natural Heritage Program in DCR has developed a network of natural lands for the Commonwealth. This project, named the Virginia Natural Landscape Assessment (VaNLA), is a landscape-scale geospatial analysis used for identifying, prioritizing, and linking natural lands in Virginia. Using land cover data derived

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from satellite imagery, the VaNLA identifies large patches of natural land with at least 100 acres of interior cover. This interior cover, known as core area, begins 100 meters from patch edges. Small patches with 10 to 99 acres of interior cover are included as habitat fragments that support landscape corridors and that may be important in localities with few large patches of natural land.

Core areas and habitat fragments are referred to collectively as "ecological cores." Although the VaNLA is predominantly an analysis of forests, ecological cores include marshes, dunes, and beaches where these covers are abundant and exceed minimum size requirements. Over 50 attributes are assigned to the ecological cores providing information about rare species and habitats, environmental diversity, species diversity, patch characteristics, patch context, and water quality benefits. The ecological cores ranked highest for these attributes are called C1 and C2.

DEQ proposes to require that for applications submitted more than 12 months after the effective date of the proposed regulation, that the application include a preconstruction desktop survey of VaNLA ecological cores within the disturbance zone conducted within six months prior to the date of the application submittal. DCR could do this work for the applicant at a charge. According to DCR, depending on the complexity of the project, analysis, review, and recommendations would take an estimated four to eight hours, and in some cases more time. The cost to the applicant for DCR staff time would be \$60 per hour. Thus, the cost would be approximated \$240 to \$480 per project application.

If it is determined that ecological cores ranked C1 or C2 occur within the disturbance zone, significant adverse impacts will be deemed likely. The applicant, if he chooses to go forward using that specific plot of land, would be required to prepare a mitigation plan. The proposed regulation specifies that mitigation measures for significant adverse impacts to natural heritage resources described in VaNLA ecological cores shall include all reasonable measures to avoid and minimize significant adverse impacts. The applicant shall demonstrate in their mitigation plan what significant adverse impacts cannot practicably be avoided and why additional proposed actions are reasonable. Additional proposed actions shall include practices to minimize or offset significant adverse impact through activities to protect, restore or enhance the affected or similar resource. DCR's three suggested mitigation activities to be used when C1 and C2 cores cannot be avoided are: afforestation (restoration), avoided deforestation (preservation), and forest enhancement.

Afforestation (restoration) consists of converting open land to forest by planting native trees appropriate for the ecoregion in which the impact being mitigated for occurred. This activity offsets the forest conversion that occurs in the project footprint by creating additional forestland. The planted acres should be protected from conversion to any other land use in perpetuity

through the use of a protective instrument that overlays the mitigation acreage.

Avoided deforestation (preservation) consists of permanently protecting existing forested habitat on private lands from conversion to other land uses. This activity offsets clearing and fragmentation impacts by ensuring that other nearby forestland that could otherwise be at risk of conversion will be maintained in forestland in perpetuity. As with afforestation acres, this mitigation activity requires that a perpetually protective instrument overlay the mitigation acreage. These protected forest acres remain as forest, although harvesting timber may be allowed as long as the harvested area is allowed to regrow as forest or is replanted.

Forest enhancement consists of implementing appropriate silvicultural practices that result in the improvement of ecological functions of forests on public and private lands. This mitigation activity offsets fragmentation impacts by increasing the ecological integrity of nearby forests. The forest improvement achieved should persist for a "significant period of time" or until the lift in ecological value is sustainable with little or no management.

Mitigation costs would vary greatly on a project by project basis depending on the project size, project location, ecological cores impacts, etc. DCR has estimated mitigation costs using afforestation, avoided deforestation, and forest enhancement for four different examples with different attributes. With these four examples, DCR found total mitigation costs of \$45,131, \$121,288, \$459,319, and \$701,194 respectively. The variance in mitigation cost appears to depend upon the number of acres in each affected core, whether the impacts were direct or indirect, and whether the affected area was in the interior or exterior part of a core. Alternatively, if the project could be located on land without C1 or C2 cores, these specific costs could be avoided.

Threatened and Endangered Insects.

Adverse Impact and Mitigation: The current and proposed regulations both state that DEQ shall find that significant adverse impacts to wildlife are likely whenever state-listed threatened and endangered (T&E) wildlife are found to occur within the disturbance zone. However, the current regulation excludes T&E insects from the T&E wildlife definition. The agency proposes to expand this, by specifying that 12 months after the effective date of the proposed regulation, T&E insect species would also be considered T&E wildlife. Thus, for applications submitted 12 months after the effective date of the proposed regulation, the presence of T&E insects in the disturbance zone would trigger the determination that adverse impacts to wildlife are likely.

Both the current and proposed regulations state that for state-listed T&E wildlife, the applicant shall take all reasonable measures to avoid significant adverse impacts or shall demonstrate in the mitigation plan what significant adverse impacts cannot practicably be avoided and why additional proposed actions are reasonable. These additional proposed

actions may include best practices to avoid, minimize, or offset adverse impacts. An estimate of the cost of taking such actions for mitigation is not currently available.

Pollinator/Bird Habitat Scorecard: DEQ and DCR have developed a program to encourage pollinator-friendly solar energy developments throughout the Commonwealth. The program is referred to as the Virginia Pollinator-Smart Solar Industry (paraphrased hereafter as "Pollinator-Smart program"). A Pollinator-Smart solar facility is one that meets performance standards outlined in the most current release of the Virginia Pollinator Smart/Bird Habitat Scorecard (Scorecard). Solar sites that meet the minimum requirement of 80 points on the Scorecard are considered "Certified Virginia Pollinator-Smart," those that score 100 or more points are considered "Gold Certified Virginia Pollinator-Smart." The scorecard can be viewed at the following URL: <https://www.dcr.virginia.gov/natural-heritage/document/solar-site-pollinator-bird-habitat-scorecard-a-new.pdf>. The majority of points on the scorecard result from planting pollinator-friendly plants.

DEQ proposes to require that the applicant submit a completed scorecard with the application. The agency believes it would take approximately 45 minutes for the applicant to complete. Certification would not be required, and a low score would not prompt mitigation. DEQ believes that many applicants would seek to have a high score because it would be good for public relations. Additionally, a paper¹⁰ from Yale University Center for Business and the Environment finds that that pollinator-friendly solar may generate private benefits to solar developers that justify its adoption without policy intervention. These benefits largely flow from higher energy output, from panel efficiency gains attributed to the cooler microclimate created by perennial plantings. A small added benefit accrues from the lower operations and maintenance costs over the project lifetime thanks to the reduced frequency of mowing for native pollinator-friendly plants as compared to turfgrass. By requiring that the scorecard be completed, with greater possibility that developers learn about the potential benefits to their business as well as the environment, applicants may be more likely to pursue a pollinator-friendly project.

The Yale study also points out that pollinator-friendly solar results in positive externalities such as more groundwater recharge and a greater reduction in soil erosion than conventional solar. Additionally, pollinator-friendly solar contributes another sizable social benefit in the form of increased crop yields when projects are sited near pollinator-dependent farmland.

Historic Resources: The existing and proposed regulations both require that the applicant conduct an architectural field survey of all architectural resources, including cultural landscapes 50 years of age or older within the disturbance zone and within one-half mile of the disturbance zone boundary, and an evaluation of the eligibility of any identified resource for listing in the Virginia Landmarks Register. Practically

speaking, this may be conducted by an outside firm with relevant expertise.

DEQ proposes to state in the proposed regulation that the architectural survey area may be refined by the applicant based on an analysis to exclude areas that have no direct view to the project. This could save expenditures for the applicant. According to DHR, the cost savings for refining the study area would be highly variable depending on the population density of the area (and number of associated buildings and structures) and degree to which the study area can be refined. DHR expects average savings to be in the single-digit thousands of dollars.

The existing and proposed regulations both require that the applicant conduct an archaeological field survey of the disturbance zone and an evaluation of the eligibility of any identified archaeological site for listing in the Virginia Landmarks Register. This may also be conducted by an outside firm with relevant expertise.

DEQ proposes to state in the proposed regulation that to streamline archaeological investigations, the survey may be guided by a research design that utilizes a probability assessment or predictive modeling. Such a research design shall be approved by DEQ and DHR for use in the project prior to conducting the fieldwork. This would also potentially reduce expenditures for the applicant. DHR points out that the cost-savings would be highly variable depending on the existing conditions, site probability, and degree to which the study area can be refined. DHR expects savings to be in the high single-digit thousands to low tens of thousands of dollars.

The current regulation allows that as an alternative to performing this archaeological survey, the applicant may make a demonstration to DEQ that the project will utilize nonpenetrating footings technology and that any necessary grading of the site prior to construction does not have the potential to adversely impact any archaeological resource. According to DEQ, this approach could still result in significant negative impacts to cultural resources. In practice there have been lengthy delays in permitting due to incomplete mitigation plans for cultural resources when this approach has been followed. Consequently, the agency proposes to eliminate this option.

All of the proposed amendments in this section only apply to applications submitted more than 12 months after the effective date of the proposed regulation.

Timeframes: According to DEQ, the absence of certain timeframes within the regulation has been problematic. The agency proposes to establish several new timeframes, including adding that the authorization to construct and operate shall become invalid if (i) a program of continuous construction or modification is not begun within 60 months from the date the PBR or modification authorization is issued or (ii) a program of construction or modification is discontinued for a period of 24 months or more, except for a DEQ-approved period between phases of a phased

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construction project. With large gaps in time between analyses and construction, conditions on the ground may have significantly changed and the analysis may no longer be accurate. If authorization is deemed invalid, new fees and application documents would have to be submitted if the developer did eventually decide to pursue the project.

Under the current regulation, reporting change of ownership must be done at least 30 days prior to the change. According to the agency, industry has indicated that it is difficult to predict ownership transactions prior to the actual date and requested that notification occur after the transaction was complete. Since DEQ has no objection to receiving the information shortly afterwards, it proposes to change the requirement to within 30 days. This would make reporting easier for the applicant.

Developers are currently required to submit post-construction site maps, but no deadline is indicated. With no deadline, DEQ has had problems enforcing their submission, which hinders their ability to ensure good practices. The agency proposes to require that the post-construction site maps be submitted within six months from the beginning of operation.

For applications submitted more than 12 months after the effective date of the proposed regulation, DEQ proposes to require that DHR provide comments on a complete historical resource analysis within 30 days. If it does not, the applicant may assume DHR concurrence with the recommendations of the study or analysis and proceed accordingly. This is beneficial for applicants and DHR does not object.

Projects with Reduced Requirements: DEQ proposes to clarify that projects proposed for previously disturbed land or brownfields that do not impact more than 10 acres, regardless of megawatt capacity, must only notify DEQ and submit a certification by the governing body of the locality or localities wherein the project will be located that the project complies with all applicable land use ordinances. These projects would not be subject to any other requirements of the regulation. DEQ reports that this approach is currently allowed but is not clearly delineated in the existing regulation. Therefore, to the extent that the availability of this approach has not been widely known, this proposed amendment may encourage development on previously disturbed land, protecting additional forest lands or prime agricultural land.

DEQ also proposes to increase the maximum rated capacity where the applicant is not required to submit any notification or certification to the department from 500 KW to one MW. According to the agency, this proposed amendment is at the request of the Department of Mines, Minerals and Energy to align with the nonresidential net metering requirements. This would moderately reduce costs for projects with capacity greater than 500 KW and less than or equal to one MW.

Businesses and Other Entities Affected. Solar project developers who submit applications more than 12 months after the effective date of the proposed regulation are likely to be most affected by the proposed regulation since some of the

proposed amendments only apply for this category of developer. Solar developers that submit applications after the effective date of the proposed regulation but before 12 months after the effective date would not be subject to some proposed changes such as required mitigation for the presence C1 or C2 cores or T&E insects in the disturbance zone, but they would be subject to other amendments, including the new fee structure. Solar projects permitted prior to the effective date of the proposed regulation would not be subject to most of the proposed amendments but would be subject to some, such as the proposed new modification fee and change in deadline to report change in ownership. According to DEQ, there are 63 projects that have active notices of intent to submit the documentation for a PBR.

Firms involved in the manufacture or distribution of solar equipment, consultants involved in environmental assessments or cultural resource evaluations, businesses that help with mitigation, sellers of installers of pollinator-friendly plants, and other ancillary businesses affiliated with the solar industry (such as law firms, etc.) may also be affected the proposed regulation.

Small Businesses Affected.

Types and Estimated Number of Small Businesses Affected: Many of the firms described likely qualify as small businesses, but DEQ does not have an estimated number.¹¹

Costs and Other Effects. The proposals to restructure fees and require mitigation for projects that would go forward on land containing C1 and C2 and T&E insects may increase costs for some small solar project developers. In contrast, the proposals to allow the architectural survey area to be refined by the applicant based on an analysis to exclude areas that have no direct view and to allow the archaeological survey to be guided by a research design that utilizes a probability assessment or predictive modeling would likely reduce cost for small solar project developers.

The proposal to require mitigation for projects that would go forward on land containing C1 and C2 and T&E insects may increase revenue for some small firms that provide related services.

Alternative Method that Minimizes Adverse Impact. There are no clear alternative methods that both reduce adverse impact and meet the intended policy goals.

Localities¹² Affected.¹³ There are NOIs, applications, or permits for solar PBR projects in essentially all regions of the Commonwealth. Thus, all localities appear to be potentially affected. Localities that disproportionately have ecological cores C1 or C2 or T&E insects may be particularly affected by the proposed requirement for mitigation for projects that would go forward on land containing C1 and C2 and T&E insects, respectively. Unless a local government itself were to choose to develop a solar energy project, the proposed amendments would not likely affect their costs.

Projected Impact on Employment. It is not clear whether the proposed amendments in net would substantively affect total

employment. It is possible that the proposed higher application fees and new NOI and annual permit maintenance fees, combined with new mitigation requirements for areas with ecological cores C1 or C2 or T&E insects, could potentially discourage some developers from pursuing some solar projects that would have been pursued under the current regulation or choose to pursue the project in a different state. There are some proposals that would reduce cost, such as the lower-cost historical resource surveys, but these lower costs would not likely fully offset the other cost increases. If the net increase in costs were to substantially decrease the establishment of new solar projects, then there would be some reduced employment compared to what otherwise would have occurred.

Effects on the Use and Value of Private Property. The proposals in net appear to increase the cost of developing real estate for the purpose of creating and operating solar energy projects with electricity generating rated capacity greater than five MW and equal or less than 150 MW. This may in some cases discourage such development.

¹See Chapter 808: <https://lis.virginia.gov/cgi-bin/legp604.exe?091 ful CHAP0808 hil>

²See Chapter 368 <https://lis.virginia.gov/cgi-bin/legp604.exe?171 ful CHAP0368 hil>

³Source: DEQ

⁴Disturbance zone is defined as "the area within the site directly impacted by land-disturbing activity including construction and operation of the solar energy project and 100 feet from the boundary of the directly impacted area."

⁵Photovoltaic is defined as "materials and devices that absorb sunlight and convert it directly into electricity by semiconductors."

⁶Projects with capacity of 5 MW or less are not assessed any fees in both the current and proposed regulations.

⁷Only includes application fee since there is no NOI fee in the current regulation.

