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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; James A. Leftwich, Jr., Vice-Chair; Ward L. Armstrong; Nicole Cheuk; Richard E. Gardiner; Ryan T. McDougle; Christopher R. Nolen; Steven Popp; Charles S. Sharp; Malfourd W. Trumbo; Amigo R. Wade; Wren M. Williams.

Staff of the Virginia Register: Holly Trice, 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>).

May 2023 through May 2024

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
39:19	April 19, 2023	May 8, 2023
39:20	May 3, 2023	May 22, 2023
39:21	May 17, 2023	June 5, 2023
39:22	May 31, 2023	June 19, 2023
39:23	June 14, 2023	July 3, 2023
39:24	June 28, 2023	July 17, 2023
39:25	July 12, 2023	July 31, 2023
39:26	July 26, 2023	August 14, 2023
40:1	August 9, 2023	August 28, 2023
40:2	August 23, 2023	September 11, 2023
40:3	September 6, 2023	September 25, 2023
40:4	September 20, 2023	October 9, 2023
40:5	October 4, 2023	October 23, 2023
40:6	October 18, 2023	November 6, 2023
40:7	November 1, 2023	November 20, 2023
40:8	November 14, 2023 (Tuesday)	December 4, 2023
40:9	November 29, 2023	December 18, 2023
40:10	December 13, 2023	January 1, 2024
40:11	December 27, 2023	January 15, 2024
40:12	January 10, 2024	January 29, 2024
40:13	January 24, 2024	February 12, 2024
40:14	February 7, 2024	February 26, 2024
40:15	February 21, 2024	March 11, 2024
40:16	March 6, 2024	March 25, 2024
40:17	March 20, 2024	April 8, 2024
40:18	April 3, 2024	April 22, 2024
40:19	April 17, 2024	May 6, 2024
40:20	May 1, 2024	May 20, 2024

*Filing deadlines are Wednesdays unless otherwise specified.

PETITIONS FOR RULEMAKING

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF COUNSELING

Initial Agency Notice

Title of Regulation: 18VAC115-80. Regulations Governing the Registration of Qualified Mental Health Professionals.

Statutory Authority: §§ 54.1-2400, 54.1-3500, and 54.1-3505 of the Code of Virginia.

Name of Petitioner: Kathy Johnson.

Nature of Petitioner's Request: The petitioner requests that the Board of Counseling license qualified mental health professionals (QMHPs) as licensed mental health professionals. The petitioner states that QMHPs are highly trained in the behavioral aspect of mental health and many hold masters degrees or higher.

Agency Plan for Disposition of Request: The petition for rulemaking will be published in the Virginia Register of Regulations on April 24, 2023. The petition will also be published on the Virginia Regulatory Town Hall at www.townhall.virginia.gov to receive public comment, which will open on April 24, 2023, and close on May 24, 2023. The board will consider the petition at its next meeting after the close of public comment, currently scheduled for July 21, 2023. The petitioner will be notified of the board's decision after that meeting.

Public Comment Deadline: May 24, 2023.

Agency Contact: Jaime Hoyle, Executive Director, Board of Counseling, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 367-4406, or email jaime.hoyle@dhp.virginia.gov.

VA.R. Doc. No. PFR23-25; Filed March 22, 2023, 3:36 p.m.

PERIODIC REVIEWS AND SMALL BUSINESS IMPACT REVIEWS

TITLE 4. CONSERVATION AND NATURAL RESOURCES

DEPARTMENT OF FORESTRY

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of Forestry conducted a periodic review and a small business impact review of **4VAC10-11, Public Participation Guidelines**, and determined that this regulation should be retained as is. The department is publishing its report of findings dated March 7, 2023, to support this decision.

The purpose of this chapter is to promote public involvement in the development, amendment, or repeal of the regulations of the Department of Forestry. The regulation is necessary to define and guide members of the public who are interested in an opportunity to submit data, views, and arguments, either orally or in writing, to the agency. The regulation is written clearly and is easily understandable. The regulation outlines the regulation's purpose, definitions, and guidelines for notifying persons interested in regulatory actions. The regulation defines procedures on public comment, rulemaking, the appointment of regulatory advisory panel and negotiated rulemaking panel, how meetings are conducted, public hearings on regulations, and periodic review of regulations.

The regulation will be retained without a change.

The regulation continues to be needed in order to promote public involvement in the development, amendment, or repeal of the department's regulations. The department did not receive any comments or complaints during the 21-day public comment period. This regulation is not complex and does not overlap, duplicate, or conflict with any other federal or state laws or regulations. This regulation is evaluated annually and does not rely on technology, economic conditions, or any other factors due to the nature of public participation. This regulation identifies the Virginia Regulatory Town Hall as the mechanism for notification, registration, and meeting procedures for public participation. The department determined the regulation has no economic impact on small businesses.

Contact Information: Amanda Davis, Policy Planning Manager III, Department of Forestry, 900 Natural Resources Drive, #800, Charlottesville, VA 22903, telephone (804) 664-7301.

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of Forestry conducted a periodic review and a small business impact review of **4VAC10-20, Standards for Classification of Real Estate as Devoted to Forest Use under the Virginia Land Use Assessment Law**, and determined that this regulation should be retained as is.

The department is publishing its report of findings dated March 7, 2023, to support this decision.

This regulation allows the State Forester to (i) encourage the proper use of real estate in order to assure a readily available source of agricultural, horticultural, and forest products, and of open space within reach of concentrations of population; (ii) conserve natural resources in forms that will prevent erosion; (iii) protect adequate and safe water supplies; (iv) preserve scenic natural beauty and open spaces; (v) promote proper land-use planning and the orderly development of real estate for the accommodation of an expanding population; and (vi) promote a balanced economy and ease or lessen the pressures that force the conversion of real estate to more intensive uses. The regulation is necessary to define and direct standards that shall be applied uniformly throughout the state to determine if real estate is devoted to forest use.

The regulation will be retained without a change.

The regulation continues to be needed in order to provide standards that shall be applied uniformly throughout the state to determine if real estate is devoted to forest use. The department did not receive any comments or complaints during the 21-day public comment period. The regulation is not complex and does not overlap, duplicate, or conflict with any other federal or state laws or regulations. This regulation is evaluated annually, and consideration was given to current conditions of technology, economic conditions, and other factors. The department determined that the regulation has no economic impact on small businesses.

Contact Information: Amanda Davis, Policy Planning Manager III, Department of Forestry, 900 Natural Resources Drive, #800, Charlottesville, VA 22903, telephone (804) 664-7301.

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of Forestry conducted a periodic review and a small business impact review of **4VAC10-30, Virginia State Forests Regulations**, and determined that this regulation should be retained as is. The department is publishing its report of findings dated March 7, 2023, to support this decision.

The purpose of this chapter is for the Department of Forestry to define and provide an overview of acts prohibited in Virginia state forests, provided such acts 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. This regulation provides guidance on the interpretation of the regulations, the territorial scope, permits required, preservation of the forest, pollution, disposal, conduct, gambling, alcohol, picnicking, camping, bathing, dressing, explosives, fires, smoking, hunting, fishing, boating, dogs and other animals, sports, vehicles, meetings, advertisements, contributions, aviation, and sale of forest

Periodic Reviews and Small Business Impact Reviews

products. The regulation is necessary to define and provide overview of what is prohibited in state forests.

The regulation will be retained without a change.

The regulation continues to be needed in order to provide the activities prohibited in Virginia state forests. The department received one comment; however, the comment was informational and was directed at the Virginia Department of Conservation and Recreation. The regulation is not complex and does not overlap, duplicate, or conflict with any other federal or state laws or regulations. This regulation is evaluated annually, and consideration was given to current conditions of technology, economic conditions, and other factors. The department determined the regulation has no economic impact on small businesses.

Contact Information: Amanda Davis, Policy Planning Manager III, Department of Forestry, 900 Natural Resources Drive, #800, Charlottesville, VA 22903, telephone (804) 664-7301.

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of Forestry conducted a periodic review and a small business impact review of **4VAC10-40, Reforestation of Timberlands Regulations**, and determined that this regulation should be retained as is. The department is publishing its report of findings dated March 7, 2023, to support this decision.

The purpose of this chapter is for the Department of Forestry to define and provide an overview of rules governing reforestation of timberlands. Reforestation assistance includes the funds, material, personnel, or other assistance made available to a landowner pursuant to § 10.1-1173 of the Code of Virginia and this regulation. This chapter provides reforestation rules, such as qualifying and nonqualifying species, type of land cover, land area and practices, seed trees, equipment, personnel, expenditure of taxes, and assistance to damaged replant areas. The regulation is necessary to define and provide overview of what reforestation of timberlands means.

The regulation will be retained without a change.

The regulation continues to be needed in order to provide landowners an understanding of what is meant by reforestation of timberlands. The department did not receive any public comments for this review. The regulation is not complex and does not overlap, duplicate, or conflict with any other federal or state laws or regulations. This regulation is evaluated annually, and consideration was given to current conditions of technology, economic conditions, and other factors. The department determined the regulation has no economic impact on small businesses.

Contact Information: Amanda Davis, Policy Planning Manager III, Department of Forestry, 900 Natural Resources Drive, #800, Charlottesville, VA 22903, telephone (804) 664-7301.

DEPARTMENT OF ENERGY

Agency Notice

Pursuant to Executive Order 19 (2022) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the following regulations are undergoing a periodic review and a small business impact review: **4VAC25-20, Board of Coal Mining Examiners Certification Requirements; 4VAC25-31, Reclamation Regulations for Mineral Mining; 4VAC25-35, Certification Requirements for Mineral Miners; 4VAC25-40, Safety and Health Regulations for Mineral Mining; 4VAC25-125, Regulations Governing Coal Stockpiles and Bulk Storage and Handling Facilities; 4VAC25-130, Coal Surface Mining Reclamation Regulations; 4VAC25-150, Virginia Gas and Oil Regulation; 4VAC25-160, Virginia Gas and Oil Board Regulations; 4VAC25-165, Regulations Governing the Use of Arbitration to Resolve Coalbed Methane Gas Ownership Disputes; and 4VAC25-170, Geothermal Energy Regulations.**

The review of each regulation will be guided by the principles in Executive Order 19 (2022). The purpose of a periodic review is to determine whether each regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to these regulations, including whether each regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

Public comment period begins April 24, 2023, and ends May 15, 2023.

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: Michael Skiffington, Regulatory Coordinator, Department of Energy, 1100 Bank Street, 8th Floor, Richmond, VA 23219-3402, telephone (804) 692-3212.



Periodic Reviews and Small Business Impact Reviews

TITLE 12. HEALTH

STATE BOARD OF HEALTH

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Board of Health conducted a periodic review and a small business impact review of **12VAC5-150, Regulations for the Sanitary Control of Storing, Processing, Packing or Repacking of Oysters, Clams and Other Shellfish**, and determined that this regulation should be amended. The board is publishing its report of findings dated December 22, 2022, to support this decision.

Upon a review of the regulation, the board determined the regulation is essential to protecting public health by requiring that molluscan shellfish establishments obtain approval from the State Health Commissioner before beginning operations or renovations. The regulation further requires such establishments to maintain sanitary conditions, thus protecting all people in Virginia. The regulation meets the criteria set forth in Executive Order 19 (2022). The regulation is necessary to interpret and apply the requirements of the Code of Virginia and is clearly written and understandable.

The board has determined that the regulation should be amended to ensure that it reflects the most updated science and best practices, including feedback from relevant industry experts and other stakeholders. The regulation has not undergone a comprehensive review since its initial administrative codification approximately 50 years ago. In addition, at the conclusion of a periodic review conducted in 2017, the Office of the Attorney General (OAG) advised the board that sections of the regulation were inconsistent with the Code of Virginia and require amendment.

Chapter 8 (§ 28.2-800 et seq.) of Title 28.2 of the Code of Virginia authorizes the board to promulgate regulations necessary to protect public health and safety as it pertains to crustacea and shellfish. The continued need for the regulation is established in statute. No comments were received during the public comment period from October 10, 2022, to October 31, 2022. The last periodic review of this chapter was completed in 2017.

The regulation is clearly written and easily understandable; however, it overlaps, duplicates, or conflicts with state laws and regulation, specifically § 28.2-823 of the Code of Virginia and 12VAC5-160. An evaluation is necessary to determine how or if technology, economic conditions, or other factors could have an impact on the regulated industry and the general public. Virginia Department of Health staff will engage with stakeholders and the regulated community regarding any proposed amendments to minimize the economic impact of the regulation on small businesses while maintaining appropriate regulatory standards to ensure the safety, health, and welfare of the public.

Contact Information: Sarah Good, Plant Program Manager, Virginia Department of Health, James Madison Building, 109 Governor Street, Richmond, VA 23219, telephone (804) 659-3823.

