VIRGINIA REGISTER OF REGULATIONS

VOL. 41 ISS. 7 PUBLISHED EVERY OTHER WEEK BY THE VIRGINIA CODE COMMISSION November 18, 2024

## TABLE OF CONTENTS





THE VIRGINIA REGISTER OF REGULATIONS (USPS 001-831) is published biweekly for $263.00 per year by Matthew Bender & Company, Inc., 3 Lear Jet Lane, Suite 102, P.O. Box 1710, Latham, NY 12110. Periodical postage is paid at Easton, MD and at additional mailing offices. POSTMASTER: Send address changes to The Virginia Register of Regulations, 4810 Williamsburg Road, Unit 2, Hurlock, MD 21643.

**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 inconsequen111tial 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 https://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.

# PUBLICATION SCHEDULE AND DEADLINES

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

**December 2024 through December 2025**

| Volume: Issue | Material Submitted By Noon* | Will Be Published On |
|---|---|---|
| 41:8 | November 13, 2024 | December 2, 2024 |
| 41:9 | November 26, 2024 **(Tuesday)** | December 16, 2024 |
| 41:10 | December 11, 2024 | December 30, 2024 |
| 41:11 | December 23, 2024 **(Monday)** | January 13, 2025 |
| 41:12 | January 8, 2025 | January 27, 2025 |
| 41:13 | January 22, 2025 | February 10, 2025 |
| 41:14 | February 5, 2025 | February 24, 2025 |
| 41:15 | February 19, 2025 | March 10, 2025 |
| 41:16 | March 5, 2025 | March 24, 2025 |
| 41:17 | March 19, 2025 | April 7, 2025 |
| 41:18 | April 2, 2025 | April 21, 2025 |
| 41:19 | April 16, 2025 | May 5, 2025 |
| 41:20 | April 30, 2025 | May 19, 2025 |
| 41:21 | May 14, 2025 | June 2, 2025 |
| 41:22 | May 28, 2025 | June 16, 2025 |
| 41:23 | June 11, 2025 | June 30, 2025 |
| 41:24 | June 25, 2025 | July 14, 2025 |
| 41:25 | July 9, 2025 | July 28, 2025 |
| 41:26 | July 23, 2025 | August 11, 2025 |
| 42:1 | August 6, 2025 | August 25, 2025 |
| 42:2 | August 20, 2025 | September 8, 2025 |
| 42:3 | September 3, 2025 | September 22, 2025 |
| 42:4 | September 17, 2025 | October 6, 2025 |
| 42:5 | October 1, 2025 | October 20, 2025 |
| 42:6 | October 15, 2025 | November 3, 2025 |
| 42:7 | October 29, 2025 | November 17, 2025 |
| 42:8 | November 10, 2025 **(Monday)** | December 1, 2025 |
| 42:9 | November 24, 2025 **(Monday)** | December 15, 2025 |

*Filing deadlines are Wednesdays unless otherwise specified.

## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### BOARD OF COUNSELING

### Initial Agency Notice

Title of Regulation: **18VAC115-20. Regulations Governing the Practice of Professional Counseling.**

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

Name of Petitioner: Marva Michelle Baskerville.

Nature of Petitioner's Request: The petitioner requests that the Board of Counseling revise 18VAC115-20-70 to establish a pathway for licensed substance abuse treatment providers (LSATPs) to become licensed professional counselors (LPCs). A similar pathway exists for LPCs to become LSATPs without an examination under 18VAC115-60-90 C.

Agency Plan for Disposition of Request: The petition for rulemaking will be published in the Virginia Register of Regulations on November 18, 2024. The petition will also be published on the Virginia Regulatory Town Hall at www.townhall.virginia.gov to receive public comment, which opens November 18, 2024, and closes December 18, 2024. The board will consider the petition and all comments in support or opposition at the next meeting after the close of public comment. That meeting is currently scheduled for January 24, 2025. The petitioner will be notified of the board's decision after that meeting.

Public Comment Deadline: December 18, 2024.

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. PFR25-15; Filed October 16, 2024, 4:06 p.m.