⁸Includes NOI fee; does not include incomplete fee.

⁹Source: SCC

¹⁰See <https://cbey.yale.edu/research/maximizing-land-use-benefits-from-utility-scale-solar>

¹¹Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million."

¹²"Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

¹³§ 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

Agency's Response to Economic Impact Analysis: The Department of Environmental Quality has reviewed the economic impact analysis prepared by the Department of Planning and Budget and has no comment.

Summary:

The proposed amendments (i) clarify specific definitions, (ii) establish clear timeframes for data submittals and

recordkeeping activities, (iii) clarify requirements for natural and cultural resource studies, (iv) clarify the public participation procedures, and (v) adjust the fee structure to adequately fund the program.

9VAC15-60-10. Definitions.

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

"Applicant" means the developer, owner, or operator who submits an application to the department for a permit by rule pursuant to this chapter.

"Archaeological field survey" means systematic identification-level archaeological investigations as described in DHR's guidelines for conducting historic resources survey within the project area and submission of necessary documentation to DHR with recommendations on eligibility of identified resources for listing in the Virginia Landmarks Register and National Register of Historic Places.

"Architectural field survey" means comprehensive, reconnaissance-level documentation as described in DHR's guidelines for conducting historic resources survey of all standing buildings or structures 50 years of age or older within the project area and surrounding areas with a view to the project and submission of necessary documentation to DHR with recommendations on eligibility of identified resources for listing in the Virginia Landmarks Register and National Register of Historic Places.

"Archive search" means a search of DHR's cultural resource inventory for the presence of previously recorded archaeological sites and for architectural structures and districts.

"Begin commercial operation" means to have begun to generate electricity for sale, excluding the sale of test generation.

"Begin construction" means a continuous program of construction or land-disturbing activity necessary to construct a small solar energy project.

"Coastal Avian Protection Zones" or "CAPZ" means the areas designated on the map of "Coastal Avian Protection Zones" generated on the department's Coastal GEMS geospatial data system (9VAC15-60-120 C 1).

"Complete application" means an application the department has determined meets the requirements of this chapter.

"Concentrating photovoltaics" or "CPV" means PV systems with equipment to focus or direct sunlight on the PV cells. For purposes of this chapter, CPV is included in the definition of PV.

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

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"Department" means the Department of Environmental Quality, its director, or the director's designee.

"DCR" means the Department of Conservation and Recreation.

"DCR Virginia Solar Site Pollinator/Bird Habitat Scorecard" or "DCR Scorecard" means assessment tool used to establish target conditions for pollinator friendly habitat.

~~"DGIF" means the Department of Game and Inland Fisheries.~~

"DHR" means the Department of Historic Resources.

"Disturbance zone" means the area within the site directly impacted by land-disturbing activity, including construction and operation of the small solar energy project and within and 100 feet of from the boundary of the directly impacted area. For purposes of the DCR Virginia Solar Site Pollinator/Bird Habitat Scorecard, the disturbance zone shall include the panel zones, open areas, and screening zones of the project.

"Document certification" means the following statement signed by the responsible official or person and submitted to the department with the application documents for a permit by rule. This certification also applies to all supplemental information provided to the department after the initial application submittal:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering and evaluating the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there may be significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

"DWR" means the Department of Wildlife Resources.

"Historic resource" means any prehistoric or historic district, site, building, structure, object, or cultural landscape that is included or meets the criteria necessary for inclusion in the Virginia Landmarks Register pursuant to the authorities of § 10.1-2205 of the Code of Virginia and in accordance with 17VAC5-30-40 through 17VAC5-30-70.

"Integrated PV" means photovoltaics incorporated into building materials, such as shingles.

"Interconnection point" means the point or points where the solar energy project connects to a project substation for transmission to the electrical grid.

"Land disturbance" or "land-disturbing activity" means a manmade change to the land surface that potentially changes its runoff characteristics, including clearing, grading, or

excavation, except that the term shall not include those exemptions specified in § 62.1-44.15:34 of the Code of Virginia.

"Megawatt" or "MW" means a measurement of power; 1,000 kilowatts equals one MW.

"Natural heritage resource" means the habitat of rare, threatened, or endangered plant and animal species, rare or state significant natural communities or geologic sites, and similar features of scientific interest benefiting the welfare of the citizens of the Commonwealth.

"Notice of Intent" or "NOI" means notification, in a manner acceptable to the department, by an applicant stating intent to submit documentation for a permit under this chapter.

"Open area" means, for purposes of the DCR Virginia Solar Site Pollinator/Bird Habitat Scorecard, any area beyond the panel zone within the site boundary of a project.

"Operator" means the person responsible for the overall operation and management of a solar energy project.

"Other solar technologies" means materials or devices or methodologies of producing electricity from sunlight other than PV or CPV.

"Owner" means the person who owns all ~~or~~ a portion of, or has any property interest in a solar energy project.

"Panel zone" means, for purposes of the DCR Virginia Solar Site Pollinator/Bird Habitat Scorecard, the area underneath the solar arrays, including inter-row spacing of a disturbance zone.

"Parking lot" means an improved area, usually divided into individual spaces and covered with pavement or gravel, intended for the parking of motor vehicles.

"Permit by rule," "PBR," or "permit" means provisions of the regulations stating that a project or activity is deemed to have a permit if it meets the requirements of the provision.

"Person" means any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, county, city, town, or other political subdivision of the Commonwealth, any interstate body, or any other legal entity.

"Photovoltaic" or "PV" means materials and devices that absorb sunlight and convert it directly into electricity by semiconductors.

"Photovoltaic cell" or "PV cell" means a solid state device that converts sunlight directly into electricity. PV cells may be connected together to form PV modules, which in turn may be combined and connected to form PV arrays (often called PV panels).

"Photovoltaic system" or "PV system" means PV cells, which may be connected into one or more PV modules or arrays,

including any appurtenant wiring, electric connections, mounting hardware, power-conditioning equipment (inverter), and storage batteries.

"Preconstruction" means any time prior to ~~commencing land-clearing operations~~ beginning land-disturbing activities necessary for the installation of energy-generating structures at the ~~small solar energy~~ project.

"Previously disturbed or repurposed areas" means the land area within the property boundary of industrial or commercial properties, including brownfields, or previously mined areas. It does not include active or fallow agricultural land or silvicultural land-use.

"Rated capacity" means the maximum capacity of a small solar energy project based on Photovoltaic USA Test Conditions (PVUSA Test Conditions) rating, measured in MW.

"Responsible person" means:

1. For a corporation or limited liability company, a president, secretary, treasurer, or vice-president in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation or limited liability company or is subject to Title 13.1 of the Code of Virginia;
2. For partnership or sole proprietorship, a general partner or the proprietor, respectively; and
3. For a local government entity subject to Title 15.2 of the Code of Virginia or state, federal, or other public agency, either a principal executive officer or ranking elected official.

"Screening zone" means, for purposes of the DCR Virginia Solar Site Pollinator/Bird Habitat Scorecard, a vegetated visual barrier.

"Site" means the area ~~containing of a solar energy~~ project that is under common ownership or operating control. Electrical infrastructure and other appurtenant structures up to the interconnection point shall be considered to be within the site.

"Small renewable energy project" means (i) an electrical generation facility with a rated capacity not exceeding 150 ~~megawatts~~ MW that generates electricity only from sunlight or wind; (ii) an electrical generation facility with a rated capacity not exceeding 100 ~~megawatts~~ MW that generates electricity only from falling water, wave motion, tides, or geothermal power; or (iii) an electrical generation facility with a rated capacity not exceeding 20 ~~megawatts~~ MW that generates electricity only from biomass, energy from waste, or municipal solid waste.

"Small solar energy project," ~~"solar energy project,"~~ or "project" means a small renewable energy project that (i) generates electricity from sunlight, consisting of one or more PV systems and other appurtenant structures and facilities

within the boundaries of the site; and (ii) is designed for, or capable of, operation at a rated capacity equal to or less than 150 ~~megawatts~~ MW. Two or more solar energy projects otherwise spatially separated but under common ownership or operational control, which are connected to the electrical grid under a single interconnection agreement, shall be considered a single solar energy project. Nothing in this definition shall imply that a permit by rule is required for the construction of test structures to determine the appropriateness of a site for the development of a solar energy project.

~~"T&E," "state threatened or endangered species," or "state-listed species" means: any wildlife species designated as a Virginia endangered or threatened species by DGIF pursuant to the §§ 29.1-563 through 29.1-570 of the Code of Virginia and 4VAC15-20-130.~~

"Virginia Pollinator Protection Strategy" means a statewide strategy pursuant to § 3.2-108.1 of the Code of Virginia.

"Virginia Natural Landscape Assessment Ecological Cores" means large patches of natural land with at least 100 contiguous acres of interior, which begins 100 meters inward from the nearest edge between natural and unnatural land covers identified by DCR.

"VLR" means the Virginia Landmarks Register (~~9VAC15-60-120-B-1~~).

"VLR-eligible" means those historic resources that meet the criteria necessary for inclusion on the VLR pursuant to 17VAC5-30-40 through 17VAC5-30-70 but are not listed in VLR.

"VLR-listed" means those historic resources that have been listed in the VLR in accordance with the criteria of 17VAC5-30-40 through 17VAC5-30-70.

~~"Wildlife" means wild animals; except, however, that T&E insect species shall only be addressed as part of natural heritage resources and shall not be considered T&E wildlife.~~

9VAC15-60-20. Authority and applicability Applicability.

~~A. This regulation is issued under authority of Article 5 (§ 10.1-1197.5 et seq.) of Chapter 11.1 of Title 10.1 of the Code of Virginia. The regulation contains requirements for solar powered electric generation projects consisting of PV systems and associated facilities with a single interconnection to the electrical grid that are designed for, or capable of, operation at a rated capacity equal to or less than 150 megawatts. This chapter applies throughout the Commonwealth of Virginia. Nothing in this chapter shall be interpreted to affect the rights of a private property owner.~~

B. The department has determined that a permit by rule is required for small solar energy projects with a rated capacity greater than five megawatts and a disturbance zone greater than 10 acres, provided that the projects do not otherwise meet the criteria for Part III (9VAC15-60-130) of this chapter, and this

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regulation contains the permit by rule provisions for these projects in Part II (9VAC15-60-30 et seq.) of this chapter.

C. The department has determined that different provisions should apply to projects that meet the criteria as set forth in Part III (9VAC15-60-130) of this chapter, and this regulation contains the requirements, if any, for these projects in Part III (9VAC15-60-130 A, ~~B~~, and ~~B~~) C) of this chapter. Projects that meet the criteria for Part III of this chapter are deemed to be covered by the permit by rule.

D. The department has determined that small renewable energy projects utilizing other solar technologies shall fulfill all of the requirements in 9VAC15-40 as prescribed for small wind energy projects, unless (i) the owner or operator of the proposed project presents to the department information indicating that the other solar technology presents no greater likelihood of significant adverse impacts to natural resources than does PV technology and (ii) the department determines that it is appropriate for the proposed project utilizing the other solar technology to meet the requirements of this chapter or of some modification to either 9VAC15-40 or this chapter, as prescribed by the department for that particular project.

9VAC15-60-30. Application for permit by rule for small solar energy projects with rated capacity greater than five megawatts MW and disturbance zone greater than 10 acres.

A. ~~The owner or operator of~~ The application for a small solar energy project with a rated capacity greater than five megawatts and a disturbance zone greater than 10 acres, provided that the project does not otherwise meet the criteria for Part III (9VAC15-60-130 A, ~~B~~, and ~~B~~) C) of this chapter, shall ~~submit to the department a complete application in which he satisfactorily accomplishes~~ contain all of the following:

1. ~~In accordance with § 10.1-1197.6 B 1 of the Code of Virginia, and as early in the project development process as practicable, furnishes to the department a notice of intent, to be published in the Virginia Register, that he intends to submit the necessary documentation for a permit by rule for a small renewable energy project; A NOI to submit the necessary documentation for a permit by rule, to be published in the Virginia Register.~~

a. The applicant shall submit the NOI in a form approved by the department along with the appropriate fee pursuant to 9VAC15-60-110.

(1) The initial NOI shall be submitted to the department as early in the project development process as practicable, but at least 90 days prior to the start of the public comment period required under 9VAC15-60-90.

(2) The NOI shall be submitted to the chief administrative officer and chief elected official of the locality in which the project is proposed to be located the same time the notice is submitted to the department.

b. The NOI shall expire if no application has been submitted within 48 months from the NOI submittal date unless the department receives a written request for extension prior to the NOI expiration date.

(1) A NOI extension may be granted for an additional 36 months at which time the NOI shall expire.

(2) A new NOI and appropriate fee shall be required for any project to be permitted under the PBR for which a NOI has expired.

c. An applicant seeking changes for a project that results in an increase of MW or acreage shall submit a new NOI using the appropriate form. No additional fee shall be assessed.

d. NOI change of operator, ownership, or controlling interest for a project shall require a notification to the department within 30 days of the transfer. No additional fee shall be assessed.

(1) The original applicant shall notify the department of the change by withdrawing the initial NOI in a form acceptable to the department.

(2) The new applicant shall submit a NOI in a form acceptable to the department.

(3) The department shall not consider the change of operator, ownership, or controlling interest for a project effective until the department receives notification from both the original applicant and the new applicant.

2. ~~In accordance with § 10.1-1197.6 B 2 of the Code of Virginia, furnishes to the department a~~ A certification by the governing body of the locality ~~or localities~~ wherein the small renewable energy project will be located that the project complies with all applicable land use ordinances;.

3. ~~In accordance with § 10.1-1197.6 B 3 of the Code of Virginia, furnishes to the department copies~~ Copies of all interconnection studies undertaken by the regional transmission organization or transmission owner, or both, on behalf of the ~~small renewable energy~~ project;.

4. ~~In accordance with § 10.1-1197.6 B 4 of the Code of Virginia, furnishes to the department a~~ A copy of the final interconnection agreement between the ~~small renewable energy~~ project and the regional transmission organization or transmission owner indicating that the connection of the ~~small renewable energy~~ project will not cause a reliability problem for the system.

a. If the final agreement is not available, the most recent interconnection study shall be sufficient for the purposes of this section.

~~When a final interconnection agreement is complete, it~~ b. The final agreement shall be provided to the department within 30 days of the date of execution.

c. The department shall forward a copy of the agreement or study to the State Corporation Commission;.