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Board of Health conducted a periodic review and a small business impact review of **12VAC5-160, Regulations for the Sanitary Control of the Picking, Packing and Marketing of Crab Meat for Human Consumption**, and determined that this regulation should be repealed. The board is publishing its report of findings dated December 22, 2022, to support this decision.

Upon a review of the regulation, the board determined the regulation is essential to protecting public health by requiring crustacea establishments obtain approval from the State Health Commissioner before beginning operations or renovations. The regulation further requires such establishments to maintain sanitary conditions, thus protecting all people in Virginia. The regulation meets the criteria set forth in Executive Order 19 (2022). The regulation is necessary to interpret and apply the requirements of the Code of Virginia and is clearly written and understandable. However, the intent of the regulation can be incorporated into 12VAC5-150, reducing the burden on the regulated industry.

The board has determined that the regulation should be repealed. Language from 12VAC5-160 can be incorporated into 12VAC5-150 to maintain public health protection, safety, and welfare.

Chapter 8 (§ 28.2-800 et seq.) of Title 28.2 of the Code of Virginia authorizes the board to promulgate regulations necessary to protect public health and safety as it pertains to crustacea and shellfish. The continued need for the provisions of the regulation is established in statute. No comments were received during the public comment period from October 24, 2022, to November 14, 2022. The last periodic review of this chapter was completed in 2017. The regulation is clearly written and easily understandable but overlaps with state law and regulation. As a result, the board recommends this chapter be repealed. This action will reduce burden on the regulated industry.

Contact Information: Sarah Good, Plant Program Manager, Virginia Department of Health, James Madison Building, 109 Governor Street, Richmond, VA 23219, telephone (804) 659-3823.

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Board of Health conducted a periodic review and a small business impact review of **12VAC5-610, Sewage Handling and Disposal Regulations**, and determined

Periodic Reviews and Small Business Impact Reviews

that this regulation should be amended. The board is publishing its report of findings dated January 24, 2023, to support this decision.

Section 32.1-164 of the Code of Virginia requires the board to adopt, promulgate, and enforce regulations necessary to protect health and safety as it relates to onsite sewage systems. The regulation was reviewed and determined to be essential to protecting public health by ensuring the safe and sanitary treatment and disposal of sewage by onsite sewage systems.

The regulation meets the criteria set forth in Executive Order 19 (2022). The regulation is necessary to interpret and apply the requirements of the Code of Virginia and is clearly written and understandable. The regulation is designed to achieve its objective in the most efficient and cost-effective manner. However, the regulation has not undergone a comprehensive revision since 2000. Therefore, a detailed review is necessary to ensure the regulation reflects changes in the industry and best practices. The board has determined that the regulation should be amended to ensure that it reflects the most updated science and best practices, including feedback from relevant industry experts and other stakeholders. The regulation has not undergone a comprehensive revision since 2000. The regulation, in its current form, does not reflect all changes in the industry and best practices over the last 20 years.

Chapter 6 (§ 32.1-163 et seq.) of Title 32.1 of the Code of Virginia mandates the board's supervision and control over the safe and sanitary collection, conveyance, transportation, treatment, and disposal of sewage by onsite sewage systems. The continued need for the regulation is established in statute and is not discretionary.

While the agency did not receive any comments during the periodic review, Virginia Department of Health staff held public meetings with stakeholders and the regulated community in 2022 to address changes in the onsite sewage system industry and best practices. As a result of these meetings, the agency understands that in the regulation's current state, the regulation contains outdated soil science terminology and ambiguous wording regarding certain installation requirements. The regulation also lacks any operation and maintenance specifications for aging onsite sewage systems. Agency staff will continue to engage with stakeholders and the regulated community regarding any necessary amendments to minimize the economic impact of the regulation on small businesses while maintaining appropriate regulatory standards to ensure the safety, health, and welfare of the public.

Contact Information: Lance Gregory, Division Director, Virginia Department of Health, James Madison Building, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7491.



TITLE 17. LIBRARIES AND CULTURAL RESOURCES

DEPARTMENT OF HISTORIC RESOURCES

Agency Notice

Pursuant to Executive Order 19 (2022) 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: **17VAC10-20, Evaluation Criteria and Procedures for Nominations of Property to the National Register or for Designation as a National Historic Landmark**. The review of this regulation will be guided by the principles in Executive Order 19 (2022). The purpose of a periodic 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 April 24, 2023, and ends May 15, 2023.

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: Stephanie Williams, Deputy Director, Department of Historic Resources, 2801 Kensington Avenue, Richmond, VA 23221, telephone (804) 482-6085.



TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF ACCOUNTANCY

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board of Accountancy conducted a periodic review and a small business impact review of **18VAC5-22, Board of Accountancy Regulations**, and determined that this regulation should be retained as is. The board is publishing its report of findings dated March 23, 2023, to support this decision.

Periodic Reviews and Small Business Impact Reviews

The regulation is necessary for the protection of the public health, safety, and welfare, as it is needed to meet the statutory mandate to restrict the practice of public accounting and to ensure the competency of holders of Virginia Certified Public Accountant (CPA) licenses. The regulation is not overly complex and is written in plain language that the general public should easily understand.

The Board of Accountancy had no scheduled changes prepared when undertaking this review. Retaining the regulation was necessary because of the statutory requirement that the board regulate the profession of public accounting and the use of the CPA title.

There is a continued need for the regulation because it provides the most cost-effective means of restricting the practice of public accounting and ensuring the competency of holders of Virginia CPA licenses. No complaints from the public were received during the comment period. The Board of Accountancy believes the regulation is not overly complex. There is no overlap, duplication, or conflict with federal or state law or regulation. The last full review of the regulation occurred in 2018 when the decision was made to amend the regulation following periodic review. The Board of Accountancy, through examination of the regulation, has determined that the regulatory requirements currently minimize the economic impact of regulation on small businesses and thereby minimize the impact on existing and potential Virginia employers and their ability to maintain and increase the number of jobs in the Commonwealth.

Contact Information: Vasa Clarke, Regulatory Coordinator, Board of Accountancy, 9960 Mayland Drive, Suite 402, Henrico, VA 23233, email vasa.clarke@boa.virginia.gov.

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 1. ADMINISTRATION

TREASURY BOARD

Final Regulation

Title of Regulation: **1VAC75-20. Virginia Security for Public Deposits Act Regulations (amending 1VAC75-20-10, 1VAC75-20-30, 1VAC75-20-50 through 1VAC75-20-160; repealing 1VAC75-20-20, 1VAC75-20-40).**

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

Effective Date: July 1, 2023.

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.

Summary:

The amendments (i) conform Virginia Security for Public Deposits Act Regulations (1VAC75-20) with the Security for Public Deposits Act; (ii) make certain changes to the types of securities eligible to be pledged as collateral and their valuation; and (iii) establish formal eligibility criteria for banks to become and remain qualified public depositories and escrow agents.

Summary of Public Comments and Agency's Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

1VAC75-20-10. General.

A. The definitions provided by ~~§ 2.1-360~~ § 2.2-4401 of the Code of Virginia shall be used throughout this chapter unless the context requires otherwise.

B. The Treasury Board has designated the State Treasurer to be the chief administrative officer with respect to the provisions of the Virginia Security for Public Deposits Act (the "Act") (~~§ 2.1-359~~ § 2.2-4400 et seq. of the Code of Virginia) and the State Treasurer reserves the right to designate a representative to act on his behalf.

C. The primary responsibility for compliance with the Act rests upon the financial institutions that accept and hold public deposits. If the deposit is a "public deposit," the deposit must be secured pursuant to the Act. If a depositor or a depository is unable to ascertain whether a particular deposit is a "public deposit" for purposes of the Act, ~~he~~ they should obtain the ~~essential details~~ information about the purpose of the account,

the custodian of the account, and under what authority the account was established and communicate with the State Treasurer's office by the use of a notice of election form. A final determination will be made by the State Treasurer's office with the assistance of the Office of the Attorney General, if needed.

1VAC75-20-20. Effective date. (Repealed.)

~~This chapter, as amended, shall be effective on and after November 18, 1993.~~

1VAC75-20-30. Required collateral for banks Collateral requirements for qualified public depositories.

~~The required collateral of a national or state chartered bank to secure public deposits shall be determined according to the following applicable criteria and shall consist of securities qualifying as eligible collateral pursuant to these regulations which have a value for collateralization purposes not less than:~~

~~1. Fifty percent. Fifty percent of the actual public deposits held at the close of business on the last banking day of the immediately preceding month, or 50% of the average balance of public deposits for the immediately preceding month, whichever is greater;~~

~~2. Seventy five percent. A. The Treasury Board shall establish the required collateral that qualified public depositories must pledge to secure public deposit balances in excess of insurance coverage provided by the Federal Deposit Insurance Corporation based on resolutions and guidelines approved by the Treasury Board. These collateral requirements shall be made available for public access. Public depositories and qualified public depositories will be notified of changes to the requirements in advance of their effective dates.~~

~~B. In the event a bank's depository's average daily public deposits for the immediately preceding month exceed one-fifth of its average daily total deposits for that month, the required collateral will be 75% of the actual public deposits held at the close of business on the last banking day of the immediately preceding month, or 75% of the average balance of public deposits for the immediately preceding month, whichever is greater; 3. One hundred percent. in accordance with the Treasury Board's established collateral requirements with the added stipulation that no public deposit be collateralized at less than 75% of the actual public deposits held at the close of business on the last day of the immediately preceding month, or no public deposit be collateralized at less than 75% of the average balance of public deposits for the immediately preceding month, whichever is greater.~~

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C. In the event a ~~bank's depository's~~ average daily public deposits for the immediately preceding month exceed one-fifth of its average daily total deposits and the ~~bank depository~~ has not been actively engaged in the commercial banking business for at least three years, or in the event that a ~~bank's depository's~~ average daily public deposits for the immediately preceding month exceed one-third of its average daily total deposits, or in the event that a ~~bank depository~~ has not been actively engaged in the commercial banking business for at least one year, the required collateral will be no less than 100% of the actual public deposits held at the close of business on the last ~~banking~~ day of the immediately preceding month, or no less than 100% of the average balance of public deposits for the immediately preceding month, whichever is greater.

D. In the event a ~~bank depository~~ has violated the ~~pledging statutes and regulations~~ Security for Public Deposits Act [~~2~~ or] this chapter, or for other reasons deemed sufficient prudent by the Treasury Board, such as the deteriorating financial condition of the ~~bank depository~~ or ~~the reasons referred to in 1VAC75-20-130~~ the failure to meet compliance requirements established by the Treasury Board pursuant to 1VAC75-20-130, the Treasury Board may increase the ~~bank's ratio of required collateral to 100% of its actual public deposits~~ depository's collateral requirement.

1VAC75-20-40. Required ~~collateral for savings institutions.~~ (Repealed.)

~~The required collateral of a savings institution to secure public deposits shall consist of securities qualifying as eligible collateral pursuant to these regulations which have a value, for collateralization purposes, not less than a sum equal to 100% of the average daily balance of public deposits held by such savings institution for the immediately preceding month, but shall not be less than 100% of the public deposits held by such savings institution at the close of business on the last banking day of the immediately preceding month.~~

~~In the event that a savings institution has violated the pledging statutes and regulations, or for other reasons deemed sufficient, such as the financial condition of the savings institution or the reasons referred to in 1VAC75-20-130, the Treasury Board may increase such savings institution's ratio of required collateral above 100% of its actual public deposits.~~

1VAC75-20-50. Average daily balance computation.

A. The average daily balance for any month shall be derived by dividing the sum of the daily balances of any item being computed by the number of calendar days in the month.

B. In computing the amount of public deposits and the average balance of public deposits to be collateralized during any month, there shall be excluded the amount of each deposit [which that] is insured by federal deposit insurance the Federal Deposit Insurance Corporation.

1VAC75-20-60. Eligible collateral.

A. Securities eligible for collateral are limited to:

1. Obligations of the Commonwealth. Bonds, notes and other evidences of indebtedness of the Commonwealth of Virginia, and securities unconditionally guaranteed as to the payment of principal and interest by the Commonwealth of Virginia.

2. Obligations of the United States. Bonds, notes and other obligations of the United States, and securities unconditionally guaranteed as to the payment of principal and interest by the United States, or any agency thereof.

3. Obligations of Virginia counties, cities, ~~ete.~~ and other public bodies. Bonds, notes [] and other evidences of indebtedness of any county, city, town, district, authority [] or other public body of the Commonwealth ~~of Virginia~~ upon which there is no default provided that such bonds, notes [] and other evidences of indebtedness of any county, city, town, district, authority [] or other public body are either direct legal obligations of, or unconditionally guaranteed as to the payment of principal and interest by, the county, city, town, district, authority [] or other public body in question and revenue bonds issued by agencies or authorities of the State of Virginia Commonwealth or its political subdivisions upon which there is no default and [which that] are rated BBB Baa2 or better by Moody's Investors Service, Inc. or BBB or better by Fitch Ratings, Inc. or Standard & Poor's Corporation Financial Services LLC.

