



# VIRGINIA

## REGISTER OF REGULATIONS

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# THE VIRGINIA REGISTER INFORMATION PAGE

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

## **ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS**

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

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

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

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

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

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

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

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

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

## **FAST-TRACK RULEMAKING PROCESS**

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

## **EMERGENCY REGULATIONS**

Pursuant to § 2.2-4011 of the Code of Virginia, an agency, upon consultation with the Attorney General, and at the discretion of the Governor, may adopt emergency regulations that are necessitated by an emergency situation. An agency may also adopt an emergency regulation when Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment. The emergency regulation becomes operative upon its adoption and filing with the Registrar of Regulations, unless a later date is specified. Emergency regulations are limited to no more than 12 months in duration; however, may be extended for six months under certain circumstances as provided for in § 2.2-4011 D. Emergency regulations are published as soon as possible in the *Register*. During the time the emergency status is in effect, the agency may proceed with the adoption of permanent regulations through the usual procedures. To begin promulgating the replacement regulation, the agency must (i) file the Notice of Intended Regulatory Action with the Registrar within 60 days of the effective date of the emergency regulation and (ii) file the proposed regulation with the Registrar within 180 days of the effective date of the emergency regulation. If the agency chooses not to adopt the regulations, the emergency status ends when the prescribed time limit expires.

## **STATEMENT**

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

## **CITATION TO THE VIRGINIA REGISTER**

The *Virginia Register* is cited by volume, issue, page number, and date. **29:5 VA.R. 1075-1192 November 5, 2012**, refers to Volume 29, Issue 5, pages 1075 through 1192 of the *Virginia Register* issued on November 5, 2012.

*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**, Chairman; **Gregory D. Habeeb**; **James M. LeMunyon**; **Ryan T. McDougle**; **Robert L. Calhoun**; **E.M. Miller, Jr.**; **Thomas M. Moncure, Jr.**; **Wesley G. Russell, Jr.**; **Charles S. Sharp**; **Robert L. Talver**; **Christopher R. Nolen**; **J. Jasen Eige** or **Jeffrey S. Palmore**.

Staff of the Virginia Register: **Jane D. Chaffin**, Registrar of Regulations; **June T. Chandler**, Assistant Registrar; **Rhonda Dyer**, Publications Assistant; **Terri Edwards**, Operations Staff Assistant; **Karen Perrine**, Staff Attorney.

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# PUBLICATION SCHEDULE AND DEADLINES

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

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## March 2013 through April 2014

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
29:15	March 6, 2013	March 25, 2013
29:16	March 20, 2013	April 8, 2013
29:17	April 3, 2013	April 22, 2013
29:18	April 17, 2013	May 6, 2013
29:19	May 1, 2013	May 20, 2013
29:20	May 15, 2013	June 3, 2013
29:21	May 29, 2013	June 17, 2013
29:22	June 12, 2013	July 1, 2013
29:23	June 26, 2013	July 15, 2013
29:24	July 10, 2013	July 29, 2013
29:25	July 24, 2013	August 12, 2013
29:26	August 7, 2013	August 26, 2013
30:1	August 21, 2013	September 9, 2013
30:2	September 4, 2013	September 23, 2013
30:3	September 18, 2013	October 7, 2013
30:4	October 2, 2013	October 21, 2013
30:5	October 16, 2013	November 4, 2013
30:6	October 30, 2013	November 18, 2013
30:7	November 13, 2013	December 2, 2013
30:8	November 26, 2013 ( <b>Tuesday</b> )	December 16, 2013
30:9	December 11, 2013	December 30, 2013
30:10	December 23, 2013 ( <b>Monday</b> )	January 13, 2014
30:11	January 8, 2014	January 27, 2014
30:12	January 22, 2014	February 10, 2014
30:13	February 5, 2014	February 24, 2014
30:14	February 19, 2014	March 10, 2014
30:15	March 5, 2014	March 24, 2014
30:16	March 19, 2014	April 7, 2014
30:17	April 2, 2014	April 21, 2014

\*Filing deadlines are Wednesdays unless otherwise specified.

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# REGULATIONS

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

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## Symbol Key

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

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## TITLE 2. AGRICULTURE

### POTATO BOARD

#### Final Regulation

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

**Title of Regulation:** **2VAC5-300. Rules and Regulations for the Enforcement of the Virginia Seed Potato Inspection Law (amending 2VAC5-300-10 through 2VAC5-300-50, 2VAC5-300-70).**

**Statutory Authority:** § 3.2-1804 of the Code of Virginia.

**Effective Date:** April 24, 2013.

**Agency Contact:** Thomas H. Smith, Agriculture and Consumer Services Supervisor, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-3548, FAX (804) 371-7785, TTY (800) 828-1120, or email thomas.smith@vdacs.virginia.gov.

**Summary:**

*The amendments reflect the merger of the Seed Potato Board with the Potato Board pursuant to Chapters 803 and 835 of the 2012 Acts of Assembly and make other technical changes.*

#### CHAPTER 300

#### RULES AND REGULATIONS FOR THE ENFORCEMENT OF THE VIRGINIA SEED POTATO INSPECTION LAW STANDARDS

#### **2VAC5-300-10. Notification of arrival date and location of potatoes.**

All persons upon receiving seed ~~Irish~~ potatoes in Virginia, for the commercial production of ~~Irish~~ potatoes, shall notify the nearest office of the Virginia ~~Seed Potato Inspection Service~~ Department of Agriculture and Consumer Services, Fruit and Vegetable Marketing Program, of arrival date and location of potatoes intended for seed purposes.

#### **2VAC5-300-20. Requirements for shipment.**

All ~~Irish~~ potatoes shipped into Virginia for seed must meet U.S. No. 1 or U.S. No. 1, size "B," requirements, except that the tolerance for shatter bruising, dirt, and greening may be that designated for U.S. No. 2.

#### **2VAC5-300-30. Certification.**

All ~~Irish~~ potatoes shipped into Virginia for seed must be certified according to the regulations established by the officially recognized certifying agency in the state, province of Canada, or the government of a foreign country; wherein said seed potatoes were produced provided such seed potatoes meet the requirements specified in 2VAC5-300-20 and are within tolerances established by 2VAC5-300-60.

#### **2VAC5-300-40. Inspection.**

The Commissioner of Agriculture and Consumer Services, or his duly authorized agents shall have the right to draw a reasonable sample from any lot of seed ~~Irish~~ potatoes for the purpose of inspection and observation by the personnel of the Eastern Shore Agricultural Experiment Station. These samples may be planted for observation and comparison, and the results of these tests may be published.

#### **2VAC5-300-50. Certificate of inspection.**

A certificate of inspection shall be issued by the Commissioner of Agriculture and Consumer Services or his duly authorized agents at the time of inspection if all requirements of the Virginia Seed Potato ~~Inspection Law~~ Standards (Article 3 (§ 3.2-1816 et seq.) of Chapter 18 of the Code of Virginia) and its rules and regulations have been met. Seed ~~Irish Potatoes~~ potatoes that fail to comply shall be placed under "stop sale" order and the chairman of the ~~State Seed~~ State Potato Board shall be promptly notified of this action. Any lot of seed potatoes placed under "stop sale" order shall be held until an official release is issued by the commissioner or his authorized agents in accordance with § ~~3.2-4107~~ 3.2-1819 of the Virginia Seed Potato ~~Inspection Law~~ Standards. The commissioner or his authorized agents shall verify the removal of certification tags from all bags on lots released for nonpropagational purposes.

#### **2VAC5-300-70. Advisory review committee.**

The chairman of the ~~State Seed~~ State Potato Board may appoint an advisory review committee comprised of three members of the board to evaluate circumstances involved in any differences of opinion regarding any lot of seed ~~Irish~~ potatoes inspected. This committee shall make recommendations to the Commissioner of Agriculture and Consumer Services or his representative.

VA.R. Doc. No. R13-3538; Filed March 5, 2013, 10:44 a.m.



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# Regulations

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## TITLE 4. CONSERVATION AND NATURAL RESOURCES

### MARINE RESOURCES COMMISSION

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

#### Final Regulation

**Title of Regulation:** **4VAC20-270. Pertaining to Crabbing (amending 4VAC20-270-51).**

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

**Effective Date:** March 1, 2013.

**Agency Contact:** Jane Warren, Agency Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, FAX (757) 247-2002, or email betty.warren@mrc.virginia.gov.