5. ~~In accordance with § 10.1-1197.6 B 5 of the Code of Virginia, furnishes to the department a A certification signed and stamped by a professional engineer licensed in Virginia that the maximum generation capacity of the ~~small solar energy~~ project, as designed, does not exceed 150 megawatts; MW.~~

6. ~~In accordance with § 10.1-1197.6 B 6 of the Code of Virginia, furnishes to the department an An analysis of potential environmental impacts of the ~~small renewable energy~~ project's operations on attainment of national ambient air quality standards;~~

7. ~~In accordance with § 10.1-1197.6 B 7 of the Code of Virginia, furnishes to the department, where relevant, an An analysis of the beneficial and adverse impacts of the proposed project on natural resources. ~~The owner or operator shall perform the analyses prescribed in pursuant to 9VAC15-60-40 or 9VAC15-60-45, as applicable.~~ For wildlife, that analysis shall be based on information on the presence, activity, and migratory behavior of wildlife to be collected at the site for a period of time dictated by the site conditions and biology of the wildlife being studied, not exceeding 12 months;~~

8. ~~In accordance with § 10.1-1197.6 B 8 of the Code of Virginia, furnishes to the department a A mitigation plan pursuant to 9VAC15-60-60 that details reasonable actions to be taken by the owner or operator to avoid, minimize, or otherwise mitigate such impacts, and to measure the efficacy of those actions; provided, however, that the provisions of this subdivision shall only be required if the department determines, pursuant to 9VAC15-60-50, that the information collected pursuant to § 10.1-1197.6 B 7 of the Code of Virginia and 9VAC15-60-40 indicates that significant adverse impacts to wildlife or historic resources are likely. ~~The mitigation plan shall be an addendum to the operating plan of the solar energy project, and the owner or operator shall implement the mitigation plan as deemed complete and adequate by the department. The mitigation plan shall be an enforceable part of the permit by rule; or 9VAC15-60-65, as applicable, if a determination of likely significant adverse impacts has been made according to 9VAC15-60-50 or 9VAC15-60-55, as applicable.~~~~

The plan shall detail actions necessary to avoid, minimize, or otherwise mitigate such impacts, and to measure the efficacy of those actions.

9. ~~In accordance with § 10.1-1197.6 B 9 of the Code of Virginia, furnishes to the department a A certification signed and stamped by a professional engineer licensed in Virginia that the project is designed in accordance with 9VAC15-60-80;~~

10. ~~In accordance with § 10.1-1197.6 B 10 of the Code of Virginia, furnishes to the department an An operating plan that includes a description of how the project will be~~

~~operated in compliance with its mitigation plan, if such a mitigation plan is required pursuant to 9VAC15-60-50; and any mitigation plan required due to findings under 9VAC15-60-50 or 9VAC15-60-55, as applicable.~~

11. ~~In accordance with § 10.1-1197.6 B 11 of the Code of Virginia, furnishes to the department a A detailed site plan meeting the requirements of 9VAC15-60-70;~~

12. ~~In accordance with § 10.1-1197.6 B 12 of the Code of Virginia, furnishes to the department a A certification signed by the applicant that the ~~small solar energy~~ project has registered or applied for or obtained all necessary environmental permits;~~

13. ~~In accordance with § 10.1-1197.6 H and I of the Code of Virginia, furnishes to the department a A certification signed by the applicant that the ~~small solar energy~~ project is being proposed, developed, constructed, or purchased by a person that is not a utility regulated pursuant to Title 56 of the Code of Virginia or provides certification that (i) the project's costs are not recovered from Virginia jurisdictional customers under base rates, a fuel factor charge, or a rate adjustment clause, or (ii) the applicant is a utility aggregation cooperative formed under Article 2 (§ 56-231.38 et seq.) of Chapter 9.1 of Title 56 of the Code of Virginia;~~

14. ~~Prior to authorization of the project and in accordance with § 10.1-1197.6 B 13 and B 14 of the Code of Virginia, conducts a A summary report of the 30-day public review and comment period and holds a public meeting conducted pursuant to 9VAC15-60-90. ~~The public meeting shall be held in the locality or, if the project is located in more than one locality, in a place proximate to the location of the proposed project. Following the public meeting and public comment period, the applicant shall prepare a report summarizing, including a summary of the issues raised by the public and include any written comments received and the applicant's response to those comments. The report shall be provided to the department as part of this application; and~~~~

15. ~~In accordance with 9VAC15-60-110, furnishes to the department the The appropriate fee fees pursuant to 9VAC15-60-110.~~

B. Within 90 days of receiving all of the required documents and fees listed in subsection A of this section, the department shall determine, after consultation with other agencies in the Secretariat of Natural Resources, whether the application is complete and whether it adequately meets the requirements of this chapter pursuant to § 10.1-1197.7 A of the Code of Virginia. An applicant seeking a PBR under this part shall submit the following:

1. All items identified in subsection A of this section submitted in a format acceptable to the department and all applicable fees pursuant to 9VAC15-60-110.

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2. A cover letter submitted with the application that contains the following:

a. Document certification signed by a responsible person that contains the following statement:

"I certify under penalty of law that this application document and all attachments were prepared under my direction or supervision in accordance with a system designed to ensure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering and evaluating the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there may be significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

b. The name and contact information of the responsible person signing the document certification required under subdivision 2 a of this subsection; and

c. The name and contact information of the responsible person to receive the permit authorization.

C. Within 90 days of receiving all of the required documents and fees listed in subsection A of this section, the department shall, after consultation with DCR, DHR, and DWR, form a determination that an application is administratively complete or incomplete.

1. If the department determines that the application meets the requirements of this chapter, ~~then~~ the department shall form a determination that an application is administratively complete and notify the applicant responsible person in writing that he is authorized to construct and operate a ~~small solar energy~~ the project pursuant to this chapter.

a. The authorization to construct and operate shall become invalid if (i) a program of continuous construction or modification is not begun within 60 months from the date the PBR or modification authorization is issued or (ii) a program of construction or modification is discontinued for a period of 24 months or more, except for a department-approved period between phases of a phased construction project.

b. The department may grant an extension on a case-by-case basis.

c. Any project for which the PBR or modification authorization has been deemed invalid will require a new NOI, application documents and appropriate fees to reactivate authorization.

2. If the department determines that the application does not meet the requirements of this chapter, ~~then~~ the department shall form a determination that an application is administratively incomplete and notify the applicant in writing and specify the deficiencies.

3. If the applicant chooses to correct deficiencies in a ~~previously submitted an incomplete~~ application, (i) the applicant shall notify the department within 30 days of an incomplete notification, (ii) the department shall follow the procedures of this subsection, and (iii) the department shall notify the applicant within 60 days whether the ~~revised application~~ supplemental information meets the requirements of this chapter ~~within 60 days of receiving the revised application.~~

4. Any case decision by the department pursuant to this subsection shall be subject to the process and appeal provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

9VAC15-60-40. Analysis of the beneficial and adverse impacts on natural resources for applications submitted prior to (12 months after the effective date of the amendments).

A. Analyses of wildlife. To fulfill the requirements of § 10.1-1197.6 B 7 of the Code of Virginia, the applicant shall conduct preconstruction wildlife analyses. The analyses of wildlife shall include the following: This section applies to all applications submitted prior to (12 months after the effective date of the amendments). For purposes of this section, 9VAC15-60-50, and 9VAC15-60-60, the definition of:

1. "T&E," "state threatened or endangered species," or "state-listed species" means any wildlife species designated as a Virginia endangered or threatened species by DWR pursuant to the §§ 29.1-563 through 29.1-570 of the Code of Virginia and 4VAC15-20-130.

2. "Wildlife" means wild animals; except, however, that T&E insect species shall only be addressed as part of natural heritage resources and shall not be considered T&E wildlife.

B. The applicant shall conduct preconstruction wildlife analyses. The analyses of wildlife shall include the following:

1. Desktop surveys and maps. The applicant shall obtain a wildlife report and map generated from ~~DGIF's~~ DWR's Virginia Fish and Wildlife Information Service web-based application (9VAC15-60-120 C 3) or from a data and mapping system including the most recent data available from ~~DGIF's~~ DWR's subscriber-based Wildlife Environmental Review Map Service of the following: (i) known wildlife species and habitat features on the site or within two miles of the boundary of the site and (ii) known or potential sea turtle nesting beaches located within one-half mile of the disturbance zone.

2. Desktop map for avian resources in Coastal Avian Protection Zones (CAPZ). The applicant shall consult the "Coastal Avian Protection Zones" map generated on the department's Coastal GEMS geospatial data system (9VAC15-60-120 C 1) and determine whether the proposed

solar energy project site will be located in part or in whole within one or more CAPZ.

~~B. Analyses of historic resources. To fulfill the requirements of § 10.1-1197.6 B 7 of the Code of Virginia, the~~ C. The applicant shall also conduct a preconstruction historic resources analysis. The analysis shall be conducted by a qualified professional meeting the professional qualification standards of the Secretary of the Interior's Standards for Archeology and Historic Preservation (9VAC15-60-120 B 2) in the appropriate discipline. The analysis shall include each of the following:

1. Compilation of known historic resources. The applicant shall gather information on known historic resources within the disturbance zone and within one-half mile of the disturbance zone boundary and present this information on the context map referenced in 9VAC15-60-70 B, or as an overlay to this context map, as well as in tabular format.

2. Architectural survey. The applicant shall conduct a field survey of all architectural resources, including cultural landscapes, 50 years of age or older within the disturbance zone and within one-half mile of the disturbance zone boundary and evaluate the eligibility of any identified resource for listing in the VLR.

3. Archaeological survey. The applicant shall conduct an archaeological field survey of the disturbance zone and evaluate the eligibility of any identified archaeological site for listing in the VLR. As an alternative to performing this archaeological survey, the applicant may make a demonstration to the department that the project will utilize nonpenetrating footings technology and that any necessary grading of the site prior to construction does not have the potential to adversely impact any archaeological resource.

~~C. Analyses of other natural resources. To fulfill the requirements of § 10.1-1197.6 B 7 of the Code of Virginia, the~~ D. The applicant shall also conduct a preconstruction desktop survey of natural heritage resources within the disturbance zone.

~~D. E. Summary report. The applicant shall provide to the department a report presenting the findings of the studies and analyses conducted pursuant to subsections A B, B C, and C D of this section, along with all data and supporting documents. The applicant shall assess and describe the expected beneficial and adverse impacts, if any, of the proposed project on wildlife and historic resources identified by these studies and analyses.~~

9VAC15-60-45. Analysis of the beneficial and adverse impacts on natural resources for applications submitted after (12 months after the effective date of the amendments).

A. This section applies to applications submitted after (12 months after the effective date of the amendments). For purposes of this section, 9VAC15-60-55 and 9VAC15-60-65:

1. The definition of "T&E," "state threatened or endangered species," or "state-listed species" means (i) any wildlife species designated as a Virginia endangered or threatened species by DWR pursuant to the §§ 29.1-563 through 29.1-570 of the Code of Virginia and 4VAC15-20-130 or (ii) any species designated as a Virginia endangered or threatened species by DACS pursuant to § 3.2-1000-1100 of the Code of Virginia and 2VAC5-320-10.

2. The definition of "Wildlife" means wild animals; except, however, that T&E insect species shall be considered T&E wildlife.

B. The applicant shall conduct preconstruction wildlife analyses. The analyses of wildlife shall include the following:

1. A wildlife report and map generated either (i) from DWR's Virginia Fish and Wildlife Information Service web-based application (9VAC15-60-120 C 3) or (ii) from a data and mapping system including the most recent data available from DWR's subscriber-based Wildlife Environmental Review Map Service of the following: (a) known wildlife species and habitat features on the site or within two miles of the boundary of the site, (b) known or potential sea turtle nesting beaches located within one-half mile of the disturbance zone, and (c) desktop information for bald eagle nesting locations from the Center for Conservation Biology at the College of William and Mary.

2. Desktop map for avian resources in Coastal Avian Protection Zones (CAPZ). The applicant shall consult the "Coastal Avian Protection Zones" map generated on the department's Coastal GEMS geospatial data system (9VAC15-60-120 C 1) and determine whether the proposed project site will be located in part or in whole within one or more CAPZ.

3. The applicant shall assess and describe the expected beneficial and adverse impacts, if any, of the proposed project on wildlife identified by these studies and analyses.

C. The applicant shall perform a preconstruction historic resources analysis conducted by a qualified professional meeting the qualification standards of the Secretary of the Interior's Standards for Archeology and Historic Preservation (9VAC15-60-120 B 2) in the appropriate discipline. Any study or analysis required under this subsection submitted to DHR for review may be considered accepted by DHR if DHR does not provide comments within 30 calendar days from confirmed receipt of an analysis determined to be administratively complete. In this case, the applicant may assume DHR concurrence with the recommendations of the study or analysis and proceed accordingly. The analysis shall include each of the following:

1. Information on known historic resources within the disturbance zone and within one-half mile of the disturbance zone boundary, identified on the context map referenced in

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9VAC15-60-70 B, or as an overlay to this context map, as well as in tabular format.

2. An architectural field survey of all architectural resources, including cultural landscapes 50 years of age or older within the disturbance zone and within one-half mile of the disturbance zone boundary, and an evaluation of the eligibility of any identified resource for listing in the VLR. The architectural survey area may be refined by the applicant based on an analysis to exclude areas that have no direct view to the project. The applicant shall provide detailed justification for any changes to the survey area.

3. An archaeological field survey of the disturbance zone and an evaluation of the eligibility of any identified archaeological site for listing in the VLR. To streamline archaeological investigations, the survey may be guided by a research design that utilizes a probability assessment or predictive modeling. Such a research design shall be approved by DEQ and DHR for use in the project prior to conducting the fieldwork.

D. The applicant shall conduct a preconstruction desktop survey of natural heritage resources and Virginia Natural Lands Assessment Ecological Cores within the disturbance zone within six months prior to the date of the application submittal. The analysis shall include:

1. A report of natural heritage resources using either the DCR online information service order form or the DCR subscriber-based Natural Heritage Data Explorer web application pursuant to 9VAC15-60-120 C 2 and include the most recent data available on the following:

- a. Documented occurrences of natural heritage resources within 100 feet of the site;
- b. Intersection of the site with predicated suitable habitat (PSH) models developed by DCR for rare, threatened, and endangered species;
- c. Intersection of the site with the Virginia Natural Landscape Assessment Ecological Cores; and
- d. Onsite surveys for natural heritage resources recommended by DCR based on the analysis required under this subsection.

2. A completed DCR Virginia Solar Site Pollinator/Bird Habitat Scorecard (9VAC15-60-120 B 5).

9VAC15-60-50. Determination of likely significant adverse impacts for applications submitted prior to (12 months after the effective date of the amendments).

A. This section applies to applications submitted prior to (12 months after the effective date of the amendments).

B. The department shall find that significant adverse impacts to wildlife are likely whenever the wildlife analyses prescribed in 9VAC15-60-40 A B document that any of the following conditions exists:

1. State-listed T&E wildlife are found to occur within the disturbance zone or the disturbance zone is located on or within one-half mile of a known or potential sea turtle nesting beach.

2. The disturbance zone is located in part or in whole within zones 1, 2, 3, 4, 5, 10, 11, 12, or 14 on the Coastal Avian Protection Zones (CAPZ) map.

B- C. The department shall find that significant adverse impacts to historic resources are likely whenever the historic resources analyses prescribed by 9VAC15-60-40 B C indicate that the proposed project is likely to diminish significantly any aspect of a historic resource's integrity.

9VAC15-60-55. Determination of likely significant adverse impacts for applications submitted after (12 months after the effective date of the amendments).

A. This section applies to applications submitted after (12 months after the effective date of the amendments).

B. The department shall find that significant adverse impacts to wildlife are likely whenever the wildlife analyses prescribed in 9VAC15-60-45 B document that any of the following conditions exists:

1. State-listed T&E wildlife species are found to occur within the disturbance zone or the disturbance zone is located on or within one-half mile of a known or potential sea turtle nesting beach.