4. Obligations of the ~~International Bank for Reconstruction and Development, African Development Bank, and Asian Development Bank~~. Bonds and other obligations issued, guaranteed, or assumed by the International Bank for Reconstruction and Development by the African Development Bank, or by the Asian Development Bank.

5. Obligations partially insured or guaranteed by any U.S. Government Agency.

6. Obligations (including revenue bonds) of states, other than Virginia, and their municipalities or political subdivisions rated A A2 or better by Moody's Investors Service, Inc. or A or better by Fitch Ratings, Inc. or Standard & Poor's Corporation Financial Services LLC.

~~7. Corporate Notes rated AA by both Moody's Investors Services, Inc. and Standard & Poor's Corporation with a maximum maturity of 10 years.~~

~~8. Any additional securities approved by the Treasury Board pursuant to § 2.1-364(d) of the Code of Virginia for which written notification to qualified public depositories from the State Treasurer will be provided.~~

7. Any additional securities approved by the Treasury Board pursuant to § 2.2-4405.4 of the Code of Virginia.

B. Federal Home Loan Bank letters of credit issued in accordance with the Security for Public Deposits Act are eligible as collateral.

C. No security which is in default as to principal or interest shall be acceptable as collateral.

C. D. No qualified public depository shall utilize securities issued by itself, its holding company, or any affiliate for purposes of collateralizing its public deposits.

D. E. Securities excluded by action of the Treasury Board pursuant to ~~§ 2.1-364(d)~~ § 2.2-4405.4 of the Code of Virginia shall not be acceptable. ~~Written notification of securities excluded will be provided to qualified public depositories by the State Treasurer.~~

1VAC75-20-70. Valuation of collateral.

A. Each qualified public depository shall value its securities for reporting purposes at current market value as of the close of business on the last banking day of the immediately preceding month. ~~Weekly, qualified public depositories that have elected the dedicated method of collateralization must additionally report current market values as of the close of business on Friday of the immediately preceding week.~~ At all times the current market value of collateral must be equal to or greater than a depository's required collateral as defined in 1VAC75-20-30, ~~1VAC75-20-40~~ and 1VAC75-20-80 [~~of this chapter~~]. Current market value is defined as the market value of a security priced on a same day basis or no older than one business day. Business day is defined as ~~the close of a commercial business at 5 p.m. The State Treasurer, upon written notice to any or all qualified public depositories and eligible escrow agents, may require as deemed necessary for reporting purposes any day other than a Saturday, Sunday, a legal holiday, or a day in which banking institutions are authorized or required by law or other governmental action to be closed.~~

B. The Treasury Board may require that certain securities that are difficult-to-value or subject to rapid declines in value or otherwise represent a risk of decrease in value be valued at a rate less than 100% of their market value. ~~Accordingly, this shall apply to all of the following security types: mortgage-backed securities (MBS) and collateralized mortgage obligations (CMO) issued by United States agencies or government-sponsored enterprises (GSE) shall be valued at 80% of their market value; obligations (bonds, notes, and other evidences of indebtedness) of the Commonwealth of Virginia and any Virginia county, city, town, authority, or other public body shall be valued at 90% of their market value; and obligations (bonds, notes, and other evidences of indebtedness) of other states and their municipalities and political subdivisions shall be valued at 80% of their market value. Qualified public depositories shall have six months from [the date these regulations are effective July 1, 2023,] to adjust their pledged collateral, if necessary.~~

1VAC75-20-80. Deposit of collateral.

A. No qualified public depository shall accept or retain any public deposit [~~which that~~] is required to be secured unless it has previously executed a "Public Deposit Security Agreement," approved by the depository's Board of Directors or Loan Committee, with such approval reflected in the minutes of said board or committee. The depository shall maintain the security agreement as an official record continuously from the time of its execution. The depository must also have deposited eligible collateral, as defined in [~~these regulations this chapter~~], equal to its required collateral, determined as [~~herein~~] provided [~~in this chapter~~], with an eligible escrow agent approved by the State Treasurer. Each depository is responsible for providing a written notification and executing new agreements upon its name change.

B. Whether or not a qualified public depository has eligible collateral deposited as [~~heretofore~~] provided at the time it receives a public deposit, if such deposit would result in an increase in the qualified public depository's required collateral computed as of the day on which the deposit is received, such qualified public depository shall immediately deposit sufficient securities to increase its collateral to an amount equal to that determined pursuant to 1VAC75-20-30 ~~or 1VAC75-20-40, whichever is applicable~~, utilizing the qualified public depository's actual public deposits held at the close of business on the banking day such deposit is received ~~in lieu of those held at the close of business on the last banking day in the immediately preceding month. Banking day is defined as the financial institution's close of business at 2 p.m. Written notice of deposit of collateral shall be submitted to the State Treasurer Treasury Board.~~

~~At the time of the deposit of registered securities, the qualified public depository owning the securities shall attach appropriate bond power forms as required to allow the State Treasurer to transfer ownership of such registered securities for the purpose of satisfying the qualified public depository's liabilities under the Act in the event the collateral needs to be liquidated.~~

1VAC75-20-90. Substitution of eligible collateral.

A. A substitution of eligible collateral may be made by the qualified public depository at any time provided that the current market value of the collateral substituted is equal to or greater than the current market value of the collateral withdrawn.

B. At the time of making a collateral substitution, the qualified public depository shall prepare a request for the substitution upon a form approved by the ~~State Treasurer Treasury Board~~ and ~~deliver the original provide it to the escrow agent and a copy to the State Treasurer Treasury Board.~~ The escrow agent shall not allow a collateral substitution unless the current market value of the collateral to be substituted is equal to or greater than the current market value of the collateral to

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be withdrawn. Current market value for the escrow agent in regards to a substitution is the market value of a security priced on a same day basis or no older than one business day prior to the date of the substitution. The escrow agent shall calculate adjustments to the current market value of collateral that the ~~State Treasurer~~ Treasury Board has identified as difficult-to-value or subject to rapid declines in value or otherwise represents a risk of decrease in value at the time of substitution to determine if the market value is equal to or greater than the value of the collateral to be withdrawn in accordance with 1VAC75-20-70.

C. In the event the current market value of the substituted collateral is not equal to or greater than the value of the collateral to be withdrawn as determined in accordance with 1VAC75-20-70, the qualified public depository shall obtain written approval of the ~~State Treasurer~~ Treasury Board to substitute the collateral.

1VAC75-20-100. Withdrawal of collateral.

A qualified public depository shall not be permitted to withdraw collateral previously pledged without the prior written approval of the ~~State Treasurer~~ Treasury Board. The ~~State Treasurer~~ Treasury Board may grant such approval only if the qualified public depository certifies in writing that such withdrawal will not reduce the current market value of its pledged collateral below its required collateral as defined by ~~these regulations~~ this chapter, and this certification is substantiated by a statement reporting the qualified public depository's current public deposits, which indicates that after withdrawal such deposits will continue to be secured to the full extent required by the law and regulations. Current public deposits ~~are defined as for this purpose are~~ the amount of public deposits held at the time of withdrawal of collateral. ~~If a qualified public depository cannot determine the amount of current public deposits when collateral is to be withdrawn, the depository shall request an exception to this provision from the State Treasurer stating why the depository cannot comply and how it intends to determine the current public deposit balance under this provision. The request for exception must be in writing and formally approved by the State Treasurer. The escrow agent shall not permit the qualified public depository to withdraw collateral without the prior written approval of the State Treasurer~~ Treasury Board.

1VAC75-20-110. Reports by qualified public depositories.

A. Within 10 ~~business calendar~~ calendar days after the end of ~~every~~ the month, each qualified public depository shall submit to the ~~State Treasurer a written report, under oath, signed by an authorized officer of the financial institution indicating~~ Treasury Board an electronic report of such data required by the Treasury Board, certified as to its accuracy by an authorized official of the qualified public depository. The report shall include the total amount of public deposits held by it at the close of business on the last banking day in the immediately preceding month; the average daily balance for

such month of all public deposits held by it during the immediately preceding month; the average daily balance of all bank deposits for the immediately preceding month; the total required collateral; the total par value and the total current market value of collateral ~~for at the close of business on the last day in~~ the immediately preceding month; and the average daily collateral balance. Included with this report shall be a detailed schedule of pledged collateral to include, ~~but not limited to,~~ the security description, coupon rate, CUSIP (Committee on Uniform Securities Identification Procedures) number, maturity date, debt rating by Moody's Investors Services, Inc., Fitch Ratings, Inc. or Standard & Poor's ~~Corporation~~ Financial Services LLC, par value amount, book or principal value amount, and current market value amount, determined pursuant to 1VAC75-20-70.

B. Qualified public depositories selecting the dedicated method to collateralize their public deposit balances shall also submit reports similar to those outlined in subsection A of this section each week for the immediately preceding week.

C. At the request of ~~any a~~ a public depositor for which ~~it a~~ qualified public depository holds deposits, within 10 ~~business~~ calendar days after the end of ~~any a~~ a month, the qualified public depository shall submit a statement indicating the total public deposits in each account to the credit of such depositor on the last banking day in the immediately preceding month and the total amount of all public deposits held by it upon such date.

D. Within the first 10 ~~business~~ calendar days of each ~~calendar~~ quarter, ~~every~~ qualified public depository ~~depositories~~ shall submit to the ~~State Treasurer a~~ Treasury Board an electronic report ~~indicating the account number, type of account, amount of federal deposit insurance applied, total amount on deposit and total amount on deposit to be secured by its pledged collateral or a combined listing containing the same information as an attachment to the "Public Depository Monthly Report" as of the close of business on the last banking day of the calendar quarter being reported. At the same time every qualified public depository shall submit to each public depositor for whom it holds public deposits, a report indicating the account number, type of account, and total account amount to be secured by its pledged collateral~~ by public deposit account to include the account number, type of account (demand or savings), full name of account, name of public entity, custodian name and title, federal tax identification number, amount on deposit in the account, amount on deposit secured by federal deposit insurance, and amount of deposit secured by pledged collateral. Qualified public depositories shall also within the first 10 calendar days of each quarter provide to each public depositor for whom it holds public deposits, a schedule detailing the public deposit accounts reported to the Treasury Board for that depositor, indicating the account name and number, type of account, amount on deposit secured by federal deposit insurance, and total account amount to be secured by its pledged collateral.

~~With the submission of the "Public Depository Monthly Report" to the State Treasurer for the month ending on June 30, E. By the 10th calendar day of July, qualified public depositories shall attach submit an annual certification from an independent certified public accountant or their internal audit department, attesting to the accuracy of the public deposit balances reported to the ~~State Treasurer~~ Treasury Board during their previous fiscal year in accordance with the instructions issued by the Treasury Board.~~

1VAC75-20-120. Reports by State Treasurer.

~~The State Treasurer shall report to the auditors of any public depositor, upon their written request, the status of any qualified public depository's collateral account and its compliance with the reporting requirements of the Act. The State Treasurer shall notify any public depositor that maintains accounts with any bank or savings institution of any irregularities, including, but not limited to, the late filing of the required monthly reports or deficiencies in the qualified public depository's eligible collateral at any time. make available to public depositors and their auditors reports of compliance irregularities of public depositories including undercollateralization and repeated late filings of required compliance reports. The Treasury Board shall be notified of the sending of any reports of irregularities required herein no later than at its next compliance irregularities during the board's regularly scheduled ~~meeting~~ meetings.~~

1VAC75-20-130. ~~Compliance requirements~~ Eligibility criteria and compliance requirements for qualified public depositories.

~~Pursuant to the power granted under § 2.1-364 § 2.2-4405 of the Code of Virginia, the Treasury Board may establish criteria for determining the continued eligibility of public depositories to accept public deposits. By formal request, any depository may receive a copy of the approved policy enacted by the Treasury Board. The State Treasurer shall notify public depositors of any policy irregularity regarding their depository to become a qualified public depository and compliance requirements for continued eligibility.~~

1. To become a qualified public depository, the minimum qualifications are that a bank:

- a. Meet the requirements of a qualified public depository as defined in § 2.2-4401 of the Code of Virginia.
- b. Have an average or above rating from the Treasury Board's designated rating service for the most recent eight calendar quarters.
- c. Cannot be under a formal federal or state bank regulatory enforcement action that would impair its ability to serve as a qualified public depository, to be determined on a case-by-case basis. Banks will be required to disclose to the Treasury Board any such formal enforcement actions currently in force.