**Summary:**

*The amendments define barrel limits that correspond with previously established bushel limits by pot category and establish per trip vessel limits for the 2013 crab pot season.*

**4VAC20-270-51. ~~Harvest~~ Harvester and vessel harvest and possession limits.**

A. Any barrel used by a harvester to contain or possess any amount of crabs will be equivalent in volume to no more than 3 bushels of crabs.

A. ~~B.~~ The lawful harvest in bushels of crabs by crab pot license category is as follows: From March 16, 2013, through November 30, 2013, it shall be unlawful for any person to harvest in any one day or to possess aboard any vessel any amount of crabs in excess of the following bushel limits as determined by that licensee's crab pot license category: any harvester legally licensed for a crab pot license, as defined in 4VAC20-270-50 B, shall be limited to the following harvest and possession limits:

~~27 bushels for harvesters with a legal crab pot license allowing up to 85 crab pots.~~

~~32 bushels for harvesters with a legal crab pot license allowing up to 127 crab pots.~~

~~38 bushels for harvesters with a legal crab pot license allowing up to 170 crab pots.~~

~~45 bushels for harvesters with a legal crab pot license allowing up to 255 crab pots.~~

~~55 bushels for harvesters with a legal crab pot license allowing up to 425 crab pots.~~

1. 27 bushels, or 9 barrels, of crabs, if licensed for up to 85 crab pots.

2. 32 bushels, or 10 barrels and 2 bushels, if licensed for up to 127 crab pots.

3. 38 bushels, or 12 barrels and 2 bushels, if licensed for up to 170 crab pots.

4. 45 bushels, or 15 barrels, if licensed for up to 255 crab pots.

5. 55 bushels, or 18 barrels and 1 bushel, if licensed for up to 425 crab pots.

~~B. C.~~ When multiple harvesters are on board any vessel, that vessel's harvest and possession limit shall be equal to the sum of each licensee's crab pot license category bushel limit only one harvest and possession limit, as described in 4VAC20-270-51 B, and that limit shall correspond to the highest harvest and possession limit of only one licensee on board that vessel.

~~C. D.~~ When transporting or selling one or more legal crab pot licensee's crab harvest in bushels, or barrels, any agent shall possess either the crab pot license of that one or more crab pot licensees or a bill of lading indicating each crab pot licensee's name, address, Commercial Fisherman Registration License number, date, and amount of bushels or barrels of crabs to be sold.

~~D. E.~~ If any police officer finds crabs in excess of any lawful bushel or barrel limit, as described in subsections A and B of this section, that excess quantity of crabs shall be returned immediately to the water by the licensee or licensees who possess that excess over any single or combined lawful harvest limit. The refusal to return crabs in excess of any harvest limit to the water shall constitute a separate violation of this chapter.

~~E. F.~~ The bushel and barrel limits described in this chapter replace any provisions for bushel limits described in previous 4VAC20-300.

VA.R. Doc. No. R13-3617; Filed March 1, 2013, 9:43 a.m.

#### Final Regulation

**Title of Regulation:** **4VAC20-530. Pertaining to American Shad (amending 4VAC20-530-31).**

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

**Effective Date:** March 1, 2013.

**Agency Contact:** Jane Warren, Agency Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, FAX (757) 247-2002, or email betty.warren@mrc.virginia.gov.

**Summary:**

*The amendments establish a limited permitting system for the American shad bycatch allowance fishery to comply with interstate management plan requirements and to assign fishing permits in a fair and equitable manner.*

**4VAC20-530-31. Bycatch fishery.**

~~A. Any registered commercial fisherman meeting the conditions described in this subsection shall be eligible to participate in the American shad bycatch fishery in 2012:~~

~~1. The registered commercial fisherman shall apply for a VMRC American Shad Bycatch Permit and possess that permit while fishing, landing, or selling his catch of American shad.~~

~~2. The registered commercial fisherman shall complete the VMRC American Shad Bycatch Survey form to describe his pending fishing activity.~~

A. It shall be unlawful for any person to take, catch, possess, or land any American shad in Virginia without first having obtained an American shad bycatch permit from the Marine Resources Commission. Permits shall be issued only to Virginia registered commercial fishermen meeting any of the following criteria:

1. The fisherman shall have held an American shad bycatch permit in at least one of the three previous calendar years and complied with all reporting requirements. In addition, that fisherman shall have submitted an American shad bycatch permit application to the Marine Resources Commission by March 15 for the 2013 fishing season, but no later than February 5 in subsequent years.

2. Any registered commercial fisherman not otherwise qualified under subdivision 1 of this subsection shall be eligible for an American shad bycatch permit if that fisherman submits an American shad bycatch permit application and the number of eligible American shad bycatch permittees as of March 15, 2013, or February 5 in subsequent years, is less than 30.

3. Should the number of American shad bycatch permit applications not exceed 30 as of March 15, 2013, or February 5 in subsequent years, the available permits not issued per subdivision 1 of this subsection may be issued until a maximum of 30 American shad bycatch permits are issued.

4. Should the number of American shad bycatch permit applications exceed 30 as of March 15, 2013, or February 5 in subsequent years, a lottery will be held for available permits not issued per subdivision 1 of this subsection.

B. The permittee shall keep a copy of that permit in his possession while fishing for or selling American shad.

~~B. C. It shall be unlawful for any person to possess aboard a vessel more than 10 American shad. When more than one registered and permitted fisherman is fishing on the same vessel, it shall be unlawful to possess more than 10 American shad aboard that vessel.~~

~~C. D. It shall be unlawful for any person to possess aboard a vessel or land any American shad unless that person possesses at least an equal number of fish of only the~~

following food-grade species: spot, croaker, bluefish, catfish, striped bass or white perch.

~~D. E. Possession of American shad by any person permitted in accordance with this section shall be lawful only when those American shad were harvested from the bycatch area. Possession of any American shad harvested in Virginia waters that are outside of the bycatch area shall constitute a violation of this regulation.~~

~~E. F. American shad harvested only as bycatch by anchored gill nets and staked gill nets may be possessed or retained for sale in accordance with the provisions of this regulation. It shall be unlawful for any person to harvest, land, or possess any American shad taken by any recreational gear or by any commercial gear, except anchored gill net or staked gill net.~~

~~F. G Every fisherman permitted for the American shad bycatch fishery shall contact the commission's interactive voice response system, ~~once weekly~~ every Monday, to report the following for the preceding weekly period: name, registration number, number of fishing trips taken, water body fished, number of nets set, number of American shad caught, and number retained.~~

VA.R. Doc. No. R13-3615; Filed March 1, 2013, 9:23 a.m.

**Final Regulation**

**Title of Regulation: 4VAC20-610. Pertaining to Commercial Fishing and Mandatory Harvest Reporting (amending 4VAC20-610-30).**

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

**Effective Date:** March 1, 2013.

**Agency Contact:** Jane Warren, Agency Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, FAX (757) 247-2002, or email betty.warren@mrc.virginia.gov.

**Summary:**

*The amendments limit the number of agents in the 2013 crab pot and peeler pot fisheries to 168.*

**4VAC20-610-30. Commercial Fisherman Registration License; exceptions and requirements of authorized agents.**

A. In accordance with § 28.2-241 C of the Code of Virginia, only persons who hold a valid Commercial Fisherman Registration License may sell, trade, or barter their harvest, or give their harvest to another, in order that it may be sold, traded, or bartered. Only these licensees may sell their harvests from Virginia tidal waters, regardless of the method or manner in which caught. Exceptions to the requirement to register as a commercial fisherman for selling harvest are authorized for the following persons or firms only:

1. Persons taking menhaden under the authority of licenses issued pursuant to § 28.2-402 of the Code of Virginia.

2. Persons independently harvesting and selling, trading, or bartering no more than three gallons of minnows per day

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# Regulations

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who are not part of, hired by, or engaged in a continuing business enterprise.

a. Only minnow pots, a cast net or a minnow seine less than 25 feet in length may be used by persons independently harvesting minnows.

b. All other marine species taken during the process of harvesting minnows shall be returned to the water immediately.

## B. Requirements of authorized agents.

1. No person whose Commercial Fisherman Registration License, fishing gear license, or fishing permit is currently revoked or rescinded by the Marine Resources Commission pursuant to § 28.2-232 of the Code of Virginia is authorized to possess the Commercial Fisherman Registration License, fishing gear license, or fishing permit of any other registered commercial fisherman in order to serve as an agent for fishing the commercial fisherman's gear or selling the harvest.