2. The disturbance zone is located in part or in whole within zones 1, 2, 3, 4, 5, 10, 11, 12, or 14 on the Coastal Avian Protection Zones (CAPZ) map.

C. The department shall find that significant adverse impacts to historic resources are likely whenever the historic resources analyses prescribed by 9VAC15-60-45 C indicate that the proposed project is likely to diminish significantly any aspect of a historic resource's integrity.

D. The department shall find that significant adverse impacts to natural heritage resources and ecological cores are likely whenever the analysis prescribed by 9VAC15-60-45 D indicates that natural heritage resources or Virginia Natural Landscape Assessment Ecological Cores with a Conservation Rank of C1 or C2 occur within the disturbance zone.

9VAC15-60-60. Mitigation plan for applications submitted prior to (12 months after the effective date of the amendments).

A. This section applies to applications submitted prior to (12 months after the effective date of the amendments).

B. If the department determines that significant adverse impacts to wildlife or historic resources or both are likely, then the applicant shall prepare a mitigation plan.

B- C. Mitigation measures for significant adverse impacts to wildlife shall include:

1. For state-listed T&E wildlife, the applicant shall take all reasonable measures to avoid significant adverse impacts or shall demonstrate in the mitigation plan what significant adverse impacts cannot practicably be avoided and why additional proposed actions are reasonable. These additional proposed actions may include best practices to avoid, minimize, or offset adverse impacts to resources analyzed pursuant to ~~9VAC15-60-40 A or C~~ 9VAC15-60-40 B or D.

2. For proposed projects where the disturbance zone is located on or within one-half mile of a known or potential sea turtle nesting beach, the applicant shall take all reasonable measures to avoid significant adverse impacts or shall demonstrate in the mitigation plan what significant adverse impacts cannot practicably be avoided; and why additional proposed mitigation actions are reasonable. Mitigation measures shall include the following:

- a. Avoiding construction within likely sea turtle crawl or nesting habitats during the turtle nesting and hatching season (May 20 through October 31). If avoiding construction during this period is not possible, then conducting daily crawl surveys of the disturbance zone (May 20 through August 31) and one mile beyond the northern and southern reaches of the disturbance zone (hereinafter "sea turtle nest survey zone") between sunrise and 9 a.m. by qualified individuals who have the ability to distinguish accurately between nesting and nonnesting emergences.
- b. If construction is scheduled during the nesting season, then including measures to protect nests and hatchlings found within the sea turtle nest survey zone.
- c. Minimizing nighttime construction during the nesting season and designing project lighting during the construction and operational phases to minimize impacts on nesting sea turtles and hatchlings.

3. For projects located in part or in whole within zones 1, 2, 3, 4, 5, 10, 11, 12, or 14 on the Coastal Avian Protection Zones (CAPZ) map, contribute \$1,000.00 per megawatt of rated capacity, or partial megawatt thereof, to a fund designated by the department in support of scientific research investigating the impacts of projects in CAPZ on avian resources.

~~C.~~ D. Mitigation measures for significant adverse impacts to historic resources shall include:

- 1. Significant adverse impacts to VLR-eligible or VLR-listed architectural resources shall be minimized, to the extent practicable, through design of the ~~solar energy~~ project or the installation of vegetative or other screening.
- 2. If significant adverse impacts to VLR-eligible or VLR-listed architectural resources cannot be avoided or minimized such that impacts are no longer significantly adverse, then the applicant shall develop a reasonable and proportionate mitigation plan that offsets the significantly

adverse impacts and has a demonstrable public benefit and benefit for the affected or similar resource.

3. If any identified VLR-eligible or VLR-listed archaeological site cannot be avoided or minimized to such a degree as to avoid a significant adverse impact, significant adverse impacts of the project will be mitigated through archaeological data recovery.

9VAC15-60-65. Mitigation Plan for applications submitted after (12 months after the effective date of the amendments) projects permitted after January 1, 2021.

A. This section shall apply to applications submitted after (12 months after the effective date of the amendments).

B. The applicant shall prepare a mitigation plan for any resource for which a significant adverse impact determination has been made as a result of the analysis pursuant to 9VAC15-60-55. The plan shall detail actions by the applicant to avoid, minimize, or otherwise mitigate such impacts and shall be an enforceable part of the PBR.

C. Mitigation measures for significant adverse impacts to wildlife shall include the following:

1. For state-listed T&E wildlife, the applicant shall take all reasonable measures to avoid significant adverse impacts or shall demonstrate in the mitigation plan what significant adverse impacts cannot practicably be avoided and why additional proposed actions are reasonable. These additional proposed actions may include best practices to avoid, minimize, or offset adverse impacts to resources analyzed pursuant to 9VAC15-60-45 B or D.

2. For proposed projects where the disturbance zone is located on or within one-half mile of a known or potential sea turtle nesting beach, the applicant shall take all reasonable measures to avoid significant adverse impacts or shall demonstrate in the mitigation plan what significant adverse impacts cannot practicably be avoided and why additional proposed mitigation actions are reasonable. Mitigation measures shall include the following:

- a. Avoiding construction within likely sea turtle crawl or nesting habitats during the turtle nesting and hatching season (May 20 through October 31). If avoiding construction during this period is not possible, then conducting daily crawl surveys of the disturbance zone (May 20 through August 31) and one mile beyond the northern and southern reaches of the disturbance zone (sea turtle nest survey zone) between sunrise and 9 a.m. by qualified individuals who have the ability to distinguish accurately between nesting and nonnesting emergences.
- b. If construction is scheduled during the nesting season, then including measures to protect nests and hatchlings found within the sea turtle nest survey zone.
- c. If nighttime construction cannot be avoided, designing project lighting during the construction and operational

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phases to minimize impacts on nesting sea turtles and hatchlings. Proposed project lighting must be submitted to DWR and the U.S. Fish and Wildlife Service for approval prior to construction.

3. For projects located in part or in whole within zones 1, 2, 3, 4, 5, 10, 11, 12, or 14 on the Coastal Avian Protection Zones (CAPZ) map, contribute \$1,000 per MW of rated capacity, or partial MW thereof, to a fund designated by the department in support of scientific research investigating or minimizing the impacts of projects in CAPZ on avian resources. Payment of mitigation fee is due at the time of application submittal.

D. Mitigation measures for significant adverse impacts to historic resources shall include the following:

1. Significant adverse impacts to VLR-eligible or VLR-listed architectural resources shall be minimized to the extent practicable through design of the solar energy project or the installation of vegetative or other screening.

2. If significant adverse impacts to VLR-eligible or VLR-listed architectural resources cannot be avoided or minimized such that impacts are no longer significantly adverse, then the applicant shall develop a reasonable and proportionate mitigation plan that offsets the significantly adverse impacts and has a demonstrable public benefit and benefit for the affected or similar resource.

3. If any identified VLR-eligible or VLR-listed archaeological site cannot be avoided or minimized to such a degree as to avoid a significant adverse impact, significant adverse impacts of the project will be mitigated through archaeological data recovery.

E. Mitigation measures for significant adverse impacts to natural heritage resources described in Virginia Natural Landscape Assessment Ecological Cores shall include all reasonable measures to avoid and minimize significant adverse impacts. The applicant shall demonstrate in a mitigation plan what significant adverse impacts cannot practicably be avoided and why additional proposed actions are reasonable. Additional proposed actions shall include practices to minimize or offset significant adverse impact through activities to protect, restore, or enhance the affected or similar resource.

9VAC15-60-70. Site plan and context map requirements.

A. The applicant shall submit a site plan that includes maps showing the physical features, topography, and land cover of the area within the site, both before and after construction of the proposed project. The site plan shall be submitted at a scale sufficient to show; and shall include; the following: (i) the boundaries of the site; disturbance zone with 100 foot buffer, panel zone, open areas, and screening areas; (ii) the location, height, and dimensions of all existing and proposed PV systems, other structures, fencing, and other infrastructure; (iii)

the location, grades, and dimensions of all temporary and permanent ~~on-site~~ onsite and access roads from the nearest county or state maintained road; ~~and~~ (iv) water bodies, waterways, wetlands, and drainage channels; and (v) location of any mitigation measures and resources subject to mitigation.

B. The applicant shall submit a context map including the area encompassed by the site and within five miles of the site boundary. The context map shall show state and federal resource lands and other protected areas, Coastal Avian Protection Zones, Chesapeake Bay Resource Protection Areas pursuant to 9VAC25-830-80, historic resources, state roads, waterways, locality boundaries, forests, open spaces, farmland, brownfield sites, and transmission and substation infrastructure.

C. The applicant shall submit post-construction site maps to the department within six months after beginning commercial operation that show the physical features, topography, and land cover of the area within the site. The maps shall contain the following:

1. The boundaries of the site, disturbance zone with 100-foot buffer identified, open areas, and screening areas;

2. Panel placement;

3. Mitigation required pursuant to 9AVC15-60-60 or 9VAC15-60-65, as applicable; and

4. Location of any avoided cultural resources as a result of project design.

9VAC15-60-80. Small solar energy project design standards and operational plans.

A. The design and installation of the small solar energy project shall incorporate any requirements of the mitigation plan that pertain to design and installation if a mitigation plan is required pursuant to 9VAC15-60-50, 9VAC15-60-55, 9VAC15-60-60, or 9VAC15-60-65 as applicable.

B. The applicant shall prepare an operation plan detailing operational parameters for the project including (i) remote monitoring or staffing requirements, (ii) emergency procedures and contacts, (iii) vegetation to be used within the disturbance zone and 100-foot buffer, and (iv) application frequency of herbicides over the life of the project. Owners and operators are encouraged to utilize the link to the DACS Fieldwatch (9VAC15-60-120 B 6) prior to the application of either pesticides or herbicides.

9VAC15-60-90. Public participation.

~~A. Before the initiation of any construction at the small solar energy project, the applicant shall comply with this section. The owner or operator shall first publish a notice once a week for two consecutive weeks in a major local newspaper of general circulation informing the public that he intends to construct and operate a project eligible for a permit by rule. No later than the date of newspaper publication of the initial~~

~~notice, the owner or operator shall submit to the department a copy of the notice along with electronic copies of all documents that the applicant plans to submit in support of the application. The notice shall include: The applicant shall conduct a public comment period for public review of all application documents required by 9VAC15-60-30 and include a summary report of the public comment as part of the PBR application. The report shall include documentation of the public comment period and public meeting and include a summary of the issues raised by the public, any written comments received, and the applicant's response to those comments.~~

B. The applicant shall publish a notice announcing a 30-day comment period. The notice shall be published once a week for two consecutive weeks in a local newspaper of general circulation where the project is to be located and in at least one local newspaper that reaches low-income or minority populations in the area where the project is to be located identified by the locality. The notice shall include the following:

1. A brief description of the proposed project and its location, including the approximate dimensions of the site, approximate number and configuration of PV systems, and approximate maximum height of PV systems;
2. A statement that the purpose of the public participation is to (i) acquaint the public with the technical aspects of the proposed project and how the standards and the requirements of this chapter will be met, (ii) identify issues of concern, (iii) facilitate communication, and (iv) establish a dialogue between the owner or operator and persons who may be affected by the project;
3. Announcement of a 30-day comment period in accordance with subsection ~~C~~ D of this section, and the name, telephone number, address, and email address of the applicant who can be contacted by the interested persons to answer questions or to whom comments shall be sent;
4. Announcement of the date, time, and place for a public meeting held in accordance with subsection ~~D~~ E of this section; and
5. Location where copies of the documentation to be submitted to the department in support of the permit by rule application will be available for inspection.

~~B. C.~~ C. The owner or operator shall place a copy of the documentation in a location accessible to the public during business hours for the duration of the 30-day comment period in the vicinity of the proposed project.

C. D. The public shall be provided at least 30 days to comment on the technical and the regulatory aspects of the proposal. The comment period shall begin no sooner than 15 days after the applicant initially publishes the notice in the local newspaper.

~~D. E.~~ The applicant shall hold a public meeting not earlier than 15 days after the beginning of the 30-day public comment period and no later than seven days before the close of the 30-day comment period. The meeting shall be held in the locality or, if the project is located in more than one locality, in a place proximate to the location of the proposed project.

~~E. F.~~ For purposes of this chapter, the applicant and any interested party who submits written comments on the proposal to the applicant during the public comment period or who signs in and provides oral comments at the public meeting shall be deemed to have participated in the proceeding for a permit by rule under this chapter and pursuant to § 10.1-1197.7 B of the Code of Virginia.

9VAC15-60-100. Change PBR change of ownership, project modifications, reporting, and permit termination.

~~A. Change of ownership. A permit by rule PBR may be transferred to a new owner or operator if: through an administrative amendment to the permit. The department will incorporate the administrative changes to the PBR after the receipt of the following:~~

1. ~~The current owner or operator notifies the department at least 30 days in advance of the transfer date by submittal of a notice per subdivision 2 of this subsection~~ Notification of the change in a form acceptable to the department;
2. The notice shall include a written agreement between the existing and new owner or operator containing a specific date for transfer of permit responsibility, coverage, and liability between them; and
3. The transfer of the permit by rule to the new owner or operator shall be effective on the date specified in the agreement described in subdivision 2 of this subsection.
4. Information required for a change of ownership shall be submitted to the department within 30 days of the transfer date.
5. The department shall not consider the change of operator, ownership, or controlling interest for a project shall not be effective until the department receives notification from both the original applicant and the new applicant.

~~B. Project modifications. Provided project modifications are in accordance with the requirements of this permit by rule and do not increase the rated capacity of the small solar energy project, the owner or operator of a project authorized under a permit by rule may modify its design or operation or both by furnishing to the department new certificates prepared by a professional engineer, new documentation required under 9VAC15-60-30, and the appropriate fee in accordance with 9VAC15-60-110. The department shall review the received modification submittal in accordance with the provisions of subsection B of 9VAC15-60-30. A PBR name may be changed through an administrative amendment to the permit.~~

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1. Information required for a change of ownership shall be submitted to the department within 30 days of the change date.

2. The department will incorporate the administrative changes to the PBR after receipt of the notification in a form acceptable to the department.

C. Permit by rule termination. The Modification to an existing PBR, with the exception of administrative changes, shall be in accordance with the provisions of 9VAC15-60-30 B.

1. The applicant shall submit the modification application and include project address, documents, maps, and studies supporting the changes to the existing permit. Information that is unchanged in the existing PBR shall not be submitted. Unchanged information shall be identified and certified as unchanged in the modification application.

2. In addition to the information required in subdivision 1 of this subsection, a modification to an existing PBR shall also require a certification from the local government pursuant to 9VAC15-60-30 A 2, a public comment period pursuant to 9VAC15-60-90, and the appropriate fee pursuant to 9VAC15-60-110.

3. Upon receipt of all required documents and applicable fees, the department shall review the modification submittal in accordance with the provisions of subsection C of 9VAC15-60-30.

D. Recordkeeping and reporting shall be provided as follows:

1. The owner or operator shall furnish notification of the following milestones:

a. The date the project began construction within 15 days after such date;

b. The date the project began commercial operation within 15 days of such date;

c. The date of any onsite construction or maintenance that could impact the project's mitigation and avoidance plan within 15 days after such date;

d. A map of the project post construction clearly showing panel configuration relative to any required mitigation and incorporates any onsite changes resulting from any onsite construction or maintenance that could impact the project mitigation and avoidance plan within 90 days of completion of such work; and

e. For projects that contain mitigation for historic resources, a post-construction demonstration of completed mitigation requirements according to the approved mitigation within 90 days of completion of such work.