2. For continued eligibility, compliance requirements are:

a. Sufficient collateralization, pooled method. If a qualified public depository using the pooled method of collateralization is undercollateralized three months in a rolling 12-month period, the Treasury Board may take action, including the following, as it deems appropriate:

- (1) Increase the depository's collateral requirement.
- (2) Prohibit the depository from opening any new public deposit accounts.
- (3) Restrict the types of securities the depository may pledge as collateral.

b. Sufficient collateralization, dedicated method. If a qualified public depository using the dedicated method of collateralization is undercollateralized for weekly reporting, it [~~will~~ may] be penalized accordingly.

c. Timely monitoring and collateralization of public deposit balances. Failing to monitor public deposit balances daily and pledge additional collateral when necessary may result in the Treasury Board taking action, including the actions outlined in subdivisions 2 a (1), 2 a (2), and 2 a (3) of this section.

d. Timely reporting. If a qualified public depository reports late or otherwise fails to report when required, the Treasury Board may take action as it deems necessary.

e. Rating from Treasury Board's designated rating service.

(1) Pooled method: If the depository's rating should fall below average, the collateral requirement will increase to at least 100% of public deposits, net of [~~FDIC~~ Federal Deposit Insurance Corporation] coverage, until the rating is again average or above for two consecutive quarters. If the depository's rating should fall into the rating service's lowest rating tier, the Treasury Board may restrict the types of securities the depository may pledge as eligible collateral, or require securities be valued at less than 100%, or both.

(2) Dedicated method: If the depository's rating should fall from one category to another, the collateral requirement will be increased accordingly.

1VAC75-20-140. ~~Criteria for the selection of~~ Eligibility criteria and compliance requirements for escrow agents.

~~Pursuant to the powers granted to the Treasury Board by § 2.1-362 of the Code of Virginia, the State Treasurer has determined that the selection of an escrow agent or agents is consistent with administration of the Act and the State Treasurer shall define all escrow agent criteria under an agreement labeled "Public Deposit Security Agreement" to be signed and sealed by an authorized officer for the escrow agent, depository and State Treasurer. All escrow agent requirements shall be outlined under a "Master Custodial Agreement" to be signed by an authorized officer for the escrow agent and the State Treasurer, acting on behalf of the Treasury Board. A depository may have no more than one escrow agreement for Virginia public deposits in effect at any given time period.~~

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~~Each depository and~~ The escrow agent is responsible for providing a written notification and executing new agreements upon their ~~its~~ name change. Every qualified public depository shall comply with this section within 60 days of the effective date of this chapter. An escrow agent selected by a qualified public depository for the purpose of holding collateral pledged to the Treasury Board under the Virginia Security for Public Deposits Act (the Act) must meet the following requirements:

~~1. The escrow agent must sign a "Public Deposit Security Agreement," which shall also be signed by the depository and the State Treasurer, acting on behalf of the Treasury Board.~~

~~2. The escrow agent shall hold in a separate account for the Treasury Board eligible collateral pledged under the provisions of the Act and, if acting as escrow for more than one public depository, the collateral must be accounted for in a manner that will allow separate reporting by account and public depository. The escrow shall hold the eligible collateral in a section of the institution which is separate from daily activities performed by that institution such as its trust department and be held accountable for the regulatory requirements of such department.~~

~~3. The escrow agent shall be an independent entity in the performance of its duties on behalf of the Treasury Board. The escrow agent may not be the depository itself, its holding company, or any affiliate of the depository.~~

~~4. The escrow agent must be able to ascertain whether pledged collateral is eligible in accordance with 1VAC75-20-60. The escrow agent shall distribute all interest, dividends, or other income for the pledged securities to the depository and shall be payable thereto provided the escrow agent has not received written notice from the Treasury Board that the depository is in a condition of "default or insolvency" as defined in the Act, in which event the escrow agent shall hold such income subject to the order of the Treasury Board.~~

~~5. The escrow agent shall allow the Treasury Board to examine pledged securities held as collateral at any time, upon 24 hour notice, during the regular business hours of the escrow agent without cost to the Treasury Board. Upon notification from the Treasury Board of the "default or insolvency" of a depository, the escrow agent shall deliver the pledged securities to the Treasury Board for disposition as provided in the Act, and take a receipt thereof, which shall relieve the escrow agent from any further liability to the depository.~~

~~6. The escrow agent shall price securities held as collateral at a current market value no older than one business day from the date of a substitution of collateral and from the close of business on the last banking day of the month for monthly reporting purposes.~~

~~7. The escrow agent shall adhere to the reporting requirements as detailed in the "Public Deposit Security Agreement."~~

~~8. The escrow agent shall allow substitutions in accordance with 1VAC75-20-90.~~

~~9. The escrow agent shall ensure that withdrawals of collateral will be in accordance with 1VAC75-20-100.~~

1. To become an escrow agent, the minimum requirements are that an entity:

a. Be a bank or trust company organized under federal law, Virginia law, or under the laws of another state.

b. Be located in Virginia, meaning it has a main office or branch office in the Commonwealth where deposits are accepted, checks are paid, and money is lent, or where similar services required by an escrow agent under the [SPDA Security for Public Deposits Act] Master Custodial Agreement are offered. Existing escrow agents not located in Virginia are [grandfathered in exempt from this requirement].

c. Have an Average or above rating from the Treasury Board's designated rating service for the most recent eight calendar quarters.

d. Cannot be under a formal federal or state bank regulatory enforcement action that would impair its ability to serve as an escrow agent, to be determined on a case-by-case basis. Banks will be required to disclose to the Treasury Board any such formal enforcement actions currently in force.

e. Be an independent entity in the performance of its duties on behalf of the Treasury Board. The escrow agent may not be the depository itself, its holding company, or any affiliate of the depository.

2. For continued eligibility, compliance requirements are:

a. The escrow agent shall hold in a separate account for the Treasury Board eligible collateral pledged under the provisions of the Act and, if acting as escrow for more than one public depository, a separate account must be opened for each depository. The escrow shall hold the eligible collateral in a section of the institution [which that] is separate from daily activities performed by that institution [,] such as its trust department [,] and be held accountable for the regulatory requirements of such department.

b. The escrow agent must be able to ascertain whether pledged collateral is eligible collateral in accordance with 1VAC75-20-60. The escrow agent shall distribute all interest, dividends, or other income for the pledged securities to the depository and such income shall be payable thereto provided the escrow agent has not received written notice from the Treasury Board that the depository is in a condition of "default or insolvency" as defined in the Act, in which event the escrow agent shall

hold such income subject to the order of the Treasury Board.

c. The escrow agent shall price securities held as collateral at a current market value no older than one business day from the date of a substitution of collateral, as of the close of business on the last day of the month for monthly reporting purposes, and as of the close of business Friday for weekly reporting purposes for depositories using the dedicated method.

d. The escrow agent shall adhere to the reporting requirements as detailed in the "Master Custodial Agreement" and the "Public Deposit Security Agreement."

e. The escrow agent shall allow substitutions in accordance with 1VAC75-20-90.

f. The escrow agent shall ensure that withdrawals of collateral will be in accordance with 1VAC75-20-100.

The State Treasurer, acting on behalf of the Treasury Board, will determine that an escrow agent ~~can meet~~ is eligible based upon the criteria established under this section prior to executing the "Master Custodial Agreement" and the "Public Deposit Security Agreement." The State Treasurer may request information from an escrow agent to substantiate its ability to meet the aforementioned criteria.

In the event an escrow agent violates the requirements of the "Master Custodial Agreement" or the "Public Deposit Security Agreement," the State Treasurer shall notify the escrow agent and applicable public depositories of the violation and require the escrow agent to comply with all terms of the ~~agreement~~ agreements. The escrow agent must provide the State Treasurer and public depositories a written statement, within 30 days of the notification, outlining how and when the violations will be remedied. This statement must be acceptable to the State Treasurer, who will monitor adherence to it. If the escrow agent fails to provide a statement or adhere to it ~~or violates the agreement three times within a two year period, the State Treasurer will classify such an escrow agent as "disqualified" as an escrow agent under the provisions of the Act and notify all parties its remediation plan or continues to violate the agreements, the Treasury Board may take disciplinary action, up to and including termination of the "Master Custodial Agreement".~~ Qualified public depositories shall ~~have 90 days to~~ select a new escrow agent after such a disqualification in accordance with Treasury Board instructions.

~~In the event an escrow agent is classified as "disqualified," the term of suspension shall be for one year from the date of disqualification. After "disqualification," an escrow agent must request from the Treasury Board approval to be reinstated as an eligible escrow agent.~~

After "disqualification," an escrow agent may request approval from the Treasury Board to be reinstated as an

eligible escrow agent if correction of prior deficiencies is demonstrated.

1VAC75-20-150. Suspension of authority to receive public deposits.

For failure to comply with ~~the Act or the regulations the Virginia Security for Public Deposits Act (the Act) or this chapter,~~ the Treasury Board may rescind the authority of a qualified public depository to ~~receive further public deposits open new public deposit accounts, or accept new deposits into existing public deposit accounts~~ in accordance with ~~1VAC75-20-130~~ 1VAC75-20-130. A depository that continues to hold public deposits after its authority to do so has been rescinded remains fully subject to the provisions of the Act. This includes, without limitation, continuing to meet collateralization and reporting requirements and acting as a qualified public depository for purposes of §§ ~~2-1-363~~ 2.2-4403 and ~~2-1-363.1~~ 2.2-4404 of the Code of Virginia.

1VAC75-20-160. Exception ~~reports~~ reportings by public depositors.

Upon receipt of the quarterly public depositor report, as ~~stated~~ outlined in 1VAC75-20-110, public depositors shall notify the State Treasurer of any unresolved discrepancy between the information provided and the public depositors' records. Additionally, public depositors shall verify and confirm to [the Department of the] Treasury their account balances as reported by the "Public Fund Accounts" search feature on the Department of the Treasury's website after the end of each quarter to ensure their public funds accounts are being properly reported to the Treasury Board by their qualified public depositories.

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 (1VAC75-20)

~~Public Deposit Security Agreement (and relevant exhibits), # 1001.~~

~~Notice of Election to Require Security for Public Deposit, # 1004.~~

[Master Custodial Agreement \(filed 1/2022\)](#)

[Public Deposit Security Agreement \(filed 1/2022\)](#)

VA.R. Doc. No. R21-6701; Filed March 29, 2023, 4:00 p.m.



Regulations

TITLE 9. ENVIRONMENT

STATE WATER CONTROL BOARD

Notice of Effective Date

Title of Regulation: 9VAC25-260. Water Quality Standards (amending 9VAC25-260-50, 9VAC25-260-140, 9VAC25-260-185, 9VAC25-260-187, 9VAC25-260-310, 9VAC25-260-390, 9VAC25-260-400, 9VAC25-260-410, 9VAC25-260-420, 9VAC25-260-440, 9VAC25-260-470, 9VAC25-260-500).

Statutory Authority: § 62.1-44.15 of the Code of Virginia; Clean Water Act (33 USC § 1251 et seq.); 40 CFR Part 131.

On August 25, 2022, the State Water Control Board adopted revisions to the Water Quality Standards in 9VAC25-260-50, 9VAC25-260-140, 9VAC25-260-185, 9VAC25-260-187, 9VAC25-260-310, 9VAC25-260-390, 9VAC25-260-400, 9VAC25-260-410, 9VAC25-260-420, 9VAC25-260-440, 9VAC25-260-470, and 9VAC25-260-500. These revisions relate to water quality criteria, use designations, and other policies related to water quality. The amendments were published in final form on December 19, 2022, in Volume 39, Issue 9 of the Virginia Register (39:9 VA.R. 1224-1269 December 19, 2022) to be effective upon filing notice of U.S. Environmental Protection Agency (EPA) approval with the Registrar of Regulations. The State Water Control Board has received a letter from Leslie Gillespie-Marthaler, EPA Region III Regional Administrator, dated April 14, 2023, approving all of the amendments except the specific numerical water quality criteria for acute and chronic aluminum for protection of aquatic life in freshwater established in 9VAC25-260-140 B.

The effective date for the approved amendments is April 18, 2023. Copies are available by calling toll free at 1-800-592-5482 ext. 4121 or local at (804) 698-4121; by written request to David Whitehurst, P.O. Box 1105, Richmond, VA 23218; or by email request to david.whitehurst@deq.virginia.gov.

Effective Date: April 18, 2023.

Agency Contact: David Whitehurst, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 774-9180, FAX (804) 698-4178, or email david.whitehurst@deq.virginia.gov.

VA.R. Doc. No. R21-6555; Filed April 18, 2023, 1:00 p.m.



TITLE 14. INSURANCE

STATE CORPORATION COMMISSION

Final Regulation

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

Titles of Regulations: 14VAC5-410. Rules Governing Multiple Employer Welfare Arrangements (amending 14VAC5-410-20, 14VAC5-410-30, 14VAC5-410-40, 14VAC5-410-70).

14VAC5-415. Rules Governing Self-Funded Multiple Employer Welfare Arrangements (adding 14VAC5-415-10 through 14VAC5-415-130).

Statutory Authority: §§ 12.1-13, 38.2-223, and 38.2-3420 of the Code of Virginia.

Effective Date: May 1, 2023.

Agency Contact: Daryl Hepler, Manager, Bureau of Insurance, State Corporation Commission, P.O. Box 1157, Richmond, VA 23218, telephone (804) 371-9999, or email daryl.hepler@scc.virginia.gov.