2. No registered commercial fisherman shall use more than one person as an agent at any time.

3. Any person serving as an agent shall possess the Commercial Fisherman Registration License and gear license of the commercial fisherman while fishing.

4. When transporting or selling a registered commercial fisherman's harvest, the agent shall possess either the Commercial Fisherman Registration License of that commercial fisherman or a bill of lading indicating that fisherman's name, address, Commercial Fisherman Registration License number, date and amount of product to be sold.

## C. Requirements of authorized blue crab fishery agents.

~~5.~~ 1. Any person licensed to harvest blue crabs commercially shall not be eligible to also serve as an agent.

~~6.~~ 2. Any person serving as an agent to harvest blue crabs for another licensed fisherman shall be limited to the use of only one registered commercial fisherman's crab license; however, an agent may fish multiple crab traps licensed and owned by the same person.

~~7.~~ 3. There shall be no more than one person, per vessel, serving as an agent for a commercial crab licensee.

~~8.~~ 4. Prior to using an agent in any crab fishery, the licensee shall ~~register that person, with the commission, and shall receive approval for use of that agent, prior to the commencement of any harvesting activity.~~ submit a crab agent registration application to the commission. Crab agent registration applications shall be approved by the commissioner, or his designee, for a crab fishery licensee according to the following guidelines:

a. Only 168 agents may participate in the 2013 crab fishery, as described in subdivision 4 b of this subsection, unless the commissioner, or his designee, approves a

request for agent use because of a non-economic hardship circumstance and

b. 153 of the 168 agents may be utilized by those crab fishery licensees who received approval for agent use in 2012 or who currently are licensed by a transferred crab fishery license from a licensee approved for agent use in 2012, except that should any of these licensees described in this subdivision fail to register for agent use, applications for agent use by other 2013 licensees shall be approved on a first-come, first-serve basis, starting with those licensees who have registered prior to the effective date of this regulation.

~~9.~~ D. Failure to abide by any of the provisions of this section, shall constitute a violation of this regulation.

~~E.~~ E. In accordance with § 28.2-241 H of the Code of Virginia, only persons with a valid Commercial Fisherman Registration License may purchase gear licenses. Beginning with licenses for the 1993 calendar year and for all years thereafter, gear licenses will be sold only upon presentation of evidence of a valid Commercial Fisherman Registration License.

Exceptions to the prerequisite requirement are authorized for the following gears only and under the conditions described below:

1. Menhaden purse seine licenses issued pursuant to § 28.2-402 of the Code of Virginia may be purchased without holding a Commercial Fisherman Registration License.

2. Commercial gear licenses used for recreational purposes and issued pursuant to § 28.2-226.2 of the Code of Virginia may be purchased without holding a Commercial Fisherman Registration License.

~~D.~~ F. Exceptions to the two-year delay may be granted by the commissioner if he finds any of the following:

1. The applicant for an exception (i) has demonstrated, to the satisfaction of the commissioner, that the applicant has fished a significant quantity of commercial gear in Virginia waters during at least two of the previous five years; and (ii) can demonstrate, to the satisfaction of the commissioner, that a significant hardship caused by unforeseen circumstances beyond the applicant's control has prevented the applicant from making timely application for registration. The commissioner may require the applicant to provide such documentation as he deems necessary to verify the existence of hardship.

2. The applicant is purchasing another commercial fisherman's gear, and the seller of the gear holds a Commercial Fisherman Registration License and the seller surrenders that license to the commission at the time the gear is sold.

3. An immediate member of the applicant's family, who holds a current registration, has died or is retiring from the

commercial fishery and the applicant intends to continue in the fishery.

Any applicant denied an exception may appeal the decision to the commission. The applicant shall provide a request to appeal to the commission 30 days in advance of the meeting at which the commission will hear the request. The commission will hear requests at their March, June, September, and December meetings.

Under no circumstances will an exception be granted solely on the basis of economic hardship.

VA.R. Doc. No. R13-3618; Filed March 1, 2013, 9:53 a.m.

**Final Regulation**

**Title of Regulation:** 4VAC20-620. Pertaining to Summer Flounder (amending 4VAC20-620-40, 4VAC20-620-50).

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

**Effective Date:** March 1, 2013.

**Agency Contact:** Jane Warren, Agency Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, FAX (757) 247-2002, or email betty.warren@mrc.virginia.gov.

**Summary:**

*The amendments establish the 2013 recreational fishery management measures and increase the commercial landing limit to 12,500 pounds per 15-day landing period effective the first Monday in March.*

**4VAC20-620-40. Commercial vessel possession and landing limitations.**

A. It shall be unlawful for any person harvesting Summer Flounder outside of Virginia's waters to do any of the following, except as described in subsections B, C, and D of this section:

1. Possess aboard any vessel in Virginia waters any amount of Summer Flounder in excess of 10% by weight of Atlantic croaker or the combined landings, on board a vessel, of black sea bass, scup, squid, scallops and Atlantic mackerel.
2. Possess aboard any vessel in Virginia waters any amount of Summer Flounder in excess of 1,500 pounds landed in combination with Atlantic croaker.
3. Fail to sell the vessel's entire harvest of all species at the point of landing.

B. From the first Monday in March through the day preceding the second Monday in November, or until it has been projected and announced that 85% of the allowable landings have been taken, it shall be unlawful for any person harvesting Summer Flounder outside of Virginia waters to do any of the following:

1. Possess aboard any vessel in Virginia waters any amount of Summer Flounder in excess of the combined total of the Virginia landing limit described in subdivision 3 of this

subsection and the amount of the legal North Carolina landing limit or trip limit.

2. Land Summer Flounder in Virginia for commercial purposes more than twice during each consecutive 15-day period, with the first 15-day period beginning on the first Monday in March.

3. Land in Virginia more than ~~10,000~~ 12,500 pounds of Summer Flounder during each consecutive 15-day period, with the first 15-day period beginning on the first Monday in March.

4. Land in Virginia any amount of Summer Flounder more than once in any consecutive five-day period.

C. From the second Monday in November through December 31 of each year, or until it has been projected and announced that 85% of the allowable landings have been taken, it shall be unlawful for any person harvesting Summer Flounder outside of Virginia waters to do any of the following:

1. Possess aboard any vessel in Virginia waters any amount of Summer Flounder in excess of the combined total of the Virginia landing limit described in subdivision 3 of this subsection and the amount of the legal North Carolina landing limit or trip limit.

2. Land Summer Flounder in Virginia for commercial purposes more than twice during each consecutive 15-day period, with the first 15-day period beginning on the second Monday in November.

3. Land in Virginia more than a total of 10,000 pounds of Summer Flounder during each consecutive 15-day period, with the first 15-day period beginning on the second Monday in November.

4. Land in Virginia any amount of Summer Flounder more than once in any consecutive five-day period.

D. From January 1 through December 31 of each year, any boat or vessel issued a valid federal Summer Flounder moratorium permit and owned and operated by a legal Virginia Commercial Hook-and-Line Licensee that possesses a Restricted Summer Flounder Endorsement shall be restricted to a possession and landing limit of 200 pounds of Summer Flounder, except as described in 4VAC20-620-30 F.

E. Upon request by a marine police officer, the seafood buyer or processor shall offload and accurately determine the total weight of all Summer Flounder aboard any vessel landing Summer Flounder in Virginia.

F. Any possession limit described in this section shall be determined by the weight in pounds of Summer Flounder as customarily packed, boxed and weighed by the seafood buyer or processor. The weight of any Summer Flounder in pounds found in excess of any possession limit described in this section shall be prima facie evidence of violation of this chapter. Persons in possession of Summer Flounder aboard any vessel in excess of the possession limit shall be in violation of this chapter unless that vessel has requested and



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# Regulations

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been granted safe harbor. Any buyer or processor offloading or accepting any quantity of Summer Flounder from any vessel in excess of the possession limit shall be in violation of this chapter, except as described by subsection I of this section. A buyer or processor may accept or buy Summer Flounder from a vessel that has secured safe harbor, provided that vessel has satisfied the requirements described in subsection I of this section.