## TITLE 8. EDUCATION

### STATE BOARD OF EDUCATION

#### Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Board of Education conducted a periodic review and a small business impact review of **8VAC20-360, Regulations Governing General Educational Development Certificates,** and determined that this regulation should be repealed. The board is publishing its report of findings dated October 24, 2024, to support this decision.

This regulation is no longer necessary for the protection of public health, safety, and welfare because it is outdated. The board is required by Virginia statute to promulgate regulations allowing for adult education and for the testing of high school equivalency, thus creating a continued need for regulation concerning the subject matter area. The regular no-cost procurement process ensures that the approved assessments and testing protocols remain compliant with board guidance and the credential retains its rigorous value. However, the statutory and regulatory framework has evolved since this regulation was promulgated, and the regulation is now out of date. The nature or existence of any complaints is unknown, and no comments were received during the periodic review. The regulation was last revised in 2005, and it no longer reflects current statutory framework. The board's decision does not impact small business.

Contact Information: Jim Chapman, Director of Board Relations, Department of Education, James Monroe Building, 101 North 14th Street, 25th Floor, Richmond, VA 23219, telephone (804) 750-8750, or email jim.chapman@doe.virginia.gov.

#### Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Board of Education conducted a periodic review and a small business impact review of **8VAC20-530, Regulations Governing Criteria to Identify Toxic Art Materials; Labeling; Use in Elementary Grades Prohibited,** and determined that this regulation should be amended. The board is publishing its report of findings dated October 24, 2024, to support this decision.

This regulation is necessary for the protection of public health, safety, and welfare. The board must require school divisions to evaluate all art materials used in schools and identify those that are toxic. All materials used in the public schools that meet the criteria as toxic shall be so labeled and the use of such art materials shall be prohibited in kindergarten through grade five.

The periodic review found that this regulation overlaps, duplicates, and conflicts with federal law in several instances. The periodic review also found that this regulation does not reflect changes made within the Labeling of Hazardous Art Materials Act (LHAMA), 15 USC § 1277 (P.L. 100-695, enacted November 18, 1988), which provided that the requirements for the labeling of art materials set forth in the version of the standard of the American Society for Testing and Materials (ASTM) designated D-4236 that is in effect on November 18, 1988 shall be deemed to be a regulation issued by the Consumer Product Safety Commission under § 3(b) of the Federal Hazardous Substances Act, 15 USC § 1262(b). 16 CFR 1500 now includes the requirements of ASTM D-4236 in 16 CFR 1500.14(b)(8)(i), along with other requirements made applicable to art materials by LHAMA. The substance of the requirements specified in LHAMA became effective on November 18, 1990. As a result, the regulation could be significantly shortened by defaulting to the federal requirements.

The board will consider consolidating 8VAC20-720 for efficiency. There is a continued need for this regulation. The board has not received any complaints or comments concerning the regulation. While the regulation is not overly complex, it overlaps and duplicates federal law in several instances. The regulation has not been revised since it was originally promulgated in 1988.

Contact Information: Jim Chapman, Director of Board Relations, Department of Education, James Monroe Building, 101 North 14th Street, 25th Floor, Richmond, VA 23219, telephone (804) 750-8750, or email jim.chapman@doe.virginia.gov.

◆ ◆

## 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 **12VAC5-215, Rules and Regulations Governing Health Data Reporting,** and determined that this regulation should be amended. The board is publishing its report of findings dated July 1, 2024, to support this decision.

This regulation is necessary for the protection of public health, safety, and welfare of the citizens of the Commonwealth. The establishment of effective health care data analysis and reporting initiatives is essential to improving the quality and efficiency of health care, fostering competition among health care providers, and increasing consumer choice with regard to health care services in the Commonwealth. Accurate and

valuable health care data can best be identified by representatives of state government and the consumer, provider, insurance, and business communities.

This regulation is clearly written and understandable. The board will amend the regulation to align with the current practices regarding specifications for health care institutions, filing requirements, due dates, fee structure, and financial information that is periodically published and disseminated regarding health data. The board will also incorporate the provisions of Methodology to Measure Efficiency and Productivity of Health Care Institutions (12VAC5-216), into this regulation. Additionally, amendments that reduce regulatory requirements will be considered where possible.