Summary:

Pursuant to Chapters 404 and 405 of the 2022 Acts of Assembly, the amendments provide for licensure of self-funded multiple employer welfare arrangements (MEWAs), including (i) limiting Chapter 410 to applicability to fully insured MEWAs; and (ii) establishing a new chapter, Chapter 415, which includes the requirements for licensure as a self-funded MEWA, including an MEWA's financial condition, solvency requirements, insolvency plan, and exclusion from the Virginia Life, Accident and Sickness Insurance Guaranty Association. A change from the proposed stage includes an exemption applicable to trusts that comply with and are established pursuant to § 6.2-952 of the Code of Virginia.

AT RICHMOND, MARCH 24, 2023

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. INS-2022-00190

Ex Parte: In the matter of amending Rules

Governing Multiple Employer Welfare

Arrangements and Adopting Rules Governing

Self-Funded Multiple Employer Welfare Arrangements

ORDER AMENDING AND ADOPTING REGULATIONS

On December 28, 2022, the State Corporation Commission ("Commission") entered an Order to Take Notice of the Bureau

of Insurance ("Bureau")'s proposal to: (1) amend rules set forth in Chapter 410 of the Virginia Administrative Code, 14VAC5-410-10 et seq., entitled "Rules Governing Multiple Employer Welfare Arrangements" ("Chapter 410"); and (2) adopt new Chapter 415 of the Virginia Administrative Code, 14VAC5-415-10 et seq., entitled "Rules Governing Self-Funded Multiple Employer Welfare Arrangements" ("Chapter 415") (together, "Rules").

The Bureau has recommended the amendment of Chapter 410 and the adoption of Chapter 415 to effectuate amendments to Chapter 34 of Title 38.2 of the Code of Virginia ("Code") providing for the licensure of self-funded Multiple Employer Welfare Arrangements ("MEWAs") by the Commission.¹ The proposed amendments to Chapter 410 limit that chapter to apply only to fully insured MEWAs.² Newly proposed Chapter 415 establishes the requirements for licensure as a self-funded MEWA, and "address[es] the self-funded MEWA's financial condition, solvency requirements, and insolvency plan and its exclusion, pursuant to § 59.1-592, from the Virginia Life, Accident and Sickness Insurance Guaranty Association established under Chapter 17 (§ 38.2-1700 et seq.)."³

The Order to Take Notice, proposed amendments to Chapter 410 and proposed new Chapter 415 were posted on the Commission's website; sent to all carriers licensed in Virginia to write accident and sickness insurance and to all interested persons on January 9, 2023; sent to the Office of the Virginia Attorney General's Division of Consumer Counsel ("Consumer Counsel"); and published in the Virginia Register of Regulations on January 30, 2023. Licensees, Consumer Counsel, and other interested parties were afforded the opportunity to file written comments and/or request a hearing on or before March 1, 2023.

The Bureau received one set of comments to the proposed amendments to Chapter 410 and adoption of Chapter 415, which was filed by the Virginia Bankers Association Benefits Corporation ("VBA Benefits Corporation"). Specifically, the VBA Benefits Corporation requested that Chapter 410 and Chapter 415 include an exemption applicable to trusts that comply with and are established pursuant to § 6.2-952 of the Code. In support of its request, the VBA Benefits Corporation asserts that Code §§ 6.2-953 A and B specifically exempt trusts established under Code § 6.2-952, and their sponsoring association and subsidiaries, from the provisions of Title 38.2 of the Code and regulations adopted thereunder.

The Bureau considered the VBA Benefits Corporation's filed comments and responded to such comments in its Response to Comments ("Response"), filed with the Clerk of the Commission on March 10, 2023. In its Response, the Bureau recommended including the VBA Benefits Corporation's proposed clarification in Chapter 410 and Chapter 415. The Bureau also proposed an additional clarification to align 14VAC5-410-20 C with 14VAC5-415-10 B.

As part of its comments, the VBA Benefits Corporation requested a hearing should the Commission not accept its proposed clarification. The Bureau has taken the position that acceptance of the proposed clarification to Chapter 410 and Chapter 415 resolves any issue raised by the comments and no hearing should be needed.

NOW THE COMMISSION, having considered the Bureau's proposal to amend and adopt Rules, the comments filed by VBA Benefits Corporation, and the Bureau's Response, concludes that: (1) a hearing to consider the proposal to amend Chapter 410 and adopt Chapter 415 is not necessary; and (2) Chapter 410 should be amended and Chapter 415 should be adopted by the Commission, as modified and attached hereto, effective May 1, 2023.

Accordingly, IT IS ORDERED THAT:

(1) The amendments to "Rules Governing Multiple Employer Welfare Arrangements," 14VAC5-410-10 et seq. of the Virginia Administrative Code, which are attached hereto and made a part hereof, are hereby ADOPTED effective May 1, 2023.

(2) The "Rules Governing Self-Funded Multiple Employer Welfare Arrangements," 14VAC5-415-10 et seq. of the Virginia Administrative Code, which are

(3) The Bureau shall provide notice of the amendments to Chapter 410 and the adoption of Chapter 415 to all carriers licensed in Virginia to write accident and sickness insurance and to all persons known to the Bureau to have an interest in accident and sickness insurance.

(4) The Commission's Office of General Counsel shall cause a copy of this Order and the attached Rules to be forwarded to the Virginia Registrar of Regulations for appropriate publication in the Virginia Register of Regulations.

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

(6) The Bureau shall file with the Clerk of the Commission a certificate of compliance with the notice requirements of Ordering Paragraph (3) above on or before May 1, 2023.

(7) This case is dismissed.

Commissioner Patricia L. West participated in this matter.

A COPY hereof shall be sent electronically by the Clerk of the Commission to:

C. Meade Browder, Jr., Senior Assistant Attorney General, Office of the Attorney General, Division of Consumer Counsel, 202 North 9th Street, 8th Floor, Richmond, Virginia 23219-3424, at MBrowder@oag.state.va.us; and a copy hereof shall be delivered to the Commission's Office of General

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Counsel and the Bureau of Insurance in care of Deputy Commissioner Donald Beatty.

¹See 2022 Va. Acts Chs. 404 and 405.

²As part of its proposed amendments to Chapter 410 and to reflect this limitation, the Bureau suggests changing the title of that chapter to "Rules Governing Fully Insured Multiple Employer Welfare Arrangements." (Emphasis added).

³See § 38.2-3420 B 4 of the Code.

Chapter 410 Rules Governing Fully Insured Multiple Employer Welfare Arrangements

14VAC5-410-20. Applicability and scope.

A. This chapter shall apply to all multiple employer welfare arrangements offering or providing coverage in this Commonwealth if any of the following conditions is met:

1. The multiple employer welfare arrangement is domiciled in Virginia;
2. At least one employer whose principal office or headquarters is located in Virginia provides health care benefits to his employees through the multiple employer welfare arrangement, regardless of the plan's place of domicile; or
3. At least one employee who is employed in Virginia and who has been initially enrolled in the plan in Virginia is being provided health care benefits through the multiple employer welfare arrangement, regardless of the plan's place of domicile or the location of the employer's principal office or headquarters.

B. Multiple employer welfare arrangements shall be subject to all of the provisions of Title 38.2 of the Code of Virginia to the extent that such provisions are applicable to multiple employer welfare arrangements in accordance with § 38.2-3421 of the Code of Virginia.

C. This chapter shall not apply to [a not-for-profit benefits consortium established under § 15.2-1517.1 of the Code of Virginia, a benefits consortium established under § 6.2-952 or 23.1-106 of the Code of Virginia, a multiple employer welfare arrangement meeting the requirements of § 38.2-3420 C of the Code of Virginia, or a] self-funded multiple employer welfare [~~arrangements~~ arrangement] licensed pursuant to Rules Governing Self-Funded Multiple Employer Welfare Arrangements (14VAC5-415).

14VAC5-410-30. Definitions.

As used in this chapter:

"Commission" means the State Corporation Commission.

"Contribution" means the amount paid or payable by the employer or employee for services provided through the multiple employer welfare arrangement.

"Direct basis" means that the liability of the insurer, health maintenance organization, health services plan, or dental or optometric services plan runs directly to the insured employee or certificate holder.

"Domicile" means the situs of the trust through which the multiple employer welfare arrangement is established, the plan's place of incorporation or, if not set up through a trust or incorporated, the location of the plan's headquarters.

"Fully insured" means all of the covered benefits are (i) insured on a direct basis by an insurance company licensed and in good standing to transact the business of insurance in Virginia pursuant to Title 38.2 of the Code of Virginia or (ii) arranged for or provided on a direct basis by (a) a health services plan licensed and in good standing in Virginia pursuant to Chapter 42 (§ 38.2-4200 et seq.) of Title 38.2 of the Code of Virginia, (b) a health maintenance organization licensed and in good standing in Virginia pursuant to Chapter 43 (§ 38.2-4300 et seq.) of Title 38.2 of the Code of Virginia, (c) a dental or optometric services plan licensed and in good standing in Virginia pursuant to Chapter 45 (§ 38.2-4500 et seq.) of Title 38.2 of the Code of Virginia, or (d) any combination thereof. The existence of contracts of reinsurance will not be considered in determining whether a plan is "fully insured."

"Good standing" means the license of any (i) company to transact the business of insurance in the Commonwealth of Virginia pursuant to Title 38.2 of the Code of Virginia, (ii) health services plan licensed pursuant to Chapter 42 (§ 38.2-4200 et seq.) of Title 38.2 of the Code of Virginia, (iii) health maintenance organization licensed pursuant to Chapter 43 (§ 38.2-4300 et seq.) of Title 38.2 of the Code of Virginia, or (iv) dental or optometric services plan licensed pursuant to Chapter 45 (§ 38.2-4500 et seq.) of Title 38.2 of the Code of Virginia where the license is not suspended or revoked, or the company, health services plan, health maintenance organization, or dental or optometric services plan is not precluded by order of the ~~Commission~~ commission from soliciting, negotiating, procuring, or effecting contracts of insurance.

"Health care services" means services ~~which~~ that are furnished to an individual for the purpose of preventing, alleviating, or healing human illness, injury, or physical disability. Such terminology may include services for optometric or dental care.

"Member" means an employer ~~which~~ that participates in a multiple employer welfare arrangement.

"Multiple employer welfare arrangement" means any plan or arrangement ~~which~~ that is established or maintained for the purpose of offering or providing coverage for health care

services, whether such coverage is by direct payment, reimbursement, or otherwise, to employees of two or more employers, or to their beneficiaries except that such term does not include any such plan or other arrangement ~~which that~~ is established or maintained:

1. Under or pursuant to one or more agreements ~~which that~~ the Secretary of the ~~United States~~ U.S. Department of Labor finds to be collective bargaining agreements, or
2. By a rural electric cooperative.

For purposes of the definition of multiple employer welfare arrangement:

- a. Two or more trades or businesses, whether or not incorporated, shall be deemed a single employer if such trades or businesses are within the same control group;
- b. The term "control group" means a group of trades or businesses under common control;
- c. The determination of whether a trade or business is under "common control" with another trade or business shall be determined under regulations of the Secretary of the ~~United States~~ U.S. Department of Labor applying principles similar to the principles applied in determining whether employees of two or more trades or businesses are treated as employed by a single employer under ~~section~~ § 4001(b) of the Employee Retirement Income Security Act, (29 [~~USCS USC~~] § 1301(b)), except that, for purposes of this subdivision, common control shall not be based on an interest of less than 25%; and
- d. The term "rural electric cooperative" means:
 - (1) Any organization ~~which that~~ is exempt from tax under ~~section~~ § 501(a) of the Internal Revenue Code of 1986 (26 USC § 501(a)) and ~~which that~~ is engaged primarily in providing electric service on a mutual or cooperative basis, and
 - (2) Any organization described in paragraph (4) or (6) of ~~section~~ § 501(c) of the Internal Revenue Code of 1986 (26 USC § 501(c)(4) or (6)) ~~which that~~ is exempt from tax under ~~section~~ § 501(a) of [~~such the Internal Revenue~~] Code (26 USC § 501(a)) and at least 80% of the members of which are organizations described in subdivision d (1) of this definition.

"Self-funded multiple employer welfare arrangement" or "self-funded MEWA" means any multiple employer welfare arrangement that is not fully insured by a licensed insurance company. This term includes a benefit consortium established under Chapter 55 (§ 59.1-589 et seq.) of Title 59.1 of the Code of Virginia.

14VAC5-410-40. Licensing and filing requirements.

A. A multiple employer welfare arrangement that is not fully insured as defined in this chapter shall not operate in this Commonwealth without ~~first~~ (i) complying with the requirements of Rules Governing Self-Funded Multiple

Employer Welfare Arrangements (14VAC5-415) or (ii) meeting the criteria and becoming appropriately licensed as an insurance company, health maintenance organization, health services plan, or a dental or optometric services plan pursuant to Title 38.2 of the Code of Virginia.