G. If a person violates the possession limits described in this section, the entire amount of Summer Flounder in that person's possession shall be confiscated. Any confiscated Summer Flounder shall be considered as a removal from the appropriate commercial harvest or landings quota. Upon confiscation, the marine police officer shall inventory the confiscated Summer Flounder and, at a minimum, secure two bids for purchase of the confiscated Summer Flounder from approved and licensed seafood buyers. The confiscated fish will be sold to the highest bidder and all funds derived from such sale shall be deposited for the Commonwealth pending court resolution of the charge of violating the possession limits established by this chapter. All of the collected funds will be returned to the accused upon a finding of innocence or forfeited to the Commonwealth upon a finding of guilty.

H. It shall be unlawful for a licensed seafood buyer or federally permitted seafood buyer to fail to contact the Marine Resources Commission Operation Station prior to a vessel offloading Summer Flounder harvested outside of Virginia. The buyer shall provide to the Marine Resources Commission the name of the vessel, its captain, an estimate of the amount in pounds of Summer Flounder on board that vessel, and the anticipated or approximate offloading time. Once offloading of any vessel is complete and the weight of the landed Summer Flounder has been determined, the buyer shall contact the Marine Resources Commission Operations Station and report the vessel name and corresponding weight of Summer Flounder landed. It shall be unlawful for any person to offload from a boat or vessel for commercial purposes any Summer Flounder during the period of 9 p.m. to 7 a.m.

I. Any boat or vessel that has entered Virginia waters for safe harbor shall only offload Summer Flounder when the state that licenses that vessel requests to transfer quota to Virginia, in the amount that corresponds to that vessel's possession limit, and the commissioner agrees to accept that transfer of quota.

J. After any commercial harvest or landing quota as described in 4VAC20-620-30 has been attained and announced as such, any boat or vessel possessing Summer Flounder on board may enter Virginia waters for safe harbor but shall contact the Marine Resources Commission Operation Center in advance of such entry into Virginia waters.

K. It shall be unlawful for any person harvesting Summer Flounder outside of Virginia waters to possess aboard any vessel, in Virginia, any amount of Summer Flounder, once it

has been projected and announced that 100% of the quota described in 4VAC20-620-30 A has been taken.

## **4VAC20-620-50. Minimum size limits.**

A. The minimum size for Summer Flounder harvested by commercial fishing gear shall be 14 inches, total length.

B. The minimum size of Summer Flounder harvested by recreational fishing gear, including but not limited to hook and line, rod and reel, spear and gig, shall be ~~16 1/2~~ 16 inches, total length, except that the minimum size of Summer Flounder harvested in the Potomac River tributaries shall be the same as established by the Potomac River Fisheries Commission for the mainstem Potomac River.

C. Length shall be measured in a straight line from tip of nose to tip of tail.

D. It shall be unlawful for any person to possess any Summer Flounder smaller than the designated minimum size limit.

E. Nothing in this chapter shall prohibit the landing of Summer Flounder in Virginia that were legally harvested in the Potomac River.

VA.R. Doc. No. R13-3616; Filed March 1, 2013, 8:45 a.m.

## **Final Regulation**

Title of Regulation: **4VAC20-950. Pertaining to Black Sea Bass (amending 4VAC20-950-45).**

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

Effective Date: February 28, 2013.

Agency Contact: Jane Warren, Agency Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, FAX (757) 247-2002, or email [betty.warren@mrc.virginia.gov](mailto:betty.warren@mrc.virginia.gov).

### Summary:

*The amendments lower the recreational possession limit for black sea bass from 25 fish to 15 fish for January 1 through February 28, 2013.*

## **4VAC20-950-45. Recreational possession limits and seasons.**

A. It shall be unlawful for any person fishing with hook and line, rod and reel, spear, gig, or other recreational gear to possess more than 25 black sea bass. When fishing is from a boat or vessel where the entire catch is held in a common hold or container, the possession limit shall be for that boat or vessel and shall be equal to the number of persons on board legally eligible to fish, multiplied by 25, during any open season described in subsection D of this section, except January 1 through the last day of February 2013 open season. The captain or operator of the boat or vessel shall be responsible for that boat or vessel possession limit. Any black sea bass taken after the possession limit has been reached shall be returned to the water immediately.

B. It shall be unlawful for any person fishing with hook and line, rod and reel, spear, gig, or other recreational gear to possess more than 15 black sea bass from January 1 through the last day of February 2013. When fishing is from a boat or vessel where the entire catch is held in a common hold or container, the possession limit shall be for that boat or vessel and shall be equal to the number of persons on board legally eligible to fish, multiplied by 15, from January 1 through the last day of February 2013. The captain or operator of the boat or vessel shall be responsible for that boat or vessel possession limit. Any black sea bass taken after the possession limit has been reached shall be returned to the water immediately.

~~B.~~ C. Possession of any quantity of black sea bass that exceeds the possession limit described in ~~subsection~~ subsections A and B of this section shall be presumed to be for commercial purposes.

~~C.~~ D. The open recreational fishing seasons, in 2013, shall be from January 1 through the last day of February, May 19 through October 14, and from November 1 through December 31, ~~except as provided in subsection D of this section.~~

~~D. Only if the Atlantic States Marine Fisheries Commission authorizes an open recreational fishing season of January 1 through the end of February 2013 shall Virginia establish an open season of January 1 through the end of February in 2013.~~

E. It shall be unlawful for any person fishing recreationally to take, catch, or possess any black sea bass, except during an open recreational season.

V.A.R. Doc. No. R13-3586; Filed February 28, 2013, 4:07 p.m.

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# GOVERNOR

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## EXECUTIVE ORDER NUMBER 60 (2013)

### **Commission on Military Installations and Defense Activities**

#### Importance of the Issue

The Commonwealth must address the impact that indiscriminant defense budget cuts due to sequestration will have on the economic well-being of the citizens and businesses of Virginia. The automatic sequestration defense and national security reductions mandated by the Budget Control Act of 2011 will have a significant adverse effect on the Commonwealth. These mandated reductions will have a potentially devastating impact in Virginia, with the Northern Virginia and Hampton Roads regions at the greatest risk. Additionally, the Department of Defense (DoD) has requested multiple rounds of Base Realignment and Closure (BRAC) in the President's budgets which they have asked to occur in 2015 and 2017. Therefore, Virginia must also take prompt action to address potential impacts of BRAC in Virginia.

Current actions contemplated by DoD as a result of the anticipated sequestration and defense budget cuts include terminating thousands of temporary civilian workers, reducing base operations by 30%, limiting supply purchases to essential FY13 consumption, restricting nonmission-critical purchases, reviewing contracts and studies for possible cost savings, and canceling ongoing and scheduled studies that are not congressionally directed or mission-critical. Civilian pay makes up a large portion of the services' operating budget, and each service has been directed to consider the possibility of civilian furloughs of up to 30 calendar days or 22 discontinuous workdays. Many of these citizens are already hard hit by years of recession.

It is estimated that Virginia will potentially lose approximately 82,000 direct jobs at federal agencies and contractors and an additional 82,000 indirect jobs supported by business and personal spending that will be impacted by the cuts. Northern Virginia will likely absorb more than 60% of these losses, Hampton Roads approximately 20%, and metro-Richmond 12%.

Virginia must be vigilant in protecting the military assets located in the Commonwealth, and will continuously seek new opportunities for economic diversification and growth. To this end, the Commonwealth will be proactive in identifying the appropriate strategies to retain the military and federal facilities located in the Commonwealth, to identify other operations and facilities that can be located within Virginia, and to address the best response to the anticipated mandated federal budget reductions contained in the Budget Control Act of 2011.

To accomplish this, in accordance with the authority vested in me by Article V of the Constitution of Virginia and by § 2.2-

134 of the Code of Virginia, I hereby create Virginia's Commission on Military Installations and Defense Activities.

#### Composition of the Commission

The Commission will consist of the Secretaries of Commerce and Trade, Finance, Public Safety, and Veterans Affairs and Homeland Security, the co-chairs of the General Assembly Military and Veteran Caucus, and four (4) citizen members whose background shall include service as a General or Flag Officer in one of the military services to be appointed by the Governor and serve at his pleasure. Initial appointments of members to the Commission by the Governor will include 10 members. The Governor shall designate a Chairman from among the appointed members. The Governor may appoint additional persons to the Commission at his discretion.