There is a continued need for the regulation as the board is required to administer the health care data reporting initiatives. The board has not received complaints or comments concerning this regulation but has identified the need to amend this regulation to maintain an accurate and robust health care data system. The regulation does not conflict with state law or regulation. The regulation requires a comprehensive review to reflect changes in the health care industry, technology, and economic conditions.

Contact Information: Kindall Bundy, Policy Analyst, Virginia Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 986-5270, FAX (804) 864-7022, or email kindall.bundy@vdh.virginia.gov.

### 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 **12VAC5-216, Methodology to Measure Efficiency and Productivity of Health Care Institutions,** and determined that this regulation should be repealed. The board is publishing its report of findings dated July 1, 2024, to support this decision.

This regulation is necessary for the protection of public health, safety, and welfare of the citizens of the Commonwealth. The establishment of effective health care data analysis and reporting initiatives is essential to improving the quality and efficiency of health care, fostering competition among health care providers, and increasing consumer choice with regard to health care services in the Commonwealth. Accurate and valuable health care data can best be identified by representatives of state government and the consumer, provider, insurance, and business communities. As written, the regulation is not clear or easily understandable. Outdated regulatory language and technical deficiencies have been identified and should be addressed through regulatory action.

The board is recommending that the regulation be repealed, and the provisions be incorporated into Rules and Regulations Governing Health Data Reporting (12VAC5-215). After review, the need for several significant amendments to the provisions of the regulation have been identified. Repealing this regulation is necessary to better align regulatory requirements with current practice, to overhaul existing regulatory language to conform to the form and style requirements of the Virginia Administrative Code, and to identify opportunities for regulatory reduction while continuing to fulfill the board's statutory mandate to protect the citizens of the Commonwealth. The board believes that repealing the regulation and incorporating its provisions into 12VAC5-215 will be more efficient and effective than amending the current chapter.

This regulation is necessary for the board to provide members of the public and health service purchasers vital information to identify the most efficient and productive health care providers. No complaints or comments have been received concerning the regulation. The regulation does not conflict with any known federal or state law or regulation. Regulations are evaluated on an ongoing basis, and this regulation was last amended in September 2012 as a result of periodic review. The board does not anticipate that repealing the regulation will have an adverse economic impact on small businesses in the Commonwealth of Virginia.

Contact Information: Kindall Bundy, Policy Analyst, Virginia Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 986-5270, FAX (804) 864-7022, or email kindall.bundy@vdh.virginia.gov.

### 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 **12VAC5-217, Regulations of the Patient Level Data System,** and determined that this regulation should be amended. The board is publishing its report of findings dated October 17, 2024, to support this decision.

This action is being used to conform this regulation to the provision of Chapter 552 of the 2021 Acts of Assembly, Special Session I, Item 307(D1). The advantage to the public and the Commonwealth is that the regulation will be in compliance with legislative changes enacted by the 2021 General Assembly and will provide helpful information regarding inpatient psychiatric admissions. There are no disadvantages to individual private citizens or businesses not subject to the regulation, the agency, or the Commonwealth. The primary disadvantages to the regulated community are the projected costs of implementing the requirements of the regulation and additional workflows required to complete the new fields.

The board will amend this regulation to better align with current practice, update existing regulatory language to conform to the form and style requirements of the Virginia Registrar of Regulations, and identify opportunities for regulatory reduction, while continuing to fulfill the board's

statutory mandate to protect the citizens of the Commonwealth. This regulatory action is the least burdensome method identified to conform the regulation to statute.

The proposed amendments will conform the regulation to current practice and therefore may have an impact on affected entities. All Virginia-licensed hospitals are required to submit acute discharges. There is a cost for hospitals associated with submitting this data. Hospitals incur internal costs and may incur vendor costs as well as costs from Virginia Health Information for data processing if the submission does not meet a 95% accuracy rate. There are approximately 102 licensed hospitals in the Commonwealth some of which are independently owned (private) and operated with less than 500 full-time employees having a gross annual sales of less than $6 million.

Contact Information: Kindall Bundy, Policy Analyst, Virginia Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 986-5270, FAX (804) 864-7022, or email kindall.bundy@vdh.virginia.gov.