2. A copy of the site map clearly showing any resources to be avoided or mitigated shall be maintained onsite during construction.

3. Upon request, the owner shall furnish to the department copies of records required to be kept by this PBR.

4. Within 30 days of notification, any information requested by the department.

E. Pursuant to the Virginia Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia), the department may terminate the permit by rule whenever the department finds that the applicant has:

1. The applicant has knowingly ~~Knowingly~~ or willfully misrepresented or failed to disclose a material fact in any report or certification required under this chapter; or

2. After the department has taken enforcement actions pursuant to 9VAC15-60-140, the owner or operator persistently operates the project in significant violation of Failed to comply with the conditions or commitments stated within the permit by rule application; or

3. Violated the project's mitigation plan.

~~Prior to terminating a permit by rule pursuant to subdivision 1 or 2 of this subsection, the department shall hold an informal fact finding proceeding pursuant to § 2.2-4019 of the Virginia Administrative Process Act in order to assess whether to continue with termination of the permit by rule or to issue any other appropriate order. If the department determines that it should continue with the termination of the permit by rule, the department shall hold a formal hearing pursuant to § 2.2-4020 of the Virginia Administrative Process Act. Notice of the formal hearing shall be delivered to the owner or operator. Any owner or operator whose permit by rule is terminated by the department shall cease operating his small solar energy project.~~

9VAC15-60-110. Fees for projects subject to Part II of this chapter.

~~A. Purpose. The purpose of this section is to establish schedules and procedures pertaining to the payment and collection of fees from any applicant seeking a new permit by rule. Fees shall be collected for an application for a PBR or a modification to an application to modify an existing permit by rule PBR for a small solar energy project subject to Part II (9VAC15-60-30 et seq.) of this chapter. No fee shall be required for administrative permit changes pursuant to subsection A or B of 9VAC15-60-100.~~

~~B. Permit fee payment and deposit. Fees for permit by rule PBR applications or modifications shall be paid by the applicant as follows:~~

~~1. Due date. All permit application fees or, modification, or CAPZ mitigation fees if applicable are due on submittal day of the at the time of application or modification package submittal.~~

~~2. Method of payment. Fees shall be collected utilizing, where practicable, an online payment system. Until such system is operational, fees shall be paid by check, draft, or postal money order made payable to "Treasurer of Virginia/DEQ" and shall be sent to the Department of~~

Environmental Quality, Receipts Control, P.O. Box 1104, Richmond, VA 23218.

a. Fees shall be in United States currency, except that agencies and institutions of the Commonwealth of Virginia may submit interagency transfers for the amount of the fee.

b. The department may provide a means to pay fees electronically. When fees are collected electronically pursuant to this part through credit cards, business transaction costs to the department associated with processing such payments may be assessed.

3. ~~Incomplete payments.~~ All incomplete payments shall be deemed nonpayments.

4. ~~Late payment.~~ No PBR application or modification ~~submit~~ will be deemed complete until the department receives proper payment.

a. Interest may be charged for late payments at the underpayment rate set forth in § 58.1-15 of the Code of Virginia and is calculated on a monthly basis at the applicable periodic rate. A 10% late payment fee shall be charged to any delinquent (over 90 days past due) account.

b. The department is entitled to all remedies available under the Code of Virginia in collecting any past due amount.

C. ~~Fee schedules.~~ Each application for a ~~permit by rule PBR~~ and each application for a modification of a ~~permit by rule PBR~~ is a separate action and shall be assessed a separate fee. ~~The amount of the permit application fee is based on the costs associated with the permitting program required by this chapter. The fee schedules are shown in the following table:~~

1. The fee for a permit application or modification submitted prior to (insert the effective date of the amendments) is identified on Table 1.

Table 1

Type of Action	Fee
Permit by rule application – by rated capacity:	\$8,000
>5 MW up to and including 25 MW	\$10,000
>25 MW up to and including 50 MW	\$12,000
>50 MW up to and including 75 MW	\$14,000
>75 MW up to and including 150 MW	
Permit by rule modification – for any project subject to Part II of this chapter	\$4,000

2. The fee for a permit application or modification submitted after (insert the effective date of the amendments) is identified on Table 2.

Table 2

Type of Action	Fee
NOI fee:	\$2,000
>5 MW up to and including 20 MW	\$7,500 base fee plus \$150 per MW
>20 MW	\$7,500 base fee plus \$165 per MW
Modification fee for a project subject to Part II of this chapter	20% of original application fee
Incomplete fee: assessed for application review after receipt of an incomplete determination	20% of original application fee

D. ~~Use of fees.~~ All projects that were permitted after (insert the effective date of the amendments) shall be assessed an annual permit maintenance fee. No maintenance fee shall be assessed for projects that were permitted prior to (insert the effective date of the amendments). The annual permit maintenance fee shall be comprised of a base fee of \$500 plus \$15 per MW of the project. Maintenance fees shall be adjusted annually based on the Consumer Price Index.

1. The annual adjustment of the permit maintenance fees shall be based upon the annual permit maintenance fee amount for the preceding calendar year and the change in the CPI value published by the U.S. Department of Labor for all-urban consumers over the 12-month period ending on August 31 of the calendar year preceding the calendar year in which the permit maintenance fee is assessed.

2. The CPI for all-urban consumers published by the U.S. Department of Labor may be obtained online from the Bureau of Labor Statistics website.

3. No CPI adjustment shall be made for annual permit maintenance fees assessed in the (insert the calendar year the amendments become effective).

4. The amount of the annual permit maintenance fee shall be rounded down to the nearest whole dollar.

5. Within 30 days following the date of the postmark on the bill, the owner shall pay the fee in full by check, draft, or money order made payable to the Treasurer according to subsection B 2 of this section.

E. All applicants, unless otherwise specified by the department, shall submit the following information along with the fee payment in a form acceptable to the department and include the following information:

1. Applicant name, address, and daytime telephone number;

Regulations

2. Responsible person name, address, and daytime telephone number if different from the applicant;

3. Name of the project and project location;

4. Whether the fee is for a new PBR issuance, Incomplete fee, permit maintenance, or permit modification;

5. The amount of fee submitted; and

6. The existing permit number.

F. Fees are assessed for the purpose of defraying the department's costs of administering and enforcing the provisions of this chapter including ~~permit by rule PBR processing, permit by rule PBR modification processing, and inspection and monitoring of small solar energy projects~~ to ensure compliance with this chapter. Fees collected pursuant to this section shall be used for the administrative and enforcement purposes specified in this chapter and in § 10.1-1197.6 E of the Code of Virginia.

~~E. Fund.~~ G. The fees, received by the department in accordance with this chapter, shall be deposited in the Small Renewable Energy Project Fee Fund as specified in § 10.1-1197.6 F of the Code of Virginia.

~~F. Periodic review of fees. Beginning July 1, 2013, and periodically thereafter, the~~ H. The department ~~shall~~ will periodically review the schedule of fees established pursuant to this section to ensure that the total fees collected are sufficient to cover 100% of the department's direct costs associated with use of the fees.

9VAC15-60-120. Internet accessible resources.

A. This chapter refers to resources to be used by applicants in gathering information to be submitted to the department. These resources are available through the Internet; therefore, in order to assist applicants, the uniform resource locator or Internet address is provided for each of the references listed in this section.

B. Internet available resources.

1. The Virginia Landmarks Register, Virginia Department of Historic Resources, 2801 Kensington Avenue, Richmond, Virginia. Available at the following Internet address: <http://www.dhr.virginia.gov/register/register.htm>.

2. Professional Qualifications Standards, the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation, as amended and annotated (48 FR 44716-740, September 29, 1983), National Parks Service, Washington, DC. Available at the following Internet address: http://www.nps.gov/history/local-law/arch_stnds_9.htm.

3. The Natural Communities of Virginia, Classification of Ecological Community Groups, Virginia Department of Conservation and Recreation, Division of Natural Heritage, Richmond, Virginia. Available at the following Internet

address: http://www.dcr.virginia.gov/natural_heritage/ncintro.shtml.

4. Virginia's Comprehensive Wildlife Conservation Strategy, 2005 (referred to as the Virginia Wildlife Action Plan), Virginia Department of ~~Game and Inland Fisheries Wildlife Resources~~, 4010 West Broad Street, Richmond 7870 Villa Park Drive, Suite 400, Henrico, Virginia. Available at the following Internet address: <http://www.bewildvirginia.org/wildlifeplan/>.

5. Pollinator Smart Solar Site Portal, Virginia Department of Conservation and Recreation, Division of Natural Heritage, Richmond, Virginia. Available at the following Internet address: <https://www.dcr.virginia.gov/natural-heritage/pollinator-smart>.

6. Virginia Pollinator Protection Plan, Virginia Department of Agriculture and Consumer Services, 102 Governor Street, Richmond, Virginia. Available at the following Internet address: <https://www.vdacs.virginia.gov/plant-industry-services-pollinator-protection-plan.shtml>.

C. Internet applications.

1. Coastal GEMS application, 2010, Virginia Department of Environmental Quality. Available at the following Internet address: <http://www.deq.virginia.gov/coastal/coastalgems.html>.

~~NOTE: This website is maintained by the department. Assistance and information may be obtained by contacting Virginia Coastal Zone Management Program, Virginia Department of Environmental Quality, 1111 East Main Street, Suite 1400, Richmond, Virginia 23219, (804) 698-4000.~~

2. Virginia Natural Landscape Assessment, Virginia Department of Conservation and Recreation. Available at the following Internet address: for detailed information on ecological cores go to http://www.dcr.virginia.gov/natural_heritage/vclnavnla.shtml. Land maps may be viewed at DCR's Land Conservation Data Explorer Geographic Information System website at <http://www.vaconservedlands.org/gis.aspx>.

~~NOTE: The website is maintained by DCR. Actual shapefiles and metadata are available for free by contacting a DCR staff person at vaconslands@dcr.virginia.gov or DCR, Division of Natural Heritage, 217 Governor Street, Richmond, Virginia 23219, (804) 786 7951.~~

3. Virginia Fish and Wildlife Information Service 2010, Virginia Department of ~~Game and Inland Fisheries Wildlife Resources~~. Available at the following Internet address: <http://www.vafwis.org/fwis/>.

~~NOTE: This website is maintained by DGIF and is accessible to the public as "visitors," or to registered subscribers. Registration, however, is required for access to~~

~~resource specific or species specific locational data and records. Assistance and information may be obtained by contacting DGIF, Fish and Wildlife Information Service, 4010 West Broad Street, Richmond, Virginia 23230, (804) 367-6913.~~

9VAC15-60-130. Small solar energy projects less than or equal to five megawatts MW or less than or equal to 10 acres or meeting certain categorical criteria.

A. Projects meeting one of the following conditions shall be subject to this section:

1. Projects with a rated capacity greater than one MW and less than or equal to five MW;
2. Projects with a disturbance zone greater than two acres and less than or equal to 10 acres; or
3. Projects located on previously disturbed or repurposed areas without regard to the rated capacity or size of the disturbance zone and any impact to undisturbed areas is less than or equal to 10 acres.

B. An applicant seeking a PBR under this part shall submit the following:

1. The NOI in a form acceptable to the department.
2. A certification by the governing body of the locality wherein the project will be located that the project complies with all applicable land use ordinances.

C. The owner or operator of a small solar energy applicant of a project is not required to submit any notification or certification to the department if he meets at least one of the following criteria:

1. The ~~small solar energy~~ project has either a rated capacity equal to or less than ~~500 kilowatts~~ one MW or a disturbance zone equal to or less than two acres; or
2. The ~~small solar~~ project falls within at least one of the following categories, without regard to the rated capacity or the disturbance zone of the project:
 - a. The ~~small solar energy~~ project is mounted on a single-family or duplex private residence.
 - b. The ~~small solar energy~~ project is mounted on one or more buildings less than 50 years old or, if 50 years of age or older, have been evaluated and determined by DHR within the preceding seven years to be not VLR-eligible.
 - c. The ~~small solar energy~~ project is mounted over one or more existing parking lots, existing roads, or other previously disturbed areas and any impacts to undisturbed areas do not exceed an additional two acres.
 - d. The ~~small solar energy~~ project utilizes integrated PV only, provided that the building or structure on which the integrated PV materials are used is less than 50 years old or, if 50 years of age or older, has been evaluated and

determined by DHR within the preceding seven years to be not VLR-eligible.

~~B. The owner or operator of a small solar energy project with either a rated capacity greater than 500 kilowatts and less than or equal to five megawatts or a disturbance zone greater than two acres and less than or equal to 10 acres shall notify the department and shall submit a certification by the governing body of the locality or localities wherein the project will be located that the project complies with all applicable land use ordinances.~~

NOTICE: The following forms used in administering the regulation have been filed by the agency. Amended or added forms are reflected in the listing and are published following the listing. Online users of this issue of the Virginia Register of Regulations may also click on the name to access a form. The forms are also available from the agency contact or may be viewed at the Office of Registrar of Regulations, 900 East Main Street, 11th Floor, Richmond, Virginia 23219.

FORMS (9VAC15-60)

[Solar Permit by Rule \(PBR\) Notice of Intent \(NOI\) Part II 9VAC15-60-30 \(rev. 2/2020\)](#)

[Solar Permit by Rule \(PBR\) Notice of Intent \(NOI\) Part III 9VAC15-60-130 \(rev. 2/2020\)](#)

[Solar Permit by Rule \(PBR\) Withdrawal Notice \(rev. 2/2020\)](#)

[Solar Permit by Rule \(PBR\) Change of Owner/Operator/Name \(rev. 2/2020\)](#)

V.A.R. Doc. No. R19-5818; Filed February 16, 2021, 11:07 a.m.

STATE WATER CONTROL BOARD

Final Regulation

REGISTRAR'S NOTICE: The State Water Control Board is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 3, which excludes regulations that consist only of changes in style or form or corrections of technical errors. The State Water Control Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **9VAC25-415. Policy for the Potomac River Embayments (amending 9VAC25-415-30).**

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

Effective Date: April 14, 2021.

Agency Contact: Melissa Porterfield, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4238, or email melissa.porterfield@deq.virginia.gov.

Summary:

The amendments update the names of two regulations referenced in the regulation.

Regulations

9VAC25-415-30. Policy requirements.

A. Existing discharges shall meet the requirements of 9VAC25-415-40 within five years from April 2, 1997, unless exempted under subsection B, C or D of this section. New dischargers shall meet the requirements of 9VAC25-415-40 immediately.

B. Existing discharges with design flows less than 0.05 mgd shall be exempt from meeting the requirements of 9VAC25-415-40 until the completion of their next design flow expansion.

C. Failing septic systems. Existing residential homes, industrial and commercial operations, public facilities, and any other operation where a septic drain field system has failed shall be exempt from the requirements of 9VAC25-415-40, provided that the applicant demonstrates that it is not feasible to connect to a publicly-owned treatment plant and that there is no feasible alternative except to discharge. Discharge permits shall be issued in conformance with the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (9VAC25-31-10 et seq.) and Virginia General Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Domestic Sewage Discharges of Less Than or Equal to 1,000 Gallons per Per Day (9VAC25-110-10 et seq.).