#### Responsibilities of the Commission

The Commission's responsibilities shall include the following:

1. Evaluate data and studies in order to develop recommendations and plans regarding preventing closure or realignment of federal military and national security installations and facilities located in the Commonwealth and to relocate other such facilities here;
2. Develop and recommend strategies to prevent the closure or realignment of federal military installations located in Virginia or the relocation of national security facilities currently located here;
3. Develop and recommend strategies designed to limit the adverse economic effect of such realignment, closure, or relocation, or to seek additional tenant activity growth from the Department of Defense or federal government;
4. Develop and recommend strategies that support and foster collaboration among local and regional entities in identifying appropriate opportunities for the protection of existing federal facilities and the placement of additional federal facilities in the Commonwealth;
5. Determine and recommend the best and most efficient manner to foster and promote business, technology, transportation, education, economic development, and other efforts to support, attract, and retain existing military installations and commands in the Commonwealth;
6. Identify and track all federal government military and national security facilities located in the Commonwealth and their military construction plans and facilitate ways to assist in those plans;
7. Make recommendations, as appropriate, to prepare the Commonwealth to effectively compete in federal budget reductions through the sequestration process;

8. Support the Commonwealth's position in research and development related to or arising out of military missions and contracting;

9. Improve the Commonwealth's military-friendly environment for service members, military dependents, military retirees, and businesses that bring military and base-related jobs to the Commonwealth;

10. Advise contractors, where appropriate, in the development of analytical tools by which to obtain essential, critical information required about each Virginia military installation with input from local installation and community leadership;

11. Direct and review studies from experts that have utilized past Base Realignment and Closure criteria and scoring, conduct a thorough and detailed analysis of the military value of Virginia's military installations, ranges, and airspace for the purpose of formulating strategies to secure the long-term viability, retention, and growth of military missions and facilities;

12. Ensure that a risk assessment is properly conducted of each installation that can inform strategies to prepare for Department of Defense consolidation and realignment actions; and

13. Develop and implement strategies for new private sector growth in industries adversely affected by defense procurement and related cuts such as aerospace, cyber security, modeling and simulation, technology, consulting, and others.

Commission Staffing and Funding

Necessary staff support for the Commission's work during its existence shall be furnished by the Office of the Secretary of Veterans Affairs and Homeland Security and the Office of the Secretary of Commerce and Trade, and such other agencies and offices as designated by the Governor. An estimated 100 hours of staff time will be required to support the work of the Commission.

Necessary funding to support the Commission and its staff shall be provided from private contributions and state funds appropriated for the same purposes as the Commission, as authorized by § 2.2-135 of the Code of Virginia, as well as any other private sources of funding that may be identified. Estimated direct costs for this Commission are \$5,000.00.

Commission members shall serve without compensation and shall receive reimbursement for expenses incurred in the discharge of their official duties.

The Commission shall meet upon the call of the chairman and report at least quarterly to the Governor and shall issue such other reports and recommendations as necessary or as requested by the Governor.

Effective Date of the Executive Order:

Executive Order 22 is hereby rescinded, and this Executive Order shall be effective upon its signing and shall remain in force and effect until January 11, 2014, unless amended or rescinded by further executive order. Given under my hand and under the Seal of the Commonwealth of Virginia, this 1st day of March, 2013.

/s/ Robert F. McDonnell  
Governor

EXECUTIVE ORDER NUMBER 61 (2013)

**Declaration of a State of Emergency for the Commonwealth of Virginia Due to a Winter Storm Event**

Importance of the Issue

On March 6, 2013, I verbally declared a state of emergency to exist for the Commonwealth of Virginia based on the current and predicted impacts from a severe winter storm with high winds and significant snow accumulations that has created transportation issues and significant power outages. The National Weather Service forecasts total snowfall accumulations of 10 to 14 inches with higher amounts possible in the higher elevations.

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

Therefore, by virtue of the authority vested in me by § 44-146.17 of the Code of Virginia, as Governor and as Director of Emergency Management, and by virtue of the authority vested in me by Article V, Section 7 of the Constitution of Virginia and by § 44-75.1 of the Code of Virginia, as Governor and Commander-in-Chief of the armed forces of the Commonwealth, and subject always to my continuing and ultimate authority and responsibility to act in such matters, I hereby confirm, ratify, and memorialize in writing my verbal orders issued on this date, whereby I proclaimed that a state of emergency exists and I directed that appropriate assistance be rendered by agencies of both state and local governments to prepare for impacts of the storm, alleviate any conditions resulting from significant storm events, and to implement recovery and mitigation operations and activities so as to return impacted areas to pre-event conditions in so far as possible. Pursuant to § 44-75.1(A)(3) and (A)(4) of the Code of Virginia, I also direct the Virginia National Guard and the Virginia Defense Force be called forth to state duty to be prepared to assist in providing such aid. This shall include Virginia National Guard assistance to the Virginia Department of State Police to direct traffic, prevent looting, and perform such other law enforcement functions as the Superintendent of State Police, in consultation with the State

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# Governor

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Coordinator of Emergency Management, the Adjutant General, and the Secretary of Public Safety, may find necessary.

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

A. Implementation by agencies of the state and local governments of the Commonwealth of Virginia Emergency Operations Plan, as amended, along with other appropriate state agency plans.

B. Activation of the Virginia Emergency Operations Center (VEOC) and the Virginia Emergency Response Team (VERT) to coordinate the provision of assistance to local governments. I am directing that the VEOC and VERT coordinate state actions in support of affected localities, other mission assignments to agencies designated in the Commonwealth of Virginia Emergency Operations Plan (COVEOP), and others that may be identified by the State Coordinator of Emergency Management, in consultation with the Secretary of Public Safety, which are needed to provide for the preservation of life, protection of property, and implementation of recovery activities.

C. The authorization to assume control over the Commonwealth's state-operated telecommunications systems, as required by the State Coordinator of Emergency Management, in coordination with the Virginia Information Technology Agency, and with the consultation of the Secretary of Public Safety, making all systems assets available for use in providing adequate communications, intelligence, and warning capabilities for the event, pursuant to § 44-146.18 of the Code of Virginia.

D. The evacuation of areas threatened or stricken by effects of the storm. Following a declaration of a local emergency pursuant to § 44-146.21 of the Code of Virginia, if a local governing body determines that evacuation is deemed necessary for the preservation of life or other emergency mitigation, response, or recovery, pursuant to § 44-146.17(1) of the Code of Virginia, I direct the evacuation of all or part of the populace therein from such areas and upon such timetable as the local governing body, in coordination with the Virginia Emergency Operations Center (VEOC), acting on behalf of the State Coordinator of Emergency Management, shall determine. I reserve the right to direct and compel evacuation from the same and different areas and determine a different timetable both where local governing bodies have made such a determination and where local governing bodies have not made such a determination. Also, in those localities that have declared a local emergency pursuant to § 44-146.21 of the Code of Virginia, if the local governing body determines that controlling movement of

persons is deemed necessary for the preservation of life, public safety, or other emergency mitigation, response, or recovery, pursuant to § 44-146.17(1) of the Code of Virginia, I authorize the control of ingress and egress at an emergency area, including the movement of persons within the area and the occupancy of premises therein upon such timetable as the local governing body, in coordination with the State Coordinator of Emergency Management and the VEOC shall determine. Violations of any order to citizens to evacuate shall constitute a violation of this Executive Order and are punishable as a Class 1 misdemeanor.

E. The activation, implementation, and coordination of appropriate mutual aid agreements and compacts, including the Emergency Management Assistance Compact (EMAC), and the authorization of the State Coordinator of Emergency Management to enter into any other supplemental agreements, pursuant to § 44-146.17(5) and 44-146.28:1 of the Code of Virginia, to provide for the evacuation and reception of injured and other persons and the exchange of medical, fire, police, National Guard personnel and equipment, public utility, reconnaissance, welfare, transportation and communications personnel, and equipment and supplies. The State Coordinator of Emergency Management is hereby designated as Virginia's authorized representative within the meaning of the Emergency Management Assistance Compact, § 44-146.28:1 of the Code of Virginia.

F. The authorization of the Departments of State Police, Transportation, and Motor Vehicles to grant temporary overweight, over width, registration, or license exemptions to all carriers transporting essential emergency relief supplies or providing restoration of utilities (electricity, gas, phone, water, wastewater, and cable) in and through any area of the Commonwealth in order to support the disaster response and recovery, regardless of their point of origin or destination. Such exemptions shall not be valid on posted structures for restricted weight.