### 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 **12VAC5-220, Virginia Medical Care Facilities Certificate of Public Need Rules and Regulations,** and determined that this regulation should be repealed and replaced. The board is publishing its report of findings dated August 9, 2024, to support this decision.

This regulation is necessary for the protection of public health, safety, and welfare because the Certificate of Public Need (COPN) program ensures that the health care marketplace in Virginia is not saturated with unneeded medical care facilities, services, or equipment, that charity care is being provided to indigent persons, that new medical care facilities, services, and equipment are encouraged in geographic areas not served or not sufficiently served by existing medical facilities, and that there is public input regarding proposed changes to new or existing health care services in a community. The regulation is fairly complex due to the subject matter and will require revisions in form and style to make it more easily understandable.

The board will repeal and replace this regulation to incorporate various statutory and legislative mandates that have been omitted from previous actions, to conform to the form and style requirements of the Virginia Administrative Code, and to consider opportunities for regulatory reduction where possible.

There is a continued need for this regulation as the board is mandated to regulate the COPN program in Virginia. The nature of many of the comments received were generally focused on the perceived burdens of the COPN program and that it is out of date. The regulation is complex and difficult to read, making the choice to repeal and replace the least burdensome regulatory pathway to update the regulation. The regulation does not conflict with federal law or regulation, though it currently does not meet all state mandates, which prompted the board to decide repeal and replace it. The regulation has been incrementally amended as changes to the Code of Virginia occurred; however, more comprehensive changes to the regulation are needed. During the most recent licensure renewal period, 14 general hospitals, 37 outpatient surgical hospitals, and 110 nursing homes self-reported that they meet the definition of "small business"; given that some self-reported small businesses are part of larger health systems or corporations, the Virginia Department of Health (VDH) is unable to ensure the validity of the self-reported data. VDH is unable to quantify how many physician offices qualify as small businesses due to lack of available data, self-reported or otherwise. The board was not able to identify any alternatives for small businesses that would be more equitable while still protecting the health, safety, and welfare of the public and has put forth thoughtful consideration about the burdens of the regulatory requirements that have a cost.

Contact Information: Val Hornsby, Policy Planning Specialist, Office of Licensure and Certification, Virginia Department of Health, 9960 Mayland Drive, Henrico, VA 23233, telephone (804) 367-2102, or email val.hornsby@vdh.virginia.gov.

### 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 **12VAC5-391, Regulations for the Licensure of Hospice,** and determined that this regulation should be amended. The board is publishing its report of findings dated August 7, 2024, to support this decision.

This regulation is necessary for the protection of public health, safety, and welfare because it requires hospices to meet minimum standards for personnel, clinical and nonclinical services, treatment of patients, and facility safety. These standards protect members of the public who utilize hospice services. Improvements are needed to achieve greater clarity and readability of the regulation. Additionally, updates are needed to the regulation to include current clinical and industry practices. The board will amend the regulation to conform to the form and style requirements of the Virginia Administrative Code, update provisions to include current clinical and industry practices, and consider opportunities for regulatory reduction where possible.

There is a continued need for the regulation as the board is required by § 32.1-162.5 of the Code of Virginia to promulgate regulations governing the hospices. The board received one comment concerning the regulation from the public. The regulation is of moderate complexity, which is not an unexpected outcome given the overall complexity of the health

care industry. The regulation does not conflict with federal or state law or regulation. There are 80 licensed hospices in the Commonwealth of Virginia, 35 of which have self-reported that they are small businesses. The Virginia Department of Health does not validate whether these self-reports are accurate. All licensed hospices in the Commonwealth are federally certified, so even in the absence of state hospice regulations, these hospices would have to comply with federal requirements, which are as strict as or stricter than the those of the Commonwealth.

Contact Information: Val Hornsby, Policy Planning Specialist, Office of Licensure and Certification, Virginia Department of Health, 9960 Mayland Drive, Henrico, VA 23233, telephone (804) 367-2102, or email val.hornsby@vdh.virginia.gov.

### 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 **12VAC5-405, Rules Governing Private Review Agents,** and determined that this regulation should be amended. The board is publishing its report of findings dated August 9, 2024, to support this decision.