D. Other exemptions. The requirements of 9VAC25-415-40 shall not apply to the following types of discharges: combined sewer overflows, stormwater, corrective action remediation, and industrial discharges where BOD and nutrients are not primary pollutants of concern.

VA.R. Doc. No. R21-6370; Filed February 22, 2021, 1:19 p.m.

TITLE 12. HEALTH

STATE BOARD OF HEALTH

Forms

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

Title of Regulation: 12VAC5-381. Regulations for the Licensure of Home Care Organizations.

Agency Contact: Rebekah Allen, Senior Policy Analyst, Virginia Department of Health, 9960 Mayland Drive, Suite 401, Henrico, VA 23233, telephone (804) 367-2157, FAX (804) 527-4502, or email regulatorycomments@vdh.virginia.gov.

FORMS (12VAC5-381)

~~Application for Licensure, Home Care organizations, eff. 01/06.~~

[Application for Home Care Organization Licensure \(rev. 2/2021\)](#)

VA.R. Doc. No. R21-6619; Filed February 23, 2021, 1:58 p.m.

Final Regulation

REGISTRAR'S NOTICE: The State Board of Health 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 State Board of Health will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: 12VAC5-391. Regulations for the Licensure of Hospice (amending 12VAC5-391-10, 12VAC5-391-120).

Statutory Authority: §§ 32.1-12 and 32.1-162.5 of the Code of Virginia.

Effective Date: April 14, 2021.

Agency Contact: Rebekah E. Allen, Senior Policy Analyst, Virginia Department of Health, 9960 Mayland Drive, Suite 401, Richmond, VA 23233, telephone (804) 367-2102, FAX (804) 527-4502, or email regulatorycomment@vdh.virginia.gov.

Summary:

Pursuant to Item 300 F of Chapter 56 of the 2020 Acts of Assembly, Special Session I, the amendment requires every medical care facility licensed by the Virginia Department of Health, excluding nursing homes, to permit a person with a disability who requires assistance as a result of such disability to be accompanied by a designated support person at any time during which health care services are provided during the COVID-19 public health emergency.

12VAC5-391-10. Definitions.

The following words and terms when used in these regulations shall have the following meaning unless the context clearly indicates otherwise.

"Activities of daily living" means bathing, dressing, toileting, transferring, bowel control, bladder control and eating/feeding.

"Administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means, to the body of a patient by (i) a practitioner or by his authorized agent and under his supervision or (ii) the patient at the direction and in the presence of the practitioner as defined in § 54.1-3401 of the Code of Virginia.

"Administrator" means a person designated, in writing, by the governing body as having the necessary authority for the day-

to-day management of the hospice program. The administrator must be a member of the hospice staff. The administrator, director of nursing, or another clinical director may be the same individual if that individual is dually qualified.

"Adverse outcome" means the result of drug or health care therapy that is neither intended nor expected in normal therapeutic use and that causes significant, sometimes life-threatening conditions or consequences at some future time. Such potential future adverse outcome may require the arrangement of appropriate follow-up surveillance and perhaps other departures from the usual plan of care.

"Attending physician" means a physician licensed in Virginia, according to Chapter 29 (§ 54.1-2900 et seq.) of Title 54.1 of the Code of Virginia, or licensed in an adjacent state and identified by the patient as having the primary responsibility in determining the delivery of the patient's medical care. The responsibilities of physicians contained in this chapter may be implemented by nurse practitioners or physician assistants as assigned by the supervising physician and within the parameters of professional licensing.

"Available at all times during operating hours" means an individual is available on the premises or by telecommunications.

"Barrier crimes" means certain offenses specified in § 32.1-162.9:1 of the Code of Virginia that automatically bar an individual convicted of those offenses from employment with a hospice program.

"Bereavement service" means bereavement counseling as defined in 42 CFR 418.3.

"Cannabidiol oil" means the same as that term is defined in subsection A of § 54.1-3408.3 of the Code of Virginia.

"Commissioner" means the State Health Commissioner.

"Coordinated program" means a continuum of palliative and supportive care provided to a terminally ill patient and the patient's family, 24 hours a day, seven days a week.

"Core services" means those services that must be provided by a hospice program. Such services are: (i) nursing services, (ii) physician services, (iii) counseling services, and (iv) medical social services.

"Counseling services" means the provision of bereavement services, dietary services, spiritual and any other counseling services for the patient and family while the person is enrolled in the program.

"Criminal record report" means the statement issued by the Central Criminal Records Exchange, Virginia Department of State Police.

"Designated support person" means a person who is knowledgeable about the needs of a person with a disability and who is designated, orally or in writing, by the individual

with a disability, the individual's guardian, or the individual's care provider to provide support and assistance, including physical assistance, emotional support, assistance with communication or decision-making, or any other assistance necessary as a result of the person's disability, to the person with a disability at any time during which health care services are provided.

"Dispense" means to deliver a drug to the ultimate user by or pursuant to the lawful order of a practitioner, including the prescribing and administering, packaging, labeling or compounding necessary to prepare the substance for that delivery as defined in § 54.1-3401 of the Code of Virginia.

"Employee" means an individual who is appropriately trained and performs a specific job function for the hospice program on a full-time or part-time basis with or without financial compensation.

"Governing body" means the individual, group, or governmental agency that has legal responsibility and authority over the operation of the hospice program.

"Home attendant" means a nonlicensed individual performing personal care and environmental services, under the supervision of the appropriate health professional, to a patient in the patient's residence. Home attendants are also known as certified nursing assistants or CNAs, home care aides, home health aides, and personal care aides.

"Hospice" means a hospice as defined in § 32.1-162.1 of the Code of Virginia.

"Hospice facility" means an institution, place, or building as defined in § 32.1-162.1 of the Code of Virginia.

"Inpatient" means the provision of services, such as food, laundry, housekeeping, and staff to provide health or health-related services, including respite and symptom management, to hospice patients, whether in a hospital, nursing facility, or hospice facility.

"Interdisciplinary group" means the group responsible for assessing the health care and special needs of the patient and the patient's family. Providers of special services, such as mental health, pharmacy, and any other appropriate associated health services may also be included on the team as the needs of the patient dictate. The interdisciplinary group is often referred to as the IDG.

"Licensee" means a licensed hospice program provider.

"Medical director" means a physician currently licensed in Virginia, according to Chapter 29 (§ 54.1-2900 et seq.) of Title 54.1 of the Code of Virginia, and responsible for the medical direction of the hospice program.

"Medical record" means a continuous and accurate documented account of services provided to a patient, including the prescription and delivery of the treatment or care.

Regulations

"Medication error" means one or more violations of the five principles of medication administration: the correct drug to the right patient at the prescribed time in the prescribed dose via the prescribed route.

"Nursing services" means the patient care performed or supervised by a registered nurse according to a plan of care.

"OLC" means the Office of Licensure and Certification of the Virginia Department of Health.

"Operator" means any individual, partnership, association, trust, corporation, municipality, county, local government agency, or any other legal or commercial entity responsible for the day-to-day administrative management and operation of the hospice.

"Palliative care" means treatment directed at controlling pain, relieving other symptoms, and focusing on the special needs of the patient and family as they experience the stress of the dying process. Palliative care means treatment to enhance comfort and improve the quality of a patient's life during the last phase of his life.

"Patient" means a hospice patient as defined in § 32.1-162.1 of the Code of Virginia.

"Patient's family" means a hospice patient's family as defined in § 32.1-162.1 of the Code of Virginia.

"Patient's residence" means the place where the individual or patient makes his home.

"Person" means any individual, partnership, association, trust, corporation, municipality, county, local government agency, or any other legal or commercial entity that operates a hospice.

"Plan of care" means a written plan of services developed by the interdisciplinary group to maximize patient comfort by symptom control to meet the physical, psychosocial, spiritual, and other special needs that are experienced during the final stages of illness, during dying, and bereavement.

"Primary caregiver" means an individual that, through mutual agreement with the patient and the hospice program, assumes responsibility for the patient's care.

"Progress note" means a documented statement contained in a patient's medical record, dated and signed by the person delivering the care, treatment, or service, describing the treatment or services delivered and the effect of the care, treatment, or services on the patient.

"Quality improvement" means ongoing activities designed to objectively and systematically evaluate the quality of care and services, pursue opportunities to improve care and services, and resolve identified problems. Quality improvement is an approach to the ongoing study and improvement of the processes of providing services to meet the needs of patients and their families.

"Separate and distinct entrance" means an entrance to the hospice facility other than the formal public entrance used by patients and family members.

"Staff" means an employee who receives financial compensation.

"Supervision" means the ongoing process of monitoring the skills, competencies, and performance of the individual supervised and providing regular face-to-face guidance and instruction.

"Terminally ill" means a medical prognosis that life expectancy is six months or less if the illness runs its usual course.

"THC-A oil" means the same as that term is defined in subsection A of § 54.1-3408.3 of the Code of Virginia.

"Volunteer" means an employee who receives no financial compensation.

12VAC5-391-120. Hospice facilities.

A. Providers seeking to operate a hospice facility shall comply with the appropriate facility licensing regulation as follows:

1. Facilities with 16 or fewer beds shall be licensed as a hospice facility pursuant to this chapter. Such facilities with six or more beds shall obtain a Certificate of Use and Occupancy with a Use Group designation of I-2; or
2. Facilities with more than 16 beds shall be licensed as a hospital pursuant to 12VAC5-410 or as a nursing facility pursuant to 12VAC5-371. Such facilities shall obtain the applicable Certificate of Public Need prior to the development or construction of the facility.

B. Only patients diagnosed terminally ill shall be admitted to a hospice facility. The facility shall admit only those patients whose needs can be met by the accommodations and services provided by the facility.

C. To the maximum extent possible, care shall be provided in the patient's home. Admission to a hospice facility shall be the decision of the patient in consultation with the patient's physician. No patient shall be admitted to a hospice facility at the discretion of, or for the convenience of, the hospice provider, the primary caregiver, or the family.

D. All hospice providers operating a hospice facility shall use its facility to provide, to the extent possible, respite and symptom management services to all patients in the hospice program needing such services.

E. If the Governor has declared a public health emergency related to the novel coronavirus (COVID-19), all hospice providers operating a hospice facility shall allow a person with a disability who requires assistance as a result of such disability to be accompanied by a designated support person at any time during which health care services are provided.

1. If the duration of health care services in a hospice facility is anticipated to last more than 24 hours, the person with a disability may designate more than one designated support person. However, no hospice facility shall be required to allow more than one designated support person to be present with a person with a disability at any time.

2. A designated support person shall not be subject to any restrictions on visitation adopted by the hospice facility. However, such designated support person may be required to comply with all reasonable requirements of the hospice facility adopted to protect the health and safety of patients and staff of the hospice facility.

3. Every hospice provider operating a hospice facility shall establish policies applicable to designated support persons and shall:

a. Make such policies available to the public on a website maintained by the hospice facility; and

b. Provide such policies in writing to the patient at such time as health care services are provided.

~~F.~~ E. No hospice facility shall receive patients for care, palliative treatment, respite, or symptom management services in excess of its licensed bed capacity.

~~F.~~ G. No hospice facility provider shall add additional patient beds or renovate facility space without first notifying the OLC. OLC notifications must be in writing to the director of the OLC.

~~G.~~ H. The OLC will not accept any requests for variances to this section.

VA.R. Doc. No. R21-6586; Filed February 11, 2021, 4:40 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

VIRGINIA BOARD FOR ASBESTOS, LEAD, AND HOME INSPECTORS

Forms

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

Titles of Regulations: **18VAC15-20. Virginia Asbestos Licensing Regulations.**

18VAC15-30. Virginia Lead-Based Paint Activities Regulations.

18VAC15-40. Home Inspector Licensing Regulations.

Agency Contact: Joseph Haughwout, Board Administrator, Virginia Board For Asbestos, Lead, and Home Inspectors, 9960 Mayland Drive, Perimeter Center, Suite 400, Richmond, VA 23233, telephone (804) 367-2684, or email joseph.haughwout@dpwr.virginia.gov.

FORMS (18VAC15-20)

[Asbestos Worker License Application, A506-3301LIC-v4 \(rev. 8/2015\)](#)

[Asbestos Supervisor License Application, A506-3302LIC-v4 \(rev. 8/2015\)](#)

[Asbestos Inspector License Application, A506-3303LIC-v5 \(rev. 8/2015\)](#)

[Asbestos Management Planner License Application, A506-3304LIC-v4 \(rev. 8/2015\)](#)

[Asbestos Project Designer License Application, A506-3305LIC-v4 \(rev. 8/2015\)](#)

[Asbestos Project Monitor License Application, A506-3309LIC-v5 \(rev. 8/2015\)](#)

[Individual - Asbestos License Renewal Form, A506-33AREN-v5 \(rev. 2/2020\)](#)

[Asbestos Analytical Laboratory License Renewal/Branch Office Renewal Form, A506-3333_34REN-v5 \(rev. 2/2020\)](#)

[Contractor - Asbestos & Lead License Renewal Form, A506-33CONREN-v6 \(rev. 2/2020\)](#)

[Asbestos - Experience Verification Application, A506-33AEXP-v5 \(rev. 3/2019\)](#)

[Asbestos - Education Verification Application, A506-33AED-v3 \(rev. 8/2015\)](#)

[Virginia Asbestos Licensing Consumer Information Sheet, A506-33ACIS-v2 \(rev. 8/2013\)](#)

[Inspector/Project Designer/Contractor Disclosure Form, A506-33DIS-v2 \(rev. 8/2013\)](#)

~~[Asbestos Contractor License Application, A506-3306LIC-v6 \(rev. 3/2020\)](#)~~

~~[Asbestos Analytical Laboratory License Application, A506-3333LIC-v8 \(rev. 3/2020\)](#)~~

~~[Asbestos Analytical Laboratory - Branch Office Application, A506-3333BR-v1 \(rev. 9/2019\)](#)~~

[Asbestos Contractor License Application, A506-3306LIC-v6 \(rev. 5/2020\)](#)

[Asbestos Analytical Laboratory License Application, A506-3333LIC-v8 \(rev. 5/2020\)](#)

[Asbestos Analytical Laboratory - Branch Office Application, A506-3333BR-vs2 \(rev. 12/2019\)](#)

Regulations

Change of Laboratory Analysis Type Form, A506-3333COA-v1 (rev. 9/2019)

~~Asbestos Training Program Review and Audit Application, A506-3331ACRS-v5 (rev. 3/2020)~~

[Asbestos Training Program Review and Audit Application, A506-3331ACRS-v5 \(rev. 5/2020\)](#)

Asbestos Project Monitor - Work Experience Log, A506-3309EXP-v3 (rev. 8/2015)
FORMS (18VAC15-30)

Lead Abatement Worker License Application, A506-3351LIC-v3 (eff. 8/2015)

Lead Abatement Supervisor License Application, A506-3353LIC-v4 (eff. 8/2015)

Lead Abatement Inspector License Application, A506-3355LIC-v3 (eff. 8/2015)

Lead Abatement Risk Assessor License Application, A506-3356LIC-v5 (eff. 8/2015)

Lead Abatement Project Designer License Application, A506-3357LIC-v3 (eff. 8/2015)

~~Lead Abatement Contractor License Application, A506-3358LIC-v4 (eff. 3/2020)~~

[Lead Abatement Contractor License Application, A506-3358LIC-v5 \(eff. 7/2020\)](#)

Contractor - Asbestos & Lead License Renewal Form, A506-33CONREN-v6 (rev. 2/2020)

Individual - Lead License Renewal Form, A506-33LREN-v4 (rev. 2/2020)

Lead - Education Verification Application, A506-33LED-v3 (rev. 8/2015)

Lead - Experience Verification Application, A506-33LEXP-v3 (rev. 8/2015)

~~Lead Training Course Application, 3331LCRS-v5 (eff. 3/2020)~~

[Lead Training Course Application, 3331LCRS-v5 \(eff. 5/2020\)](#)

Inspector/Risk Assessor/Project Designer/Contractor Disclosure Form, A506-33LDIS-v2 (eff. 8/2013)

Virginia Lead Licensing Consumer Information Sheet, A506-33LCIS-v2 (eff. 8/2013)

FORMS (18VAC15-40)

Home Inspector License Application, A506-3380LIC-v3 (eff. 9/2017)

Home Inspector NRS Specialty Designation Application, A506-3380NRS-v1 (eff. 7/2017)

Home Inspector Experience Verification Form, A506-3380EXP-v7 (eff. 9/2017)

Home Inspectors – Inspection Log, A506-3380ILOG-v1 (eff. 9/2017)

Home Inspector Reinstatement Application, A506-3380REI-v3 (eff. 2/2020)

~~Home Inspector – Course Approval Application, Prelicense Education Course/NRS Training Module/NRS CPE, A506-3331HICRS-v3 (eff. 3/2020)~~

[Home Inspector - Course Approval Application, Prelicense Education Course/NRS Training Module/NRS CPE, A506-3331HICRS-v3 \(eff. 2/2020\)](#)

VA.R. Doc. No. R21-6699; Filed February 10, 2021, 3:15 p.m.