All over width loads, up to a maximum of 12 feet, and over height loads up to a maximum of 14 feet must follow Virginia Department of Motor Vehicles (DMV) hauling permit and safety guidelines.

In addition to described overweight/over width transportation privileges, carriers are also exempt from registration with the Department of Motor Vehicles. This includes vehicles in route and returning to their home base. The above-cited agencies shall communicate this information to all staff responsible for permit issuance and truck legalization enforcement.

Authorization of the State Coordinator of Emergency Management to grant limited exemption of hours of service worked by any carrier when transporting passengers, property, equipment, food, fuel, construction materials, and other critical supplies to or from any portion of the

Commonwealth for purpose of providing direct relief or assistance as a result of this disaster, pursuant to § 52-8.4 of the Code of Virginia and Title 49 Code of Federal Regulations, Section 390.23 and Section 395.3.

The foregoing overweight/over width transportation privileges as well as the regulatory exemption provided by § 52-8.4(A) of the Code of Virginia, and implemented in 19VAC30-20-40 B of the "Motor Carrier Safety Regulations," shall remain in effect for 30 days from the onset of the disaster, or until emergency relief is no longer necessary, as determined by the Secretary of Public Safety in consultation with the Secretary of Transportation, whichever is earlier.

- The discontinuance of provisions authorized in paragraph F above may be implemented and disseminated by publication of administrative notice to all affected and interested parties by the authority I hereby delegate to the Secretary of Public Safety, after consultation with other affected Cabinet-level Secretaries.

- The authorization of a maximum of \$500,000 in state sum sufficient funds for state and local governments mission assignments authorized and coordinated through the Virginia Department of Emergency Management that are allowable as defined by The Stafford Act. This funding is also available for state response and recovery operations and incident documentation.

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

- Designation of members and personnel of volunteer, auxiliary, and reserve groups including search and rescue (SAR), Virginia Associations of Volunteer Rescue Squads (VAVRS), Civil Air Patrol (CAP), member organizations of the Voluntary Organizations Active in Disaster (VOAD), Radio Amateur Civil Emergency Services (RACES), volunteer fire fighters, Citizen Corps Programs such as Medical Reserve Corps (MRCs), Community Emergency Response Teams (CERTs), and others identified and tasked by the State Coordinator of Emergency Management for specific disaster related mission assignments as representatives of the Commonwealth engaged in emergency services activities within the meaning of the immunity provisions of § 44-146.23(a) and (f) of the Code of Virginia, in the performance of their specific disaster-related mission assignments.

- The authorization of appropriate oversight boards, commissions, and agencies to ease building code restrictions and to permit emergency demolition, hazardous waste disposal, debris removal, emergency landfill siting, and operations and other activities necessary to address immediate health and safety needs without regard to time-consuming procedures or formalities and without regard to application or permit fees or royalties.

- The activation of the statutory provisions in § 59.1-525 et seq. of the Code of Virginia related to price gouging. Price gouging at any time is unacceptable. Price gouging is even more reprehensible after a natural disaster. I have directed all applicable executive branch agencies to take immediate action to address any verified reports of price gouging of necessary goods or services. I make the same request of the Office of the Attorney General and appropriate local officials. I further request that all appropriate executive branch agencies exercise their discretion to the extent allowed by law to address any pending deadlines or expirations affected by or attributable to this disaster event.

- The following conditions apply to the deployment of the Virginia National Guard and the Virginia Defense Force:

1. The Adjutant General of Virginia, after consultation with the State Coordinator of Emergency Management, shall make available on state active duty such units and members of the Virginia National Guard and Virginia Defense Force and such equipment as may be necessary or desirable to assist in preparations for this event and in alleviating the human suffering and damage to property.

2. Pursuant to § 52-6 of the Code of Virginia, I authorize the Superintendent of the Department of State Police to appoint any and all such Virginia Army and Air National Guard personnel called to state active duty as additional police officers as deemed necessary. These police officers shall have the same powers and perform the same duties as the State Police officers appointed by the Superintendent. However, they shall nevertheless remain members of the Virginia National Guard, subject to military command as members of the State Militia. Any bonds and/or insurance required by § 52-7 of the Code of Virginia shall be provided for them at the expense of the Commonwealth.

3. In all instances, members of the Virginia National Guard and Virginia Defense Force shall remain subject to military command as prescribed by § 44-78.1 of the Code of Virginia and are not subject to the civilian authorities of county or municipal governments. This shall not be deemed to prohibit working in close cooperation with members of the Virginia Departments of State Police or Emergency Management or local law enforcement or emergency management authorities or receiving guidance from them in the performance of their duties.

4. Should service under this Executive Order result in the injury or death of any member of the Virginia National Guard, the following will be provided to the member and the member's dependents or survivors:

a. Workers' Compensation benefits provided to members of the National Guard by the Virginia Workers' Compensation Act, subject to the requirements and limitations thereof; and, in addition,

b. The same benefits, or their equivalent, for injury, disability, and/or death, as would be provided by the federal government if the member were serving on federal active duty at the time of the injury or death. Any such federal-type benefits due to a member and his or her dependents or survivors during any calendar month shall be reduced by any payments due under the Virginia Workers' Compensation Act during the same month. If and when the time period for payment of Workers' Compensation benefits has elapsed, the member and his or her dependents or survivors shall thereafter receive full federal-type benefits for as long as they would have received such benefits if the member had been serving on federal active duty at the time of injury or death. Any federal-type benefits due shall be computed on the basis of military pay grade E-5 or the member's military grade at the time of injury or death, whichever produces the greater benefit amount. Pursuant to § 44-14 of the Code of Virginia, and subject to the availability of future appropriations which may be lawfully applied to this purpose, I now approve of future expenditures out of appropriations to the Department of Military Affairs for such federal-type benefits as being manifestly for the benefit of the military service.

5. The following conditions apply to service by the Virginia Defense Force:

a. Compensation shall be at a daily rate that is equivalent of base pay only for a National Guard Unit Training Assembly, commensurate with the grade and years of service of the member, not to exceed 20 years of service;

b. Lodging and meals shall be provided by the Adjutant General or reimbursed at standard state per diem rates;

c. All privately owned equipment, including, but not limited to, vehicles, boats, and aircraft, will be reimbursed for expense of fuel. Damage or loss of said equipment will be reimbursed, minus reimbursement from personal insurance, if said equipment was authorized for use by the Adjutant General in accordance with § 44-54.12 of the Code of Virginia;

d. In the event of death or injury, benefits shall be provided in accordance with the Virginia Workers' Compensation Act, subject to the requirements and limitations thereof.

Upon my approval, the costs incurred by state agencies and other agents in performing mission assignments through the

VEOC of the Commonwealth as defined herein and in § 44-146.28 of the Code of Virginia, other than costs defined in the paragraphs above pertaining to the Virginia National Guard and pertaining to the Virginia Defense Force, in performing these missions shall be paid from state funds.

### Effective Date of this Executive Order

This Executive Order shall be effective retroactively to March 5, 2013, and shall remain in full force and effect until June 30, 2014, unless sooner amended or rescinded by further executive order. Termination of the Executive Order is not intended to terminate any federal-type benefits granted or to be granted due to injury or death as a result of service under this Executive Order.

Given under my hand and under the Seal of the Commonwealth of Virginia, this 7th day of March, 2013.

/s/ Robert F. McDonnell  
Governor

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# GENERAL NOTICES/ERRATA

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## STATE CORPORATION COMMISSION Bureau of Insurance

**EDITOR'S NOTE:** Administrative Letter 2013-01 was published in 29:13 VA.R. 1742 February 25, 2013 and is reprinted here to correct a typographical error in Daryl Hepler's email address and to include the two attachments referenced in the letter.

February 1, 2013

Administrative Letter 2013-01

To: Continuing Care Retirement Communities

Re: Supplemental Information and Other Required Disclosures

Section 38.2-4902 A 15 of the Code of Virginia allows the State Corporation Commission to require disclosure of material information in the disclosure statement filed by Continuing Care Retirement Communities ("CCRC"). In order to assist residents in understanding the financial position and the results of operations of a CCRC, we ask that each provider include supplemental information on its facilities and other consolidated entities in its audited financial statements for the two most recent years. In addition, we ask that each provider include a summary of the financial condition of each facility. Please find attached the format samples for the supplemental and financial summary information. We ask that this information be included in the provider's next annual filing with the State Corporation Commission Bureau of Insurance.