This regulation is necessary for the protection of public health, safety, and welfare because it establishes the process by which private review agents conduct utilization review. The regulation requires updates to the form and style in order to make the language clear and understandable. The board will amend the regulation to conform to the form and style requirements of the Virginia Administrative Code and consider opportunities for regulatory reduction where possible.

There is a continued need for the regulation as the board is mandated to regulate private review agents. The board did not receive any comments concerning the regulation during the public comment period. The regulation is neither complex nor overlaps, duplicates, or conflicts with federal or state law or regulation. The regulation was last reviewed in 2015 and has not been updated since its promulgation in 1999. The board is not aware of any private review agents that would meet the definition of a small business.

Contact Information: Val Hornsby, Policy Planning Specialist, Office of Licensure and Certification, Virginia Department of Health, 9960 Mayland Drive, Henrico, VA 23233, telephone (804) 367-2102, or email val.hornsby@vdh.virginia.gov.

### 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 **12VAC5-407, Procedures for the Submission of Health Maintenance Organization Quality of Care Performance Information,** and determined that this regulation should be amended. The board is publishing its report of findings dated July 1, 2024, to support this decision.

This regulation is necessary for the protection of public health, safety, and welfare of the citizens of the Commonwealth. The establishment of effective health care data analysis and reporting initiatives is essential to improving the quality and efficiency of health care, fostering competition among health care providers, and increasing consumer choice with regard to health care services in the Commonwealth. Accurate and valuable health care data can best be identified by representatives of state government and the consumer, provider, insurance, and business communities.

The board will amend the regulation to make format and style changes, update code references, align provisions of the chapter with current practices and procedures, add clarifying language, and remove any unnecessary, duplicative, or nonregulatory language. This regulation does not overlap or duplicate a federal or state law or regulation. The regulation was last reviewed on May 8, 2013. The proposed amendments will conform the regulation to current practice and therefore will not have an impact on small business entities.

Contact Information: Kindall Bundy, Policy Analyst, Virginia Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 986-5270, FAX (804) 864-7022, or email kindall.bundy@vdh.virginia.gov.

## TITLE 2. AGRICULTURE

### BOARD OF AGRICULTURE AND CONSUMER SERVICES

### Fast-Track Regulation

Title of Regulation: **2VAC5-675. Regulations Governing Pesticide Fees Charged by the Department of Agriculture and Consumer Services (amending 2VAC5-675-30, 2VAC5-675-40, 2VAC5-675-50).**

Statutory Authority: § 3.2-3906 of the Code of Virginia.

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: December 18, 2024.

Effective Date: January 2, 2025.

Agency Contact: Nicole Wilkins, Program Manager, Office of Pesticide Services, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 371-6559, FAX (804) 371-2283, TDD (800) 828-1120, or email nicole.wilkins@vdacs.virginia.gov.

Basis: Section 3.2-109 of the Code of Virginia establishes the Board of Agriculture and Consumer Services as a policy board. Section 3.2-3906 of the Code of Virginia authorizes the board to adopt regulations establishing a fee structure for licensure, registration, and certification to defray the costs of implementing the Virginia Pesticide Control Act.

Purpose: The department has determined that current fees provide more than adequate funding for implementation of the Department of Agriculture and Consumer Services (VDACS) pesticide program. The fees prescribed in 2VAC5-675 are utilized to operate VDACS pesticide programs, which protect human health and the environment by ensuring the proper use of pesticides used to control pests that adversely affect crops, structures, health, and domestic animals. VDACS is able to ensure compliance with all applicable laws and regulations related to the use of pesticides, thereby protecting human health, while lowering the fees for commercial applicator certifications, pesticide business licenses, and registered technician certifications, which will support the economic welfare of the businesses currently responsible for paying these fees.

Rationale for Using Fast-Track Rulemaking Process: The proposed amendments lower the fees for commercial applicator certifications, pesticide business licenses, and registered technician certifications and, as such, are expected to be noncontroversial and appropriate for the fast-track rulemaking process.