BOARD OF NURSING

Forms

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

Title of Regulation: **18VAC90-26. Regulations for Nurse Aide Education Programs.**

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

FORMS (18VAC90-26)

~~Application to Establish Nurse Aide Education Program (rev. 7/11)~~

~~Nurse Aide Education Program – Program Evaluation Report (rev. 8/07)~~

~~Nurse Aide Education Program – On Site Review Report (rev. 8/07)~~

~~Application to Establish an Advanced Certification Nurse Aide Education Program (rev. 8/07)~~

~~Advanced Certification Nurse Aide Education Program – Program Evaluation Report (rev. 8/08)~~

~~Advanced Certification Nurse Aide Education Program – On Site Review Report (rev. 8/07)~~

~~Request for Statistical Information (rev. 6/08)~~

[Application to Establish Nurse Aide Education Program \(rev. 12/2020\)](#)

[Nurse Aide Education Program – Skills Record \(rev. 5/2015\)](#)

[Nurse Aide Curriculum \(rev. 2/2020\)](#)

[Nurse Aide Education On-Site Review Report \(rev. 11/2019\)](#)

VA.R. Doc. No. R21-6653; Filed January 24, 2021, 4:30 p.m.

**BOARD FOR WATERWORKS AND WASTEWATER
WORKS OPERATORS AND ONSITE SEWAGE
SYSTEM PROFESSIONALS**

Forms

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

Titles of Regulations: 18VAC160-30. Waterworks and Wastewater Works Operators Licensing Regulations.

18VAC160-40. Onsite Sewage System Professionals Licensing Regulations.

Agency Contact: Joseph Haughwout, Board Administrator, Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals, 9960 Mayland Drive, Perimeter Center, Suite 400, Richmond, VA 23233, telephone (804) 367-2684, or email joseph.haughwout@dpor.virginia.gov.

FORMS (18VAC160-30)

[Waterworks Operator License Application, A436-1955EXLIC-v1 \(eff. 4/2017\)](#)

[Provisional Waterworks Operator License Application, A436-1955PLIC-v2 \(eff. 4/2017\)](#)

[Wastewater Works Operator License Application, A436-1965EXLIC-v2 \(eff. 4/2017\)](#)

[Provisional Wastewater Works Operator License Application, A436-1965PLIC-v2 \(eff. 4/2017\)](#)

[Waterworks and Wastewater Works Operator - Provisional License Change in Classification Application, A436-1955_65CHG-v1 \(eff. 4/2017\)](#)

[Out-of-State Facility Description and Experience Verification Application, A436-19STATE_EXP-v3 \(eff. 4/2015\)](#)

[Waterworks and Wastewater Works Operator Virginia Experience Verification Application, A436-19WWEXP-v4 \(eff. 4/2017\)](#)

[Provisional Description and Experience Verification Application, A436-1955_65PEXP-v3 \(eff. 12/2014\)](#)

[Continuing Professional Education \(CPE\) Application - Certificate of Completion, A436-19CPE-v3 \(eff. 10/2015\)](#)

~~[Training Course Approval Application, A465-19CRS-v5 \(eff. 3/2020\)](#)~~

[Training Course Approval Application, A465-19CRS-v5 \(eff. 2/2020\)](#)

[Education and Training Substitution Form, A436-19EDTRv4, \(eff. 4/2017\)](#)

[Wastewater Works Operator Class 4 Application - Department of Corrections Apprenticeship Program, A436-1965APLIC-v3 \(eff. 6/2019\)](#)

FORMS (18VAC160-40)

[Conventional Onsite Soil Evaluator License Application, A465-1940CONLIC-v1 \(eff. 4/2017\)](#)

[Alternative Onsite Soil Evaluator License Application, A465-1940ALTLIC-v1 \(eff. 4/2017\)](#)

[Conventional Onsite Sewage System Installer License Application, A465-1944CONLIC-v1 \(eff. 4/2017\)](#)

[Alternative Onsite Sewage System Installer License Application, A465-1944ALTLIC-v1 \(eff. 4/2017\)](#)

[Conventional Onsite Sewage System Operator License Application, A465-1942CONLIC-v1 \(eff. 4/2017\)](#)

[Alternative Onsite Sewage System Operator License Application, A465-1942ALTLIC-v2 \(eff. 4/2018\)](#)

[Waiver of Examination - Master Conventional Onsite Sewage System Operator License Application, A436-1942WAIV-v2 \(eff. 4/2017\)](#)

[Continuing Professional Education \(CPE\) Application - Certificate of Completion, A436-19CPE-v3 \(eff. 10/2015\)](#)

~~[Training Course Approval Application, A465-19CRS-v5 \(eff. 3/2020\)](#)~~

[Training Course Approval Application, A465-19CRS-v5 \(eff. 2/2020\)](#)

[Education and Training Substitution Form, A436-19EDTRv4 \(eff. 4/2017\)](#)

[Onsite Sewage System Applicant Experience Verification Application, A436-19OSSPEXP-v4 \(eff. 4/2017\)](#)

VA.R. Doc. No. R21-6663; Filed February 10, 2021, 3:17 p.m.



Regulations

TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

COMMONWEALTH TRANSPORTATION BOARD

Proposed Regulation

REGISTRAR'S NOTICE: The Commonwealth Transportation Board is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 1 of the Code of Virginia, which excludes agency orders or regulations fixing rates or prices. The Commonwealth Transportation Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **24VAC30-620. Rules, Regulations, and Rates Concerning Toll and Bridge Facilities (amending 24VAC30-620-10, 24VAC30-620-20, 24VAC30-620-30).**

Statutory Authority: § 33.2-210 of the Code of Virginia.

Public Hearing Information: No public hearings are currently scheduled.

Public Comment Deadline: April 16, 2021.

Agency Contact: Jo Anne Maxwell, Government and Legislative Affairs Division Administrator, Department of Transportation, 1401 East Broad Street, Richmond, VA 23235, telephone (804) 786-1830, or email joanne.maxwell@vdot.virginia.gov.

Summary:

The proposed amendments (i) specify the toll rates for certain department-owned and department-operated toll facilities, (ii) delegate authority for the suspension of tolls at those facilities from the Commissioner of Highways to the commissioner's designee, (iii) specify the general conditions and criteria under which the suspension of tolls can occur, and (iv) address additional toll facilities covered by the regulation and the change in procedures and criteria to be considered for the suspension of tolls.

24VAC30-620-10. Applicability and effective dates.

This chapter applies to ~~the following facilities: the Dulles Toll Road, located in the Northern Virginia District; the Powhite Parkway Extension Toll Road, located in the Richmond District; and the George P. Coleman Bridge, located in the Hampton Roads District, all administered by the Innovative Finance and Revenue Operations Division~~ all Virginia Department of Transportation (VDOT)-owned and VDOT-operated toll facilities, unless and until, by agreement or law, authority to operate and set tolls is provided to another public or private entity.

24VAC30-620-20. General conditions and criteria concerning suspension of toll collection.

A. Tolls may be temporarily suspended on any toll facility subject to this chapter, under the following conditions:

1. The Commissioner of Highways or his designee has investigated or assessed a threat to public safety on or in the vicinity of the toll facility; and

2. As a result of the investigation or assessment, the Commissioner of Highways or his designee believes that a temporary suspension of toll collection will alleviate an actual or potential threat or risk to the public's safety, or facilitate the flow of traffic on or within the vicinity of the toll facility.

B. Incidents which may justify the temporary suspension of toll collection operations include, but are not limited to, the following: natural disasters, such as hurricanes, tornadoes, fires, and floods; accidental releases of hazardous materials, such as chemical spills; major traffic accidents, such as multi-vehicle collisions; and any other incidents deemed to present a risk to public safety.

C. Any mandatory evacuation during a state of emergency as defined in § 44-146.16 of the Code of Virginia shall require the temporary suspension of toll collection operations in affected evacuation zones on routes designated as mass evacuation routes. The Commissioner of Highways or the commissioner's designee shall reinstate toll collection when the mandatory evacuation period ends.

D. The suspension of tolls and reinstatement of tolls shall be conducted in accordance with internal agency procedures established by the Commissioner of Highways. The Commissioner of Highways may delegate in writing the authority to suspend and reinstate toll collection operations, as a result of the conditions and criteria outlined in this section. This delegation of authority includes following the policies and procedures established by the Commissioner of Highways and specific to each toll facility, governing the investigation and decision-making processes associated with the possible suspension and reinstatement of toll collections.

E. Judicial proceedings arising from any incident resulting in the suspension of toll collection will be conducted as provided for by § 33.2-613 of the Code of Virginia.

24VAC30-620-30. Rates and ~~delegation of authority to suspend toll collection.~~

A. ~~The Commissioner of Highways delegates the authority to suspend toll collection operations on the Dulles Toll Road to the Dulles Toll Road's Toll Facilities Administrative Director, subject to consultation with the Northern Virginia District Administrator and to the conditions and criteria outlined in 24VAC30-620-20 A and B. At his discretion, the Dulles Toll Road's Toll Facilities Administrative Director may delegate this authority to others within the toll facility's organization. This delegation of authority includes establishing policies and procedures specific to the toll facility governing the investigation and decision making processes associated with the possible suspension of toll collections. These policies and~~

procedures shall become part of the toll facility's operating plan.

~~B.~~ The following are the toll rate schedules for the Dulles Toll Road.

DULLES TOLL ROAD RATE STRUCTURE		
VEHICLE CLASS	MAIN PLAZA	ALL RAMPS
Two axles ¹	\$0.75	\$0.50
Three axles ²	\$1.00	\$0.75
Four axles	\$1.25	\$1.00
Five axles	\$1.50	\$1.25
Six axles or more	\$1.75	\$1.50

¹Includes passenger cars, motorcycles, motorcycles equipped with a sidecar, towing a trailer or equipped with a sidecar and towing a trailer, and 2-axle trucks (4 and 6 tires).

²Includes trucks, buses, and passenger cars with trailers.

~~C.~~ The Commissioner of Highways delegates the authority to suspend toll collection operations on the Powhite Parkway Extension Toll Road to the Richmond Toll Facilities' Toll Facilities Administrative Director, subject to consultation with the Richmond District Administrator and to the conditions and criteria outlined in 24VAC30-620-20 A and B. At his discretion, the Richmond Toll Facilities' Toll Facilities Administrative Director may delegate this authority to others within the toll facility's organization. This delegation of authority includes establishing policies and procedures specific to the toll facility governing the investigation and decision-making processes associated with the possible suspension of toll collections. These policies and procedures shall become part of the toll facility's operating plan.

~~D.~~ A. The following are the toll rate schedules for the Powhite Parkway Extension Toll Road.

POWHITE PARKWAY EXTENSION TOLL ROAD MAXIMUM RATE STRUCTURE				
VEHICLE CLASS	MAIN LINE PLAZA	MAIN LINE PLAZA - EAST & WEST RAMP	RAMP - ROUTE 60	RAMP - COURTHOUSE ROAD
Two axle vehicles ¹	\$0.75	\$0.25	\$0.25	\$0.50
Three axle vehicles	\$1.00	\$0.35	\$0.35	\$0.60

Four axle vehicles	\$1.25	\$0.45	\$0.45	\$0.70
Five axle vehicles	\$1.50	\$0.55	\$0.55	\$0.80
Six axle vehicles	\$1.50	\$0.55	\$0.55	\$0.80

¹Includes passenger cars, motorcycles, motorcycles equipped with a sidecar, towing a trailer or equipped with a sidecar and towing a trailer, and 2-axle trucks (4 and 6 tires).

~~E.~~ The Commissioner of Highways delegates the authority to suspend toll collection operations on the George P. Coleman Bridge to the George P. Coleman Bridge Facility's Toll Facilities Administrative Director, subject to consultation with the Hampton Roads District Administrator and to the conditions and criteria outlined in 24VAC30-620-20 A and B. At his discretion, the George P. Coleman Bridge Facility's Toll Facilities Administrative Director may delegate this authority to others within the toll facility's organization. This delegation of authority includes establishing policies and procedures specific to the toll facility governing the investigation and decision-making processes associated with the possible suspension of toll collections. These policies and procedures shall become part of the toll facility's operating plan.

~~F.~~ B. The following are the toll rate schedules for the George P. Coleman Bridge.

GEORGE P. COLEMAN BRIDGE TOLL RATE STRUCTURE	
VEHICLE CLASS ¹	ONE-WAY RATE
Motorcycles, pedestrians and bicyclists ²	\$0.85
Commuter ETC cars, vans, pick-ups	\$0.85
Commuter ETC two-axle commercial vans/trucks	\$0.85
Cars, vans, pick-ups	\$2.00
Two-axle, six-tire trucks and buses	\$2.00
Three-axle vehicles and buses	\$3.00
Four or more-axle vehicles	\$4.00

¹Commuter toll rates will be available only via the Smart Tag/E-Pass E-ZPass electronic toll collection (ETC) system to two-axle vehicles making three round trip northbound crossings within a 90-day period on the George P. Coleman Bridge.

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²Includes motorcycles equipped with a sidecar, towing a trailer, or equipped with a sidecar and towing a trailer. Motorcyclists requesting this rate must use the manual toll collection lanes because the Automatic Vehicle Identification system cannot accommodate the \$0.85 rate.