B. A fully insured multiple employer welfare arrangement shall not operate in this Commonwealth without first filing with the ~~Commission~~ commission:

1. The names, addresses, and biographical summaries of the plan's trustees, officers, directors, or other members of the plan's governing body.
2. The names, addresses, and qualifications of individuals responsible for the conduct of the plan's affairs, including any third-party administrators.
3. The names, addresses, and qualifications of persons who will solicit, negotiate, procure, or effect applications for coverage with the plan.
4. The names and addresses of employers participating in the plan.
5. Proof of coverage showing that the plan is fully insured by an insurer, health maintenance organization, health services plan, or dental or optometric services plan as required by the definition of "fully insured" in 14VAC5-410-30 ~~of this chapter~~. Proof of coverage shall be submitted on a form prescribed by the ~~Commission~~ commission and shall include ~~but not be limited to~~ (i) a copy of the policy insuring the plan; (ii) confirmation from the insurer, health maintenance organization, health services plan, or a dental or optometric services plan that coverage is in force; and (iii) a statement indicating the length of time coverage has been in force.
6. Any other information the ~~Commission~~ commission may require including ~~but not limited to~~ information pertaining to the adequacy of the plan's level of reserves and contributions.

C.1. If a multiple employer welfare arrangement changes coverage or does not remain fully insured as the term is defined in 14VAC5-410-30 ~~of this chapter~~, the plan shall notify the ~~Commission~~ commission at least 30 days prior to the effective date of any change or reduction in coverage.

2. Any multiple employer welfare arrangement ~~which that~~ ceases to remain fully insured shall, at least 30 days prior to the effective date of coverage termination, (i) notify the ~~Commission~~ commission of a replacement policy in accordance with subdivision B 5 of this section, (ii) apply for a license as a self-funded MEWA pursuant to 14VAC5-415, or (ii) (iii) apply for a license as an insurer, health maintenance organization, health services plan, or a dental or optometric services plan and be subject to all applicable provisions of Title 38.2 of the Code of Virginia. Such plan shall not be required to cease operations or discontinue

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benefits to existing members during this 30-day period. However, such plan shall not solicit, negotiate, procure, or effect coverage for new enrollments other than for dependents of employees already enrolled during this 30-day period unless (i) the plan has been licensed as required by this chapter, (ii) the plan becomes fully insured as the term is defined in 14VAC5-410-30 ~~of this chapter~~ and has provided the ~~Commission~~ commission with proof of coverage as required by subdivision B 5 of this section, or (iii) the plan is granted an extension by the ~~Commission~~ commission for good cause shown. Nothing contained in this section shall prevent the ~~Commission~~ commission from proceeding with an action in accordance with the provisions of 14VAC5-410-60 ~~of this chapter~~.

3. Any insurer, health maintenance organization, health services plan, or dental or optometric services plan providing coverage to a multiple employer welfare arrangement shall notify the ~~Commission~~ commission and the multiple employer welfare arrangement of any change or reduction in coverage at least 45 days prior to the effective date of such change or reduction in coverage.

4. Any insurer, health maintenance organization, health services plan, or dental or optometric services plan failing to provide notice to the ~~Commission~~ commission as required by subdivision 3 of this subsection shall be required to continue coverage to the multiple employer welfare arrangement for an additional 45 days after notice of cancellation is provided to the ~~Commission~~ commission.

D. In addition to the filing requirements stated in subsection B of this section, each fully insured multiple employer welfare arrangement shall file on or before March 1 of each year (i) proof of coverage as set forth in subdivision B 5 of this section and (ii) notice of any changes in information as filed with the ~~Commission~~ commission.

E. Any multiple employer welfare arrangement offering or providing coverage in this Commonwealth shall be subject to examination by the ~~Commission~~ commission in accordance with § 38.2-3422 of the Code of Virginia.

F. Notwithstanding any other provision of this chapter, any multiple employer health care plans licensed and operating, or whose license application is pending with the ~~Commission~~ commission on [~~the effective date of this chapter~~ January 15, 1995,] and subsequently approved by the ~~Commission~~ commission may continue to operate as a multiple employer health care plan in the Commonwealth of Virginia, pursuant to the ~~Commission's~~ commission's Rules Governing Multiple Employer Health Care Plans, for a period not to exceed three years after ~~the effective date of this chapter~~ January 15, 1995.

14VAC5-410-70. Service of process.

Suits, actions, and proceedings may be begun against any multiple employer welfare arrangement providing coverage in this Commonwealth by serving process on any trustee,

director, officer, or agent of the plan, or, if none can be found, on the ~~clerk~~ Clerk of the Commission. ~~If any multiple employer welfare arrangement that is not fully insured provides coverage in this Commonwealth without obtaining a license as required by 14VAC5-410-40 of this chapter, it shall be deemed to have thereby appointed the Clerk of the Commission its attorney for service of process.~~ Service of process shall be made as provided for in Article 1 (§ 38.2-800 et seq.) of Chapter 8 of Title 38.2 [of the Code of Virginia].

Chapter 415

Rules Governing Self-Funded Multiple Employer Welfare Arrangements

14VAC5-415-10. Applicability and scope.

A. This chapter shall apply to self-funded multiple employer welfare arrangements that issue health benefit plans in Virginia, including a benefits consortium established under Chapter 55 (§ 59.1-589 et. seq.) of Title 59.1 of the Code of Virginia.

B. This chapter shall not apply to a not-for-profit benefits consortium established under § 15.2-1517.1 of the Code of Virginia, a benefits consortium established under § [6.2-952 or] 23.1-106 of the Code of Virginia, a multiple employer welfare arrangement meeting the requirements of § 38.2-3420 C of the Code of Virginia, or a fully insured multiple employer welfare arrangement registered pursuant to Rules Governing Fully Insured Multiple Employer Welfare Arrangements (14VAC5-410).

C. Self-funded multiple employer welfare arrangements shall be subject to the provisions of Title 38.2 of the Code of Virginia to the extent that such provisions are applicable to self-funded multiple employer welfare arrangements in accordance with § 38.2-3420 of the Code of Virginia.

14VAC5-415-20. Definitions.

Terms found in this chapter are used as defined in § 38.2-3431 B of the Code of Virginia. The following words and terms when used in this chapter shall have the following meaning unless the context clearly indicates otherwise:

"Benefits consortium" means a trust that is a self-funded MEWA, as defined in § 38.2-3420 of the Code of Virginia, and that complies with the conditions set forth in § 59.1-590 of the Code of Virginia.

"Commission" means the State Corporation Commission.

"ERISA" means the federal Employee Retirement Income Security Act of 1974, P.L. 93-406, 88 Stat. 829, as amended.

"Fully insured" means all of the covered benefits are (i) insured on a direct basis by an insurance company licensed and in good standing to transact the business of insurance in Virginia pursuant to Title 38.2 of the Code of Virginia or (ii) arranged for or provided on a direct basis by (a) a health

services plan licensed and in good standing in Virginia pursuant to Chapter 42 (§ 38.2-4200 et seq.) of Title 38.2 of the Code of Virginia; (b) a health maintenance organization licensed and in good standing in Virginia pursuant to Chapter 43 (§ 38.2-4300 et seq.) of Title 38.2 of the Code of Virginia; (c) a dental or optometric services plan licensed and in good standing in Virginia pursuant to Chapter 45 (§ 38.2-4500 et seq.) of Title 38.2 of the Code of Virginia; or (d) any combination thereof. The existence of contracts of reinsurance will not be considered in determining whether a plan is "fully insured."

"Self-funded multiple employer welfare arrangement" or "self-funded MEWA" means any multiple employer welfare arrangement that is not fully insured by a licensed insurance company. This term includes a benefit consortium established under Chapter 55 (§ 59.1-589 et seq.) of Title 59.1 of the Code of Virginia.

14VAC5-415-30. Establishment of self-funded multiple employer welfare arrangements.

A. No person shall establish or operate a self-funded multiple employer welfare arrangement in the Commonwealth without obtaining a license from the commission. Any person may apply to the commission for a license to establish and operate a self-funded MEWA in compliance with this chapter.

B. Each application for a license shall be verified by an officer or authorized representative of the applicant, shall be in a form prescribed by the commission, and shall set forth or be accompanied by the following:

1. A copy of any basic organizational documents of the applicant, including the articles of incorporation, articles of association, trust agreement, or other applicable documents, and all amendments to those documents;
2. A copy of the bylaws, rules and regulations, or any similar document regulating the conduct of the internal affairs of the applicant;
3. The names, addresses, and official positions, and biographical information on forms acceptable to the commission of each member of the governing body and any person with authority to manage or establish policy;
4. Financial statements showing the applicant's assets, liabilities, and sources of financial support and a copy of the applicant's most recent audited financial statement completed no more than one year prior to the date of application;
5. A complete description of the plan of operation, including (i) the method of marketing the plan, (ii) a statement regarding the sources of working capital as well as any other sources of funding, and (iii) a description of any insurance, reinsurance, or alternative coverage arrangements proposed, including specific, aggregate, and terminal excess insurance or stop loss insurance;

6. A financial feasibility plan that includes (i) detailed enrollment projections; (ii) the methodology for determining premium rates to be charged during at least the first three years of operations and extending one year beyond the anticipated break-even point certified by an actuary; and (iii) a projection, along with material assumptions, of balance sheets, cash flow statements showing capital expenditures, and purchase and sale of investments and income statements on a quarterly basis for at least three years and extending one year beyond the anticipated break-even point;

7. The names, addresses, and qualifications of persons responsible for the conduct of the applicant's affairs, including any third-party administrators;

8. The names, addresses, and qualifications of persons who will solicit, negotiate, procure, or effect applications for coverage with the self-funded MEWA;

9. Copies of (i) policies providing specific, aggregate, and terminal excess insurance; (ii) fiduciary liability insurance; (iii) the bond that satisfies the requirements of ERISA; and (iv) guarantees or standby letters of credit;

10. A copy of the self-funded MEWA's Form M-1, Report for Multiple Employer Welfare Arrangements, for the applicable plan year;

11. A signed attestation confirming that:

- a. The self-funded MEWA makes available health plans or health benefit plans that meet the requirements for health benefit plans set forth in § 38.2-3420 B 3 of the Code of Virginia;
- b. The sponsoring association is a nonstock corporation formed under the Virginia Nonstock Corporation Act (§ 13.1-801 et seq. of the Code of Virginia) that has been formed and maintained in good faith for purposes other than obtaining or providing health benefits;
- c. The sponsoring association does not condition membership in the association on any factor relating to the health status of an individual, including an employee of an employer member of the sponsoring association or a dependent of such an employee;
- d. The sponsoring association makes any health benefit plan available to all members regardless of any factor relating to the health status of such members or individuals eligible for coverage through another member;
- e. The sponsoring association does not make any health benefit plan available to any person who is not a participating employee of the association or member of the association;
- f. The sponsoring association operates as a nonprofit entity under § 501(c)(5) or [~~§-501~~] (c)(6) of the Internal Revenue Code;
- g. The sponsoring association has been in active existence for at least five years; and

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h. The guarantees or standby letters of credit comply with § 59.1-590 B 7 of the Code of Virginia; and

12. Any other information the commission may require.

14VAC5-415-40. Issuance of license; fee; minimum net worth; impairment.

A. The commission shall issue a license to a self-funded MEWA after the receipt of a complete application and payment of a \$500 nonrefundable application fee if the commission is satisfied that the following conditions are met:

1. The persons responsible for the conduct of the affairs of the applicant are competent, trustworthy, and reputable;

2. The self-funded MEWA is financially responsible and may reasonably be expected to meet its obligations to members and prospective members. In making this determination, the commission may consider:

a. The financial soundness of the health benefit plan's arrangements for health care services;

b. The adequacy of working capital;

c. Any agreement with an insurer, a health services plan, a government, or any other organization for insuring the payment of the cost of health care services or the provision for automatic applicability of an alternative coverage if the health care plan is discontinued;

d. The deposit of acceptable securities in an amount satisfactory to the commission, submitted in accordance with § 38.2-1045 of the Code of Virginia as a guarantee to the self-funded MEWA's liabilities to its members and creditors;

e. The applicant's net worth, which shall include minimum net worth in an amount at least equal to \$4 million; and

f. A financial statement of the self-funded MEWA on the form required by 14VAC5-415-50; and

3. If applicable, the self-funded MEWA is in compliance with the requirements of § 59.1-590 B 5 through B 10 of the Code of Virginia.

B. A licensed self-funded MEWA shall have and maintain at all times the minimum net worth described in subdivision A 2 e of this section. If the commission finds that the minimum net worth of a self-funded MEWA is impaired, the commission shall issue an order requiring the self-funded MEWA to eliminate the impairment within a period not exceeding 90 days. The commission may, by order served upon the self-funded MEWA, prohibit the self-funded MEWA from issuing any new contracts while the impairment exists. If, at the expiration of the designated period, the self-funded MEWA has not satisfied the commission that the impairment has been eliminated, an order for the rehabilitation or liquidation of the self-funded MEWA may be entered.