Section 38.2-4904 A of the Code of Virginia requires the provider to make the annual disclosure statement available by written notice to each resident at no cost. In accordance with § 38.2-4904 D of the Code of Virginia, the provider should amend its currently filed disclosure statement at any time if an amendment is necessary to prevent the disclosure statement from containing any material misstatement of fact or failing to state any material fact required. The provider must file any amendment with the State Corporation Commission Bureau of Insurance before distributing it to any resident. The provider is obligated to notify each resident of the existence of any such amendment or amended disclosure statement.

An amendment would be required if the provider has concerns about its ability to continue as a going concern, is unable to perform fully its obligations pursuant to its contracts due to financial instability, or has any problems with meeting the terms of its debt obligations. The State Corporation Commission Bureau of Insurance should be notified immediately of any such financial concerns.

Sections 38.2-4910 A and B of the Code of Virginia require the provider to hold meetings at least quarterly with the

residents or representatives elected by the residents of the continuing care facility for the purpose of free discussion of issues relating to the facility. These issues may include income, expenditures and financial matters as they apply to the facility and proposed changes in policies, programs, facilities and services. The provider is required to give the resident's organization a copy of all submissions to the Commission. The provider is also required to give residents seven days' notice of each meeting.

Questions concerning this administrative letter may be addressed to: Ms. Daryl Hepler, Senior Insurance Financial Analyst, telephone (804) 371-9999, or email [daryl.hepler@scc.virginia.gov](mailto:daryl.hepler@scc.virginia.gov) or Ms. Toni Janoski, Senior Insurance Financial Analyst, telephone (804) 371-9945, or email [toni.janoski@scc.virginia.gov](mailto:toni.janoski@scc.virginia.gov).

/s/ Jacqueline K. Cunningham  
Commissioner of Insurance



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# General Notices/Errata

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**Company Name**  
**Sample - Consolidating Balance Sheet**  
**As of Date**

	<u>Facility 1</u>	<u>Facility 2</u>	<u>Facility 3</u>	<u>Other Subsidiaries</u>	<u>Eliminations</u>	<u>Combined</u>
<b>Assets</b>						
<b>Current Assets</b>						
Cash and Cash Equivalents						
Current Portion of Assets Limited as to Use						
Accounts Receivable						
Prepaid Expenses						
Supplies Inventory						
Other Current Assets						
<b>Total Current Assets</b>						
<b>Assets Limited as to Use</b>						
Externally Restricted						
Internally Restricted						
<b>Investments</b>						
<b>Property Plant and Equipment</b>						
<b>Other Assets</b>						
Deferrals						
<b>Total Assets</b>						
<b>Liabilities and Net Assets</b>						
<b>Current Liabilities</b>						
Current Portion of Long-Term Debt						
Accounts Payable and Accrued Expenses						
Accrued Salaries and Wages						
Other Accrued Expenses						
Current Portion of Refundable Advance Fees						
Interest Payable						
<b>Total Current Liabilities</b>						
<b>Advance Fees and Deposits</b>						
<b>Deferred Revenue from Advance Fees</b>						
<b>Obligation to Provide Future Services</b>						
<b>Other Liabilities</b>						
<b>Total Liabilities</b>						
<b>Net Assets</b>						
Unrestricted						
Temporarily Restricted						
Permanently Restricted						
<b>Total Net Assets (Deficit)</b>						

**Company Name**  
**Sample - Consolidating Statement of Operations**  
**As of Date**

	<u>Facility 1</u>	<u>Facility 2</u>	<u>Facility 3</u>	<u>Other</u> <u>Subsidiaries</u>	<u>Eliminations</u>	<u>Combined</u>
<b>Revenues</b>						
Monthly Resident Fees - IL						
Amortization of Deferred Revenue						
Assisted Living Services						
Health Care Services						
Investment Income						
Other Revenues						
<b>Total Revenues</b>						
<b>Expenses</b>						
Advertizing and Marketing						
Depreciation and Amortization						
Dining Services						
General and Administrative						
Insurance						
Interest						
Management Fees						
Medical Supplies						
Nursing Services						
Other						
Resident Programs						
Resident Services						
Salaries						
Taxes and License Fees						
Utilities						
<b>Total Expenses</b>						
<b>Operating Income (Loss)</b>						

**Sample  
Summary of Financial Information  
Facility Name  
As of Date**

Current Year                      Prior Year

**Total Assets**

**Total Liabilities**

**Total Net Assets**

**Total Revenues**

**Total Expenses**

**Operating Income (Loss)**

**Net Income (Loss)**

**Narrative on financial condition:**

<b>Occupancy Information:</b>	<b>Capacity of Units</b>	<b>Average Occupancy</b>	<b>Percentage Occupancy</b>
<b>Independent Living</b>			
<b>Assisted Living</b>			
<b>Nursing</b>			

**DEPARTMENT OF ENVIRONMENTAL QUALITY**

**Total Maximum Daily Load Study for Banister River  
in Halifax County**

The Virginia Department of Environmental Quality (DEQ) will host a public meeting on a water quality study for the Halifax County streams on Thursday, April 4, 2013.

The meeting will start at 6 p.m. in the Mary Bethune Complex, Bethune Public Meeting Room located at 1030 Mary Bethune Street, Halifax, VA 24558. The purpose of the meeting is to provide information and discuss the study with interested local community members and local government.

Banister River (VAC-L71R\_BAN06A08, VAC-L71R\_BAN04A00, and VAC-L71R\_BAN05A00) was identified in Virginia's Water Quality Assessment Integrated Report as impaired for not supporting the primary contact use. The impairment is based on water quality monitoring data reports of sufficient exceedances of Virginia's water quality standard for bacteria.

Winn Creek (VAC-L71R\_WNN01A06) was identified in Virginia's Water Quality Assessment Integrated Report as impaired for not supporting the primary contact use. The impairment is based on water quality monitoring data reports of sufficient exceedances of Virginia's water quality standard for bacteria.

Gibson Creek (VAC-L71R\_GIB01A08) was identified in Virginia's Water Quality Assessment Integrated Report as impaired for not supporting the aquatic life use. The impairment is based on water quality monitoring data reports of sufficient exceedances of Virginia's water quality standard for dissolved oxygen.

Section 303(d) of the Clean Water Act and § 62.1-44.19:7 C of the Code of Virginia require DEQ to develop total maximum daily loads (TMDLs) for pollutants responsible for each impaired water contained in Virginia's § 303(d) TMDL Priority List and Report and subsequent Water Quality Assessment Reports.

During the study, DEQ will develop a TMDL for the impaired water. A TMDL is the total amount of a pollutant a water body can contain and still meet water quality standards. To restore water quality, pollutant levels have to be reduced to the TMDL amount.

The public comment period on materials presented at the Halifax County meeting will extend from April 4, 2013, to May 6, 2013. For additional information or to submit comments, contact Paula Nash, Virginia Department of Environmental Quality, Blue Ridge Regional Office, 7705 Timberlake Road, Lynchburg, VA 24502, telephone (434) 582-6216, or email paula.nash@deq.virginia.gov.

**STATE BOARD OF HEALTH**

**Notice of Periodic and Small Business Impact  
Reviews**

Pursuant to Executive Order 14 (2010) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board of Health is conducting periodic and small business impact reviews of 12VAC5-120, Regulations for Tracking Children for Elevated Blood-Lead Levels.

The review of this regulation will be guided by the principles in Executive Order 14 (2010) and § 2.2-4007.1 of the Code of Virginia.

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

The comment period begins March 25, 2013, and ends on April 15, 2013.

Comments may be submitted online to the Virginia Regulatory Town Hall at <http://www.townhall.virginia.gov/L/Forums.cfm>.

Comments may also be sent to Nancy Vanvoorhis, Director, Lead-Safe Virginia Program, Virginia Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7694, FAX (804) 864-7722, or email [nancy.vanvoorhis@vdh.virginia.gov](mailto:nancy.vanvoorhis@vdh.virginia.gov).