C. For all designated high-occupancy toll facilities, the toll rates shall vary as necessary to manage the demand to use the facility in accordance with 23 USC § 166.

VA.R. Doc. No. R20-6422; Filed February 17, 2021, 3:40 p.m.

GOVERNOR

AMENDED EXECUTIVE ORDER NUMBER SEVENTY-SIX (2021)

Declaration of a State of Emergency Due to Anticipated Winter Weather

Importance of the Issue

On this date, February 11, 2021, I declare that a state of emergency exists in the Commonwealth of Virginia to prepare and coordinate our response to anticipated severe winter weather. The anticipated effects of this situation constitute a disaster as described in § 44-146.16 of the Code of Virginia (Code). Therefore, by virtue of the authority vested in me by Article V, Section 7 of the Constitution of Virginia, by §§ 44-146.17 and 44-75.1 of the Code, as Governor and Director of Emergency Management and Commander-in-Chief of the Commonwealth's armed forces, I proclaim a state of emergency.

Accordingly, I direct state and local governments to render appropriate assistance to prepare for this event, to alleviate any conditions resulting from the situation, and to implement recovery and mitigation operations and activities so as to return impacted areas to pre-event conditions as much as possible. Emergency services shall be conducted in accordance with § 44-146.13 et seq. of the Code.

In order to marshal all public resources and appropriate preparedness, response, and recovery measures, I order the following actions:

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

B. Activation of the Virginia Emergency Operations Center and the Virginia Emergency Support Team, as directed by the State Coordinator of Emergency Management, to coordinate the provision of assistance to state, local, and tribal governments and to facilitate emergency services assignments to other agencies.

C. Authorization for the heads of executive branch agencies, on behalf of their regulatory boards as appropriate, and with the concurrence of their Cabinet Secretary, to waive any state requirement or regulation, and enter into contracts without regard to normal procedures or formalities, and without regard to application or permit fees or royalties. All waivers issued by agencies shall be posted on their websites.

D. Activation of § 59.1-525 et seq. of the Code related to price gouging.

E. Authorization of a maximum of \$1,000,000 in state sum sufficient funds for state and local government mission assignments and state response and recovery operations authorized and coordinated through the Virginia Department

of Emergency Management allowable by The Stafford Act, 42 USC § 5121 et seq.

Effective Date of this Executive Order

This Executive Order shall be effective immediately and shall remain in full force and in effect until March 13, 2021, unless sooner amended or rescinded by further executive order. Termination of this Executive Order is not intended to terminate any federal type benefits granted or to be granted due to injury or death as a result of service under this Executive Order.

Given under my hand and under the Seal of the Commonwealth of Virginia, this 18th day of February 2021.

/s/ Ralph S. Northam
Governor

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.

STATE BOARD OF HEALTH

Titles of Documents: [Guidance for Cyanobacteria Bloom Recreational Advisory Management.](#)

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

Public Comment Deadline: April 14, 2021.

Effective Date: April 15, 2021.

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

STATE WATER CONTROL BOARD

Title of Document: [Implementation of the 2021 Reissuance of the VPDES General Permit Regulation for Seafood Processing Facilities - VAG52.](#)

Public Comment Deadline: April 14, 2021.

Effective Date: April 15, 2021.

Agency Contact: Elleanore Daub, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4111, or email elleanore.daub@deq.virginia.gov.

SAFETY AND HEALTH CODES BOARD

Titles of Documents: [Inspection Procedures for the Respirable Crystalline Silica Standards.](#)

[National Emphasis Program on Crystalline Silica.](#)

Public Comment Deadline: April 14, 2021.

Effective Date: April 15, 2021.

Agency Contact: 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.

DEPARTMENT OF TRANSPORTATION

Title of Document: [Locally Administered Projects Manual.](#)

Public Comment Deadline: April 14, 2021.

Effective Date: April 15, 2021.

Agency Contact: Jo Anne P. Maxwell, Regulatory Coordinator, Policy Division, Department of Transportation, 1401 East Broad Street, 11th Floor, Richmond, VA 23219, telephone (804) 786-1830, or email joanne.maxwell@vdot.virginia.gov.

GENERAL NOTICES

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Draft Temporary Detention Order Supplement Provider Manual Available for Review

The draft Temporary Detention Order Supplement Provider Manual is now available on the Department of Medical Assistance Services website at <https://www.dmas.virginia.gov/#/manualdraft> for public comment until March 18, 2021.

Contact Information: Emily McClellan, Regulatory Manager, Division of Policy and Research, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-4300, FAX (804) 786-1680.

Intent to Amend the State Plan for Medical Assistance pursuant to § 1902(a)(13) of the Social Security Act (USC § 1396a(a)(13)) - Behavioral Health Enhancement

Public Comment Period: February 22, 2021, to March 24, 2021.

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

This notice is intended to satisfy the requirements of 42 CFR 447.205 and § 1902(a)(13) of the Social Security Act (42 USC § 1396a(a)(13)). A copy of this notice is available for public review from the contact listed at the end of the notice.

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

In accordance with Items 313.YYY(3) and 313.YYY(4) of Chapter 56 of the 2020 Acts of Assembly, Special Session I, DMAS will be making the following changes:

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

1. The state plan is being revised to implement:

Assertive community treatment, which will replace and be an enhancement of the current intensive community

treatment service. This will continue to be a service for adults.

Mental health intensive outpatient programs, a new service for youth and adults.

Mental health partial hospitalization programs for youth and adults, which will replace the current partial hospitalization program for adults.

The expected increase in annual aggregate expenditures is \$861,288 in state general funds and \$1,608,325 in federal funds in federal fiscal year 2021.

Contact Information: Emily McClellan, Regulatory Manager, Division of Policy and Research, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-4300, FAX (804) 786-1680.

Public Comment Opportunity for FAMIS MOMS Demonstration Amendment: 12 Months Postpartum Coverage

Public Comment Period: February 19, 2021, through March 22, 2021.

Pursuant to 42 CFR 431.408, the Department of Medical Assistance Services (DMAS) is providing a notice of intent to submit to the federal Centers for Medicare and Medicaid Services (CMS) a request to amend its Title XXI § 1115 Demonstration for the FAMIS MOMS and FAMIS Select Programs.

DMAS is providing an opportunity for members of the public to review and provide input on the FAMIS MOMS § 1115 Demonstration Amendment: 12 Months Postpartum Coverage.

Virginia's Title XXI § 1115 Demonstration has two components. First, it expands Title XXI coverage to uninsured pregnant women with family income up to 205% of the federal poverty level (FPL) who are not eligible for Medicaid, through a program known as FAMIS MOMS. Second, it uses Title XXI funds to support a health insurance premium assistance program known as FAMIS Select.

DMAS plans to submit an amendment to the FAMIS MOMS and FAMIS Select § 1115 Demonstration that would extend health coverage from 60 days to 12 months postpartum for pregnant women with income below 205% of the FPL who are not eligible to transition to another coverage group postpartum. Through this amendment to the demonstration, Virginia will have the opportunity to test the hypotheses that 12-month postpartum coverage will reduce maternal and infant morbidity and mortality, improve health outcomes, and advance health equity.

This amendment is being submitted pursuant to a mandate from the Virginia General Assembly in the 2020 Special

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Session budget, directing DMAS to seek federal approval to provide extended postpartum coverage.

Read the full public notice and view the draft FAMIS MOMS Demonstration Amendment: 12 Months Postpartum Coverage at <http://www.dmas.virginia.gov/#/hifawaiver>. Information regarding the FAMIS MOMS Demonstration Amendment: 12 Months Postpartum Coverage can be found at that webpage. DMAS will update the website throughout the public comment and application process.

Read the most recent Prenatal Care and Birth Outcomes Focused Study reports from the DMAS External Quality Review Organization (EQRO) at <http://www.dmas.virginia.gov/#/med3studies>. Additional information about the FAMIS MOMS and FAMIS Select Demonstration is also available on the CMS website at <https://www.medicaid.gov/medicaid/section-1115-demo/demonstration-and-waiver-list/?entry=8648>.

All public comments must be received by 11:59 p.m. on Monday, March 22, 2021. Public comments may be submitted by email to famismoms@dmas.virginia.gov or by telephone at (804) 225-3002. Due to the potential for mail distribution delays during the COVID-19 public health emergency, DMAS does not recommend submitting comments by postal mail or by UPS/FedEx at this time.

A virtual public hearing during, at which members of the public may comment on the demonstration amendment, will be held at the quarterly Children's Health Insurance Program Advisory Committee (CHIPAC) meeting on March 4, 2021, at 1:00 to 3:30 p.m. Comments will be limited to two minutes each. In order to participate in the public hearing, please use the following information:

Link to Join: <https://zoom.us/j/98324876649?pwd=MDJUcDhrK0Z6N0NQNUIU3bWxNQWFyUT09>

Meeting ID: 983 2487 6649

Passcode: 909526

Call-in numbers (Dial by your location):

1 301 715 8592 US (Washington DC)

1 312 626 6799 US (Chicago)

1 929 205 6099 US (New York)

After considering public comments about the proposed demonstration amendment, DMAS will summarize these comments and agency responses, incorporate any changes based on the public comments into the application, and submit a revised application to CMS. The summary of comments, as well as copies of written comments received, will be posted for public viewing on the DMAS website along with the demonstration amendment application when it is submitted to CMS.

Contact Information: Emily McClellan, Regulatory Manager, Division of Policy and Research, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-4300, FAX (804) 786-1680.

Intent to Amend the State Plan for Medical Assistance pursuant to § 1902(a)(13) of the Social Security Act (USC § 1396a(a)(13)) - Coverage of Mandatory Medication Assisted Treatment Drugs

Public Comment Period: February 23, 2021, to March 25, 2021.

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

This notice is intended to satisfy the requirements of 42 CFR 447.205 and of § 1902(a)(13) of the Social Security Act (42 USC § 1396a(a)(13)). A copy of this notice is available for public review from the contact listed at the end of the notice.

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

The Centers for Medicare and Medicaid Services (CMS) published a State Health Official (SHO) #20-005 letter regarding the Mandatory Medicaid State Plan Coverage of Medication-Assisted Treatment (MAT) on December 30, 2020. CMS stated § 1905(ee)(1) of the SUPPORT Act requires states to include as part of the new mandatory MAT benefit all forms of drugs and biologicals that the Food and Drug Administration (FDA) has approved or licensed for medications of opioid use disorder (MOUD), including medications of a manufacturer that does not participate in the federal rebate program with the Secretary of Health and Human Services (§ 1927). Federal law requires DMAS to file a state plan amendment (SPA) to recognize and reimburse MOUDs that do not participate in the federal rebate program. Since DMAS currently covers all varieties of MOUD and the non-rebatable medications covered by these additional manufacturers offer no variety in ingredients, thus DMAS does not estimate a cost impact.

There is no expected increase or decrease in annual aggregate expenditures as a result of this change.

Contact Information: Emily McClellan, Regulatory Manager, Division of Policy and Research, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-4300, FAX (804) 786-1680.

Intent to Amend the State Plan for Medical Assistance pursuant to § 1902(a)(13) of the Social Security Act (USC § 1396a(a)(13)) - Tribal Health Clinic

Public Comment Period: February 23, 2021, to March 25, 2021.

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

This notice is intended to satisfy the requirements of 42 CFR 447.205 and of § 1902(a)(13) of the Social Security Act (42 USC § 1396a(a)(13)). A copy of this notice is available for public review from the contact listed at the end of this notice.

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

The Upper Mattaponi Tribe has established a Tribal Health Clinic (THC) to meet the primary care health needs of Tribal members, including those enrolled in Virginia Medicaid. Federal law requires DMAS to file a state plan amendment to recognize and reimburse THC's as Medicaid providers. The THC will be enrolled as a federally qualified health center and will be reimbursed for services to Medicaid members at a rate set annually by the federal government. The Centers for Medicare and Medicaid Services will cover 100% of DMAS payments to the Upper Mattaponi THC for services to Medicaid members.

There is no expected increase in annual aggregate expenditures.

Contact Information: Emily McClellan, Regulatory Manager, Division of Policy and Research, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-4300, FAX (804) 786-1680.

STATE WATER CONTROL BOARD

Proposed Enforcement Action for Buchanan County Public Service Authority

An enforcement action has been proposed for the Buchanan County Public Service Authority for violations of the State Water Control Law at the Conaway wastewater treatment plant in Buchanan County. A description of the proposed action is available at the Department of Environmental Quality office listed or online at www.deq.virginia.gov. The staff contact person will accept comments by email or postal mail from March 16, 2021, through April 15, 2021.

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 Enforcement Action for Cedar Mountain Stone Corporation - Mitchells Facility

An enforcement action has been proposed for Cedar Mountain Stone Corporation for violations of the State Water Control Law and regulations at the Cedar Mountain Stone Mitchells facility located in Mitchells, Culpeper County, Virginia. The State Water Control Board proposes to issue a consent order to resolve violations associated with the Cedar Mountain Stone Mitchells facility. A description of the proposed action is available at the Department of Environmental Quality office listed or online at www.deq.virginia.gov. The staff contact person will accept comments by email or by postal mail from March 16, 2021, through April 15, 2021.

Contact Information: Benjamin Holland, Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, or email benjamin.holland@deq.virginia.gov.

Proposed Enforcement Action for Northstar Prime LLC

An enforcement action has been proposed for Northstar Prime LLC for violations of the State Water Control Law and regulations at a property located on Bull Run Post Office Road in Loudoun County, Virginia. A description of the proposed action is available at the Department of Environmental Quality office listed or online at www.deq.virginia.gov. The staff contact person will accept comments by email or postal mail from March 16, 2021, through April 15, 2021.

Contact Information: Jim Datko, Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, or email james.datko@deq.virginia.gov.

General Notices

Proposed Enforcement Action for Waterside I LLC

An enforcement action has been proposed for Waterside I LLC for violations of the State Water Control Law and regulations at the Waterside Data Center and Davis Drive Extension project located in Loudoun County, Virginia. A description of the proposed action is available at the Department of Environmental Quality office listed or online at www.deq.virginia.gov. The staff contact person will accept comments by email or postal mail from March 16, 2021, through April 15, 2021.

Contact Information: Jim Datko, Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, or email james.datko@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.

ERRATA

BOARD OF HOUSING AND COMMUNITY DEVELOPMENT

Title of Regulation: **13VAC5-51. Virginia Statewide Fire Prevention Code.**

Publication: 37:14 VA.R.1718-1880 March 1, 2021.

Correction to Final Regulation:

Pages 1790-1795, remove 13VAC5-51-138.1 and 13VAC5-51-138.4 in entirety.

VA.R. Doc. No. R19-5886; Filed March 4, 2021, 4:05 p.m.

SAFETY AND HEALTH CODES BOARD

Title of Regulation: **16VAC25-73. Regulation Applicable to Tree Trimming Operations.**

Publication: 27:15 VA.R.1934-1964 March 28, 2011.

Correction to Final Regulation:

Page 1953, 16VAC25-73.-90 E 13, NOTE, line 5, before "arborist", replace "certified" with "[certified qualified]"

VA.R. Doc. No. R08-1044; Filed February 16, 2021, 3:05 p.m.

Errata