Substance: The proposed amendments will lower the fees for (i) commercial applicator certifications from $100 to $25, (ii) commercial applicator certification reexaminations from $100 to $25, (iii) additional categories or subcategories for commercial applicator certifications from $35 to $25, (iv) registered technician certifications from $50 to $25, (v) registered technician certification reexaminations from $50 to $25, and (vi) annual pesticide business licenses from $150 to $75.

Issues: The proposed regulatory action is advantageous to the public and to the regulated industry because the proposed action will reduce the costs to pesticide applicators and pesticide businesses while allowing the VDACS pesticide program to continue protecting public health and the environment. Lowering the pesticide applicator fees and business license fees does not add any additional regulatory requirements for pesticide applicators or pesticide businesses. There are no disadvantages to the public or the Commonwealth.

Department of Planning and Budget Economic Impact Analysis:

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia and Executive Order 19. The analysis presented represents DPB's best estimate of the potential economic impacts as of the date of this analysis.[1]

Summary of the Proposed Amendments to Regulation. The Board of Agriculture and Consumer Services (board) proposes to reduce fees for commercial applicators,[2] registered technicians,[3] and pesticide businesses.

Background. According to the Virginia Department of Agriculture and Consumer Services (VDACS), the proposed amendments would align the pesticide-related fees that VDACS collects with its costs to administer the pesticide program. The current fees and the board's proposed fees are in the following table:

| Fee Description | Current Fee | Proposed Fee |
|---|---|---|
| Commercial applicator certificate initial fee | $100 | $25 |
| Commercial applicator reexamination | $100 | $25 |

| | | |
|---|---|---|
| Commercial applicator additional category | $35 | $25 |
| Registered technician certificate initial fee | $50 | $25 |
| Registered technician reexamination | $50 | $25 |
| Business license annual fee | $150 | $75 |

Estimated Benefits and Costs. Pesticide businesses, commercial applicators, and registered technicians would benefit from the lower fees. VDACS estimates that the lower fees would result in an annual reduction of $450,750 in revenue.

Businesses and Other Entities Affected. The proposed amendments would affect the 3,000 licensed pesticide businesses and 22,600 certified pesticide applicators, including both commercial applicators and registered technicians, in the Commonwealth.[4] VDACS estimates that the vast majority of the licensed businesses are small businesses. The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.[5] An adverse impact is indicated if there is any increase in net cost or reduction in net benefit for any entity, even if the benefits exceed the costs for all entities combined.[6] As the proposal neither increases net costs nor reduces net benefit, no adverse impact is indicated.

Small Businesses[7] Affected.[8] The proposed amendments do not adversely affect small businesses.

Localities[9] Affected.[10] The proposed amendments may disproportionately affect agriculturally oriented localities. The proposal does not increase costs for local governments.

Projected Impact on Employment. The proposed amendments are unlikely to substantively affect total employment.

Effects on the Use and Value of Private Property. The proposed lower fees would very moderately increase the value of pesticide businesses. The proposed amendments do not affect real estate development costs.

[1] Section 2.2-4007.04 of the Code of Virginia requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

[2] Section 3.2-3900 of the Code of Virginia defines "commercial applicator" as "any person who has completed the requirements for certification to use or supervise the use of any pesticide for any purpose or on any property other than as provided in the definition of private applicator."

[3] Section 3.2-3900 of the Code of Virginia defines "registered technician" as "an individual who has satisfactorily completed the Board requirements for certification to apply general use pesticides, and to apply restricted use pesticides while under the direct supervision of a certified commercial applicator. Registered technicians render services similar to those of a certified commercial applicator, but have not completed all the requirements to be eligible for certification as a commercial applicator."

[4] Data source: VDACS.

[5] Pursuant to § 2.2-4007.04 D: In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance. Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation.

[6] Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation. As a result, DPB has adopted a definition of adverse impact that assesses changes in net costs and benefits for each affected Virginia entity that directly results from discretionary changes to the regulation.

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

[8] If the proposed regulatory action may have an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to § 2.2-4007.1 of the Code of Virginia, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

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

[10] Section 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

Agency Response to Economic Impact Analysis: The Department of Agriculture and Consumer Services concurs with the economic impact analysis prepared by the Department of Planning and Budget.