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

**DEPARTMENT OF HEALTH**

**Drinking Water State Revolving Fund Program -  
Intended Use Plan for FY 2013**

Under the Safe Drinking Water Act, Congress authorizes capitalization grants to the states through the Drinking Water State Revolving Loan Fund Program (DWSRF). As part of the annual DWSRF grant application process, Virginia seeks meaningful public involvement through input, review, and comments. The Virginia Department of Health's (VDH) Office of Drinking Water (ODW) has prepared a draft Intended Use Plan (IUP) that explains the goals of the program, funding priorities, how VDH intends to use the

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## General Notices/Errata

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grant funds, and other important information submitted from the funding requests and set-aside suggestions.

VDH received numerous funding requests and set-aside suggestions following the January 2012 DWSRF funding solicitation announcement. The draft 2013 IUP and draft project lists (available as indicated below) are open for review and comment by the public for a period of 60 days. The document entitled "Virginia Drinking Water State Revolving Fund Program Design Manual" (dated January 9, 2012) is a part of the Intended Use Plan and was mailed in the January announcement and placed on VDH's website. The Program Design Manual provides information on VDH's project prioritization criteria and methodologies.

VDH will hold a public meeting to solicit comments and recommendations regarding the 2013 IUP on Wednesday, May 15, 2013, from 9 a.m. to 11 a.m. at the ODW's East Central Field Office, 300 Turner Road, Richmond, VA 23225. Those individuals planning to attend the public meeting should contact Theresa Hewlett at telephone (804) 864-7501 by the close of business on May 1, 2013.

Any written comments from the public are to be submitted by May 25, 2013, which is the close of the public comment period. VDH will consider all meaningful public input and comments and make revisions to the IUP and project priority lists if necessary. Please direct requests for information and forward written comments to Steven Pellei, PE, Virginia Department of Health, Office of Drinking Water, James Madison Building, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7500, FAX (804) 864-7521.

The following information is provided at VDH's website at <http://www.vdh.virginia.gov/ODW/financial/IntendedUsePlan13.htm>:

VDH's 2013 Preliminary Project Priority List/2013 Comprehensive Project List

VDH's 2013 Draft Intended Use Plan (IUP)

The IUP is subject to change depending on EPA's 2013 award allocations.

VDH's 2013 Planning Grant Award List

The projects listed will be awarded grants in the amounts indicated on the table.

### STATE LOTTERY DEPARTMENT

#### Director's Orders

The following Director's Orders of the State Lottery Department were filed with the Virginia Registrar of Regulations on March 5, 2013. The orders may be viewed at the State Lottery Department, 900 East Main Street, Richmond, VA, or at the office of the Registrar of Regulations, 201 North 9th Street, 2nd Floor, Richmond, VA.

#### Director's Order Number Ten (13)

Virginia's Instant Game Lottery 1388 "Royal Riches" Final Rules for Game Operation (effective February 22, 2013)

#### Director's Order Number Twenty-One (13)

Virginia's Twenty-Seventh Online Game Lottery; "Fast Play \$15,000 Jackpot" Final Rules for Game Operation (effective on the first sale date of the Matrix set forth in the "Fast Play \$15,000 Jackpot" Official Game Rules)

#### Director's Order Number Twenty-Two (13)

Virginia's Twenty-Seventh Online Game Lottery; "Fast Play Blackjack Showdown" Final Rules for Game Operation (effective on the first sale date of the Matrix set forth in the "Fast Play Blackjack Showdown" Official Game Rules)

#### Director's Order Number Twenty-Three (13)

Virginia's Twenty-Seventh Online Game Lottery; "Fast Play Joker's Wild Bingo" Final Rules for Game Operation (effective on the first sale date of the Matrix set forth in the "Fast Play Joker's Wild Bingo" Official Game Rules)

#### Director's Order Number Twenty-Four (13)

Virginia's Twenty-Seventh Online Game Lottery; "Fast Play Lucky Bucks" Final Rules for Game Operation (effective on the first sale date of the Matrix set forth in the "Fast Play Lucky Bucks" Official Game Rules)

### POTATO BOARD

#### Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Department of Agriculture and Consumer Services conducted a small business impact review of **2VAC5-300, Rules and Regulations for the Enforcement of the Virginia Seed Potato Inspection Law**. This regulation continues to be necessary to establish standards by which seed potatoes are determined to be disease free and acceptable for use in the state's commercial production areas. The department has not received any complaints from the public concerning this regulation. The department has determined that the regulation is not unnecessarily complex and is easily understood by the regulated industry. This regulation does not overlap, duplicate, or conflict with any federal law or any other state law or regulation. The regulation was last evaluated in 2009, and no changes to technology, economic conditions, or other factors have occurred since that time that necessitate amendments to this regulation.

Contact Information: Thomas H. Smith, Agriculture and Consumer Services Supervisor, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-3548, FAX (804) 371-7785, or email [thomas.smith@vdacs.virginia.gov](mailto:thomas.smith@vdacs.virginia.gov).

**STATE WATER CONTROL BOARD**

**Proposed Consent Special Order for the County of King William**

An enforcement action has been proposed for the County of King William for alleged violations that occurred at the Central Garage Water System located in the County of King William. The State Water Control Board proposes to issue a consent special order to the County of King William to address noncompliance with State Water Control Board law. A description of the proposed action is available at the Department of Environmental Quality office named below or online at [www.deq.virginia.gov](http://www.deq.virginia.gov). Cynthia Akers will accept comments by email at [cynthia.akers@deq.virginia.gov](mailto:cynthia.akers@deq.virginia.gov), FAX at (804) 527-5106, or postal mail at Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060, from March 25, 2013, to April 26, 2013.

**Proposed Consent Special Order for Ronile, Inc.**

An enforcement action has been proposed for Ronile, Inc., for violations at Ronile's Rocky Mount, Virginia, facility. The special order by consent will address and resolve violations of environmental law, regulations, and Ronile's permit. A description of the proposed action is available at the Department of Environmental Quality office named below or online at [www.deq.virginia.gov](http://www.deq.virginia.gov). Jerry Ford, Jr. will accept comments by email at [jerry.ford@deq.virginia.gov](mailto:jerry.ford@deq.virginia.gov) or postal mail at Department of Environmental Quality, Blue Ridge Regional Office, 3019 Peters Creek Road, Roanoke, VA 24019, from March 25, 2013, to April 24, 2013.

**VIRGINIA CODE COMMISSION**

**Notice to State Agencies**

**Contact Information:** *Mailing Address:* Virginia Code Commission, General Assembly Building, 201 North 9th Street, 2nd Floor, Richmond, VA 23219; *Telephone:* Voice (804) 786-3591; FAX (804) 692-0625; *Email:* [varegs@dls.virginia.gov](mailto:varegs@dls.virginia.gov).

**Meeting Notices:** Section 2.2-3707 C of the Code of Virginia requires state agencies to post meeting notices on their websites and on the Commonwealth Calendar at <http://www.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/cumultab.htm>.

**Filing Material for Publication in the Virginia Register of Regulations:** Agencies use the Regulation Information System (RIS) to file regulations and related items for

publication in the *Virginia Register of Regulations*. The Registrar's office works closely with the Department of Planning and Budget (DPB) to coordinate the system with the Virginia Regulatory Town Hall. RIS and Town Hall complement and enhance one another by sharing pertinent regulatory information.

**ERRATA**

**VIRGINIA COMMONWEALTH UNIVERSITY**

**Title of Regulation:** **8VAC90-20. Parking Information (repealing 8VAC90-20-10 through 8VAC90-20-170).**

**Publication:** 29:14 VA.R. 1753 March 11, 2013.

**Correction to Final Regulation:**

Page 1753, Titles of Regulations, lines 4-5, should read "8VAC90-20. Parking Information (8VAC90-20-10 through 8VAC90-20-170)"

VA.R. Doc. No. R13-3607

**BOARD FOR WATERWORKS AND WASTE WATERWORKS OPERATORS AND ONSITE SEWAGE SYSTEM PROFESSIONALS**

**Title of Regulation:** **18VAC160-20, Board for Waterworks and Waste Waterworks Operators and Onsite Sewage System Professionals.**

**Publication:** 29:14 VA.R. 1751 March 11, 2013.

**Change to Notice of Intended Regulatory Action:**

Change title of regulation considered for amendment to "18VAC160-20, Board for Waterworks and Waste Waterworks Operators and Onsite Sewage System Professionals."

VA.R. Doc. No. R13-3570

