



COMMONWEALTH of VIRGINIA

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MEMORANDUM

To: Evelyn McGill
Executive Director
Virginia Workers' Compensation Commission

From: Joshua E. Laws
Assistant Attorney General

Date: November 30, 2015

Subject: Letter of Assurance for Proposed Emergency Regulations – Final Rule for Emergency Regulations Governing the Definition of Community found at 16 VAC 30-50-150

I have reviewed the attached emergency regulations governing the definition of “community.”

Based on that review, it is my view that the Virginia Workers' Compensation Commission (“VWCC”) has the authority to promulgate these regulations, subject to compliance with the provisions of Article 2 of the Administrative Process Act, and the VWCC has not exceeded that authority.

The authority for this emergency action is found in Va. Code § 65.2-201(A), which grants the VWCC the authority to make rules and regulations for carrying out Title 65.2, and Va. Code § 65.2-605(B) and Acts 2015, c. 456, cl. 2, which require the VWCC to “determine the number and geographic area of communities across the Commonwealth,” and states the VWCC “shall promulgate regulations to implement the provisions of this act to be effective within 280 days of enactment and shall provide an opportunity for public comment on

the regulations prior to adoption.” The emergency regulations will enable the VWCC to comply with Acts 2015, c. 456, cl. 2. Additionally, Va. Code § 2.2-4011(A) and (B) gives the VWCC the authority to promulgate these emergency regulations because Acts 2015, c. 456, cl. 2 states the regulations shall be effective within 280 days of enactment.

Accordingly, with the prior approval of the Governor, these regulations qualify for the “emergency” exemption from Article 2 requirements. Please be advised, however, that under Va. Code § 2.2-4011(A), the VWCC must state in writing the nature of and necessity for such emergency action, and this appears to have been accomplished in the “Agency Background Document.” In addition, the regulations shall be effective for no more than eighteen months from the emergency regulatory action on this subject matter. As the VWCC intends to continue regulating the subject matter governed by this emergency regulation beyond 18 months, it will be necessary to replace these emergency regulations with regulations duly promulgated under Article 2 of the APA. A Notice of Intended Regulatory Action relating to the proposed replacement regulations must be filed with the Registrar within 60 days of the effective date of the emergency regulations. The proposed replacement regulations must be filed with the Registrar within 180 days after the effective date of the emergency regulations.

If you have any questions, please contact me at 786-6026.