C. A self-funded MEWA must comply with the requirements of Chapter 55 (§ 38.2-5500 et seq.) of Title 38.2 of the Code of Virginia.

D. A self-funded MEWA must (i) operate any health benefit plans in accordance with the fiduciary duties defined in ERISA and (ii) have the power to make and collect special assessments against members, and if any assessment is not timely paid, to enforce collection of such assessment. Each member of a self-funded MEWA shall be liable for that member's allocated share of the liabilities of the self-funded MEWA.

E. A self-funded MEWA must purchase and maintain policies of specific, aggregate, and terminal excess insurance with retention levels determined in accordance with sound actuarial principles from insurers licensed to transact the business of insurance in the Commonwealth. If a self-funded MEWA replaces, modifies, or otherwise changes coverage for specific, aggregate, or terminal excess insurance, the self-funded MEWA must notify the commission at least 30 days prior to the effective date of any such change in coverage.

F. The commission may refuse to issue a license to any self-funded MEWA and may suspend or revoke the license to any licensee pursuant to Article 6 (§ 38.2-1040 et seq.) of Chapter 10 of Title 38.2 of the Code of Virginia.

G. Each self-funded MEWA licensed under this section shall renew its license with the commission annually by July 1 pursuant to § 38.2-1025 of the Code of Virginia. The renewal license shall not be issued until the self-funded MEWA has paid all fees and charges imposed on it and has complied with all other requirements of law.

14VAC5-415-50. Annual statement, additional reports, and examinations.

A. Each self-funded MEWA shall file an annual statement as provided in § 38.2-1300 of the Code of Virginia with the commission annually by March 1. The statement shall be verified by at least two principal officers and shall cover the preceding calendar year.

B. In addition to the annual statement, the commission may require a licensed self-funded MEWA to file additional reports as provided in §§ 38.2-1301 and 38.2-1301.1 of the Code of Virginia, exhibits, or statements considered necessary to secure complete information concerning the condition, solvency, experience, transactions, or affairs of the self-funded MEWA. The commission shall establish deadlines for filing these additional reports, exhibits, or statements and may require verification by any officers of the self-funded MEWA designated by the commission.

C. The commission shall examine the affairs of each self-funded MEWA and its members as provided for in § 38.2-1317 of the Code of Virginia as often as the Bureau of Insurance deems necessary. The self-funded MEWA may be required to

pay to the commission the expenses incurred by it in making an examination authorized under this section.

14VAC5-415-60. Investments.

A self-funded MEWA must comply with Chapter 14 (§ 38.2-1400 et seq.) of Title 38.2 of the Code of Virginia. In doing so, a self-funded MEWA may only invest in any Category 1 investment. A self-funded MEWA may petition the commission for permission to invest in any other investment allowed under the provisions of Chapter 14 prior to making such investment.

14VAC5-415-70. Protection against insolvency.

Each self-funded MEWA shall deposit and maintain acceptable securities with the State Treasurer in amounts prescribed by § 38.2-1045 of the Code of Virginia. The deposit shall be held as a special fund in trust, as a guarantee to the self-funded MEWA's liabilities to its members and creditors. The securities shall be deposited pursuant to a system of book-entry evidencing ownership interests of the securities with transfers of ownership interests effected on the records of a depository and its participants pursuant to rules and procedures established by the depository. Upon a determination of insolvency or action by the commission pursuant to Chapter 15 (§ 38.2-1500 et seq.) of Title 38.2 of the Code of Virginia, the deposit shall be an asset subject to the provisions of Chapter 15 and shall be used to protect the interests of the self-funded MEWA's enrollees and to ensure continuation of covered services to enrollees.

14VAC5-415-80. Financial and solvency requirements.

A. The financial and solvency requirements applicable to self-funded MEWAs granted a license under this chapter, insofar as they are not inconsistent with this chapter, include Articles 3 (§ 38.2-1017 et seq.), 4 (§ 38.2-1019 et seq.), 5 (§ 38.2-1024 et seq.), 6 (§ 38.2-1040 et seq.), and 7 (§ 38.2-1045 et seq.) of Chapter 10; Articles 1 (§ 38.2-1300 et seq.), 2 (§ 38.2-1306.2 et seq.), 3 (§ 38.2-1311 et seq.), 3.1 (§ 38.2-1316.1 et seq.), and 4 (§ 38.2-1317 et seq.) and §§ 38.2-1322 through 38.2-1332 and §§ 38.2-1333 through 38.2-1334.2:3 of Article 5 of Chapter 13; Articles 1 (§ 38.2-1400 et seq.), 2 (§ 38.2-1412 et seq.), and 4 (§ 38.2-1446 et seq.) of Chapter 14; Chapter 15 (§ 38.2-1500 et seq.); and Chapter 55 (§ 38.2-5500 et seq.) of Title 38.2 of the Code of Virginia.

B. For purposes of applying this section, "insurer" when used in a section of the Code of Virginia cited in subsection A of this section shall be construed to mean and include "self-funded MEWA" unless the section cited clearly applies to self-funded MEWAs without such construction.

14VAC5-415-90. Disclosure.

A. A self-funded MEWA shall provide meaningful disclosure to its members [§ and to its] members' participating and prospective participating employees regarding the medical, prescription drug, dental, and vision benefits provided to participating employees of the sponsoring association or its members [§] and [to] the dependents of those employees

through the health benefit plans offered by the self-funded MEWA.

B. A self-funded MEWA subject to Chapter 55 (§ 59.1-589 et seq.) of Title 59.1 of the Code of Virginia shall comply with the requirements of § 59.1-591 C of the Code of Virginia.

C. All other self-funded MEWAs shall include on health benefits plans, as applicable, the substance of the information required by § 59.1-591 C of the Code of Virginia.

14VAC5-415-100. Acts of other persons.

A self-funded MEWA is responsible for the acts of all persons who solicit, negotiate, procure, or effect applications for coverage with the self-funded MEWA.

14VAC5-415-110. Violations.

Any violation of this chapter shall be punished as provided for in § 38.2-218 of the Code of Virginia and any applicable law of the Commonwealth. The provisions of §§ 38.2-219 through 38.2-222 of the Code of Virginia shall also apply to a self-funded MEWA that fails to comply with the provisions set forth in this chapter.

14VAC5-415-120. Service of process.

Suits, actions, and proceedings may be begun against a self-funded MEWA offering or providing coverage in the Commonwealth by serving process on any trustee, director, officer, or agent of the self-funded MEWA, or if none can be found, on the Clerk of the Commission. If a benefits consortium offers or provides coverage in this Commonwealth without obtaining a license as required by this chapter, it shall be deemed to have thereby appointed the Clerk of the Commission its attorney for service of process. Service of process shall be made as provided for in Article 1 (§ 38.2-800 et seq.) of Chapter 8 of Title 38.2 of the Code of Virginia.

14VAC5-415-130. Severability.

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

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 (14VAC5-415)

[MEWA Attestation R21 \(eff. 5/2023\)](#)

[Self-Funded MEWA Application SCCBOI153 \(eff. 5/2023\)](#)

VA.R. Doc. No. R23-7418; Filed March 30, 2023, 12:27 p.m.

GENERAL NOTICES

STATE BOARD OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

Change of Decision Following Periodic Review of 12VAC35-180

The agency decision following the periodic review published in the Virginia Register at [39:15 VA.R. 2046 March 13, 2023](#) for the **Regulations to Assure the Protection of Participants in Human Research (12VAC35-180)** is changed from "amend" to "retain as is." The last action initiated, which was on October 10, 2018, occurred after the federal final rule was published.

The Federal Policy for the Protection of Human Subjects (also known as the "Common Rule" and codified for the U.S. Department of Health and Human Services (HHS) at 45 CFR Part 46, Subpart A) was originally promulgated in 1991 and amended in 2005. This version of the Common Rule is referred to as the "pre-2018 Common Rule" is available at this link: [45 CFR Part 46, Subpart A](#) as published in the 2016 edition of the Code of Federal Regulations (CFR). A comprehensive revision to the Common Rule was published in the Federal Register (FR) January 19, 2017 ([82 FR 7149](#)). The revised Common Rule has been amended twice, in an interim final rule published on January 22, 2018 ([83 FR 2885](#)), and in a final rule published on June 19, 2018 ([83 FR 28497](#)). The revised Common Rule is referred to as the "2018 Requirements."

The agency decision following periodic review is to retain the regulation as it is, making no change, instead of to amend the regulation as no federal change requires the regulation be amended. A revised Report of Findings Following Periodic Review is available at https://townhall.virginia.gov/L/GetFile.cfm?File=C:\TownHall\docroot\Review\2192\Preview_DBHDS_2192_v1.pdf.

Contact Information: Ruth Anne Walker, Director of Regulatory Affairs, Department of Behavioral Health and Developmental Services, Jefferson Building, 1220 Bank Street, 4th Floor, Richmond, VA 23219, telephone (804) 225-2252, FAX (804) 371-4609.

DEPARTMENT OF EMERGENCY MANAGEMENT

Intended Use Plan - Safeguarding Tomorrow Revolving Loan Fund

Notice of action: The Department of Emergency Management (VDEM) is seeking comments and announcing a public comment period on the proposed intended use plan for the Virginia Safeguarding Tomorrow Revolving Loan Fund. The Virginia Intended Use Plan (VIUP) provides information to potential loan recipients and other interested parties about goals for the Resilient Virginia Revolving Loan Fund (RVRLF), an overview of eligible project types, the criteria for the distribution of loans, and the process for management of

the loan fund. The VIUP is effective for Federal Fiscal Year 2023 Safeguarding Tomorrow Revolving Loan Fund (STRLF) Program.

The RVRLF was established in 2022. Sections 62.1-199 and 62.1-203 of the Code of Virginia were amended and reenacted, and Chapter 6 (§ 10.1-600 et seq.) of Title 10.1 of the Code of Virginia was amended.

Public comment deadline: April 26, 2023.

Federal information: This notice is being given to satisfy the public participation requirements of federal regulations.

How to comment: VDEM accepts written comments by email and postal mail. In order to be considered, comments must include the full name, address, and telephone number of the person commenting and be received by VDEM no later than the last day of the comment period. VDEM prefers that comments be provided in writing, along with any supporting documents or exhibits. Comments must be submitted to Robbie Coates, Director, Grant Management and Recovery Division, Department of Emergency Management, 9711 Farrar Court, Richmond, Virginia 23236, telephone (804) 267-7730, email robert.coates@vdem.virginia.gov. All materials received are part of the public record.

The plan and any supporting documents are available on the VDEM Grants website at <https://www.vaemergency.gov/wp-content/uploads/2022/02/VA-Intended-Use-Plan-STRLF-Final-Draft-wchc-04042023.pdf>. The documents may also be obtained by contacting the VDEM representative named in this notice.

Contact Information: Robbie Coates, Financial Services Manager II, Department of Emergency Management, 9711 Farrar Court, Richmond, VA 23236, telephone (804) 267-7730, email robert.coates@vdem.virginia.gov.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Consent Special Order for Gatewood Trailer Empire LLC

The Virginia Department of Environmental Quality (DEQ) proposes to issue a consent special order to Gatewood Trailer Empire LLC (d/b/a Bigfoot Trailers) for alleged violation of the Virginia Air Pollution Control Law at the property located at 12152 Washington Highway, Ashland, Virginia (Latitude 37.7357, Longitude -77.4706). A description of the proposed action is available at the DEQ office listed or online at www.deq.virginia.gov. The DEQ contact will accept comments by email from April 24, 2023, to May 24, 2023.

Contact Information: Cara Witte, Enforcement Specialist, Department of Environmental Quality, 4949-A Cox Road, Glen Allen, VA 23060, telephone (804) 712-4192, FAX (804) 698-4178, or email cara.witte@deq.virginia.gov.

Proposed Enforcement Consent Order for Harbor Station Communities LLC

An enforcement action has been proposed for Harbor Station Communities LLC for violations of State Water Control Law and regulations and the applicable permit at the Potomac Shores in Woodbridge, Virginia. The proposed consent order is available from the Department of Environmental Quality (DEQ) contact or at www.deq.virginia.gov/permits-regulations/public-notices. The DEQ contact will accept written comments from April 24, 2023, to May 24, 2023.

Contact Information: Holly Shupe, Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, or email holly.shupe@deq.virginia.gov.

Proposed Enforcement Action for HSV Holiday LLC

An enforcement action has been proposed for HSV Holiday LLC for alleged violations in Rockingham County, Virginia. The Department of Environmental Quality (DEQ) proposes to issue a consent order with penalty to HSV Holiday LLC to address noncompliance with State Water Control Law. A description of the proposed action is available at the DEQ office listed or online at www.deq.virginia.gov. The DEQ contact will accept written comments from April 24, 2023, to May 24, 2023.

Contact Information: Celeste Horton, Regional Enforcement Specialist Senior, Department of Environmental Quality, 4411 Early Road, P.O. Box 3000, Harrisonburg, VA 22801, FAX (804) 698-4178, or email celeste.horton@deq.virginia.gov.

Proposed Enforcement Action for Indian Cove Resort Association Incorporated

An enforcement action has been proposed for Indian Cove Resort Association Incorporated for violations of State Water Control Law and regulations in Virginia Beach, Virginia. The proposed order is available from the Department of Environmental Quality (DEQ) contact or at <https://www.deq.virginia.gov/permits-regulations/public-notices/enforcement-orders>. The DEQ contact will accept written comments from April 24, 2023, to May 24, 2023.

Contact Information: Thomas Jackson, Enforcement Specialist, Department of Environmental Quality, 5636 Southern Boulevard, Virginia Beach, VA 23462, FAX (804) 698-4178, or email thomas.jackson@deq.virginia.gov.

Proposed Enforcement Consent Order for Tricord Incorporated

An enforcement action has been proposed for Tricord Incorporated for violations of State Water Control Law and regulations and the applicable permit at the Wilderness Shores development project located in Orange County, Virginia. The proposed consent order is available from the Department of

Environmental Quality contact or at www.deq.virginia.gov/permits-regulations/public-notices.

The DEQ contact will accept written comments from April 25, 2023, to May 25, 2023.

Contact Information: Jim Datko, Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, or email james.datko@deq.virginia.gov.

Proposed Consent Special Order for York River Yacht Haven

The Virginia Department of Environmental Quality (DEQ) proposes to issue a consent special order to York River Yacht Haven for alleged violation of the State Water Control Law at 8109 Yacht Haven Road, Gloucester Point, Virginia. A description of the proposed action is available at the DEQ office listed or online at www.deq.virginia.gov. The DEQ contact will accept comments by email from April 24, 2023, to May 24, 2023.

Contact Information: Jeff Reynolds, Regional Enforcement Manager, Department of Environmental Quality, 4949-A Cox Road, Glen Allen, VA 23060, telephone (804) 720-4754, or email jefferson.reynolds@deq.virginia.gov.

Public Comment Opportunity for a Total Maximum Daily Load Report for Segments of Deep Run, Dover Creek, Jordans Branch, North Run, Stony Run, Stony Run Unnamed Tributary, and Upham Brook in the James River Watershed in Henrico and Goochland Counties

Purpose of notice: The Department of Environmental Quality (DEQ) seeks public comment on the development of a cleanup study, also known as a total maximum daily load report (TMDL), for Deep Run, Dover Creek, Jordans Branch, North Run, Stony Run, Stony Run - unnamed tributary, and Upham Brook in the James River Watershed in Henrico and Goochland Counties. These streams are listed as impaired since monitoring data does not meet Virginia's water quality standards for Aquatic Life (Benthics). Section 303(d) of the Clean Water Act and § 62.1-44.19:7 C of the State Water Control Law requires DEQ to develop cleanup studies to address pollutants responsible for causing waters to be on Virginia's § 303(d) list of impaired waters. A component of a cleanup study is the wasteload allocation (WLA); therefore, this notice is provided pursuant to § 2.2-4006 A 14 of the Administrative Process Act for any future adoption of the TMDL WLAs. This meeting will introduce the community to the process used in Virginia to improve stream water quality. DEQ will provide information on watershed monitoring, discuss the next steps in the study process, and invite the public to participate in the study through an advisory committee.

Cleanup study location: The cleanup study addresses the following stream segments:

General Notices

The Deep Run stream segment, located in Henrico County, is 4.16 miles and begins at its headwaters and continues to the pond at river mile 1.47.

The Dover Creek stream segment, located in Goochland County, is 4.76 miles and begins at its headwaters and continues to the upstream limit of Dover Lake.

The Jordans Branch stream segment, located in Henrico County, is 2.19 miles and begins at its headwaters and continues to its mouth at Upham Brook.

The North Run stream segment, located in Henrico County, is 7.9 miles and begins at its headwaters and continues to its mouth at Upham Brook.

The Stony Run stream segment, located in Henrico County, is 1.01 miles and begins at its headwaters and continues to the extent of backwater at the pond. Another Stony Run stream segment, located in Henrico County, is 1.35 miles and begins from the dam at the pond and continues to the mouth at Deep Run.

The Stony Run unnamed tributary stream segment, located in Henrico County, is 1.27 miles and begins at its headwaters and continues to the mouth at Stony Run.

The Upham Brook stream segment, located in Henrico County, is 12.15 miles and begins at its headwaters and continues to the mouth of the Chickahominy River.

Advisory Committee: An advisory committee to assist in development of this TMDL will be established. Any person interested in assisting should notify the DEQ contact person by the end of the comment period and provide a name, address, phone number, email address, and the organization being represented (if any). Notification of the composition of the panel will be sent to all applicants.

Public meeting: The initial public meeting on development of the cleanup study to address the Aquatic Life (Benthics) impairment will be held on May 2, 2023, at 6 p.m. at the Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060. In the event of inclement weather, the meeting will be held on May 4, 2023, at the same time and location.

Public comment period: May 2, 2023, to June 1, 2023.

How to comment: DEQ accepts comments orally at the public meeting, by email, fax, or postal mail. All comments must be received by DEQ during the comment period. Submittals must include the name, organization being represented (if any), mailing addresses, and telephone numbers of the commenter or requester.

Contact Information: Denise Moyer, Department of Environmental Quality, 4949-A Cox Road, Glen Allen, VA 23060, telephone (804) 712-9538, FAX (804) 698-4178, or email denise.moyer@deq.virginia.gov.

DEPARTMENT OF GENERAL SERVICES

Revision to Fees for Drinking Water Laboratory Certification - Final Notice

The Department of General Services, Division of Consolidated Laboratory Services (DCLS) published a general notice in [39:14 VA.R. 2037-2038 February 27, 2023](#), seeking comment on the revision to fees charged for certifying drinking water laboratories under 1VAC30-41-270 as required by subdivision I 2 of 1VAC30-41-270.

No comments were received on the revision to the fees. The revision to the fees will stand as published. The following fees are effective for May 1, 2023, through April 30, 2024, for drinking water laboratory certification under 1VAC30-41-270.

TESTING CATEGORY	FEE (\$)
Microbiological testing	
1 - 2 methods	754
3 - 5 methods	879
6+ methods	1005
Inorganic chemistry, nonmetals testing	
1 - 2 methods	816
3 - 5 methods	1065
6 - 8 methods	1319
9+ methods	1568
Inorganic chemistry, metals testing	
1 - 2 methods	1254
3 - 5 methods	1506
6+ methods	1754
Organic chemistry	
1 - 2 methods	1319
3 - 5 methods	1568
6 - 8 methods	1819
9+ methods	2071
Radiochemistry	
1 - 2 methods	1380
3 - 5 methods	1631
6+ methods	1882
Asbestos	
1 - 2 methods	1129
3 - 5 methods	1380
6+ methods	1631

HOW FEES ARE CALCULATED

DCLS calculates a laboratory's total fee by adding the fees for the number of test methods in each category in the fee table for which the laboratory is certified or applies to be certified. Contact Lab_Cert@dgs.virginia.gov for more information about the fee category for a specific method.

ADDITIONAL FEES

Additional fees apply when a laboratory:

Applies for modification of certification under 1VAC30-41-110

Is moving its location when the move requires DCLS to perform an onsite assessment

Requests reinstatement of certification when DCLS requires an onsite assessment

Hourly review fee and calculation of total fee. The fee to be charged is the sum of the total hourly charges for all reviewers plus any onsite assessment costs incurred. The hourly charge per reviewer is \$77. The charge per reviewer is determined by multiplying the number of hours expended in the review by \$77.

Onsite review and travel expenses. If an onsite review is required, travel time and onsite review time will be charged at the same hourly rate of \$77 and any travel expenses will be added.

WHEN TO PAY

Payment is due at the time the application is made or annually thereafter upon receipt of the invoice from DCLS. Annual billing precedes the expiration of the current certificate.

HOW TO PAY

Fees may be paid by check, draft, or postal money order payable to the Treasurer, Commonwealth of Virginia, or submitted electronically, if available. Payment must 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. Laboratories may also pay fees using credit cards. All fees must be sent to the following address, or submitted electronically, if available: DCLS, Attn: Lab Certification, 600 North 5th Street, Richmond, VA 23219. A fee payment form is available on the Drinking Water page of the DCLS website at www.dgs.virginia.gov/dcls.

Contact Information: Rhonda Bishton, Director's Executive Administrative Assistant, Department of General Services, 1100 Bank Street, Suite 420, Richmond, VA 23219, telephone (804) 786-3311, FAX (804) 371-8305.

STATE BOARD OF HEALTH

Annual Adjustment of Capital Expenditure Threshold for Certificate of Public Need Program

Section 32.1-102.1:2 C of the Code of Virginia states:

"No general hospital shall make any capital expenditure of \$5 million or more and no medical care facility other than a general hospital shall make any capital expenditure between \$5 million and the amount established by the (State Board of Health) as the minimum capital expenditure by a medical care facility other than a general hospital for which a certificate is required pursuant to subdivision B 8 of § 32.1-102.1:3 without first registering such capital expenditure with the (State Health Commissioner) pursuant to regulations of the Board. The amounts specified in this subsection shall be revised annually to reflect inflation using appropriate measures incorporating construction costs and medical inflation."

Section 32.1-102.1:3 B of the Code of Virginia states:

"The following actions undertaken by or on behalf of a medical care facility described in subsection A shall constitute a project for which a certificate of public need is required pursuant to subsection A of § 32.1-102.1:2:

* * *

8. Any capital expenditure of \$15 million or more, not defined as reviewable in subdivisions 1 through 7, by or on behalf of a medical care facility described in subsection A other than a general hospital. The amounts specified in this subdivision shall be revised annually to reflect inflation using appropriate measures incorporating construction costs and medical inflation..."

12VAC5-220-110 B states that the capital expenditure threshold is annually adjusted:

"...using the percentage increase listed in the Consumer Price Index for All Urban Consumers (CPI-U) for the most recent year as follows:

$$A \times (1+B)$$

where:

A = the capital expenditure threshold amount for the previous year

and

B = the percent increase for the expense category 'Medical Care' listed in the most recent year available of the CPI-U of the U.S. Bureau of Labor Statistics."

Additionally, 12VAC5-220-110 D requires the Virginia Department of Health to annually "...(i) publish the threshold amount in the General Notices section of the Virginia Register of Regulations and (ii) post the threshold amount on its website."

General Notices

The previous year's threshold requiring a certificate of public need was \$21,219,588, and the threshold requiring registration was \$7,061,144. Using the calculation of $A \times (1+B)$ listed in 12VAC5-220-110 B and the 2022 CPI-U percentage of 4.0% for medical care, the current year's thresholds are as follows:

Threshold for capital expenditures requiring a certificate of public need: \$22,068,371

Threshold for capital expenditures requiring registration: \$7,343,590

Contact Information: Erik Bodin, Certificate of Public Need Division Director, Virginia Department of Health, 9960 Mayland Drive, Suite 401, Richmond, VA 23233, telephone (804) 367-1889, FAX (804) 527-4502, or email erik.bodin@vdh.virginia.gov.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Draft Nursing Facility Provider Manual Chapter V Available for Review and Comment

The draft Nursing Facility Provider Manual Chapter V is now available on the Department of Medical Assistance Services website at <https://www.dmas.virginia.gov/providers/general-information/medicaid-provider-manual-drafts> for public comment until April 28, 2023.

Contact Information: Meredith Lee, Policy, Regulations, and Manuals Supervisor, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-0552, FAX (804) 786-1680, TDD (800) 343-0634, or email meredith.lee@dmas.virginia.gov.

Draft Psychiatric Services Provider Manual Chapter II Available for Review and Comment

The draft Psychiatric Services Provider Manual Chapter II is now available on the Department of Medical Assistance Services website at <https://www.dmas.virginia.gov/providers/general-information/medicaid-provider-manual-drafts> for public comment until April 28, 2023.

Contact Information: Meredith Lee, Policy, Regulations, and Manuals Supervisor, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-0552, FAX (804) 786-1680, TDD (800) 343-0634, or email meredith.lee@dmas.virginia.gov.

Draft Rehabilitation Provider Manual Chapter V Available for Review and Comment

The draft Rehabilitation Provider Manual Chapter V is now available on the Department of Medical Assistance Services website at <https://www.dmas.virginia.gov/providers/general-information/medicaid-provider-manual-drafts> for public comment until April 28, 2023.

Contact Information: Meredith Lee, Policy, Regulations, and Manuals Supervisor, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-0552, FAX (804) 786-1680, TDD (800) 343-0634, or email meredith.lee@dmas.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.