Summary:

*The amendments lower the fees for commercial applicator certifications, pesticide business licenses, and registered technician certifications.*

**2VAC5-675-30. Commercial applicator certificate fee.**

Any person applying for a certificate as a commercial applicator shall pay to the department an initial nonrefundable certificate fee of ~~$100~~ $25. All certificates shall expire on June 30 in the second year after issuance unless suspended or revoked for cause. A certificate not suspended or revoked for cause will be renewed upon receipt of an application for renewal submitted by June 30. If the certificate is not renewed within 60 days following the expiration of the certificate, then such certificate holder shall be required to take another examination. The fee for this reexamination or for any commercial applicator reexamination pursuant to subsection C

of § 3.2-3930 of the Code of Virginia shall be ~~$100~~ $25 and shall be nonrefundable. Any person applying to add a category or subcategory to ~~his~~ a certificate shall pay to the department a nonrefundable fee of ~~$35~~ $25. Federal, state, and local government employees certified to use~~,~~ or supervise the use of~~,~~ pesticides in government programs shall be exempt from any certification fees.

**2VAC5-675-40. Registered technician certificate fee.**

Any person applying for a certificate as a registered technician shall pay to the department an initial nonrefundable certificate fee of ~~$50~~ $25. All certificates shall expire on June 30 in the second year after issuance unless suspended or revoked for cause. A certificate not suspended or revoked for cause will be renewed upon receipt of an application for renewal submitted by June 30. If the certificate is not renewed within 60 days following the expiration of the certificate, then such certificate holder shall be required to take another examination. The fee for this reexamination pursuant to subsection C of § 3.2-3930 of the Code of Virginia shall be ~~$50~~ $25 and shall be nonrefundable. Federal, state, and local government employees certified to use pesticides in government programs shall be exempt from any certification fees.

**2VAC5-675-50. Business license fee.**

Any pesticide business that distributes, stores, sells, recommends for use, mixes, or applies pesticides shall pay a nonrefundable annual pesticide business licensing fee of ~~$150~~ $75 for each location or outlet that it operates. All business licenses will expire at midnight on March 31 of each year unless suspended or revoked for cause. If a business license is not suspended or revoked for cause, it will be renewed upon payment of the annual fee. If any person operating as a pesticide business fails to apply for renewal of a pesticide business license by COB March 31, the applicant, as a condition of renewal, shall pay a late license fee of 20% of the licensing fee in addition to that fee. Merchants of limited quantities of nonrestricted use pesticides, including grocery stores, convenience stores, drug stores, veterinarians, and other businesses that sell pesticides primarily for limited household use, shall be exempt from the business license requirement.

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, General Assembly Building, 201 North Ninth Street, Fourth Floor, Richmond, Virginia 23219.

FORMS (2VAC5-675)

Application for New Pesticide Product ~~Registration/Additional~~ Registration and Additional Information and Instructions, VDACS-07208 (rev. 7/2019)

~~Application for Virginia Pesticide Business License to sell, distribute, store, apply, or recommend pesticides for use, VDACS-07209 (rev. 7/2019)~~

~~Application for Reciprocal Pesticide Applicator Certificate/Commercial Pesticide Applicator Categories, VDACS-07210 (rev. 7/2019)~~

~~Commercial Pesticide Applicator Certification Application/Eligibility Requirements for Commercial Applicator Certification, VDACS-07211 (rev. 7/2019)~~

~~Pesticide Registered Technician Application/General Training Requirements for Registered Technicians, VDACS-07212A (rev. 7/2019)~~

~~Pesticide Registered Technician Request for Authorization to Take Pesticide Applicator Examination, VDACS-07212B (rev. 7/2019)~~

~~Commercial Pesticide Applicator Request for Authorization to Take Pesticide Applicator Examination/Commercial Pesticide Applicator Categories, VDACS-07218 (rev. 7/2019)~~

Application for Reciprocal Pesticide Applicator Certificate and Commercial Pesticide Applicator Categories, VDACS-07210 (eff. 1/2025)

Application for Renewal of Pesticide Business License, VDACS-07209-B (eff. 1/2025)

Application for Virginia Pesticide Business License to Sell, Distribute, Store, Apply, or Recommend Pesticides for Use, VDACS-07209-A (eff. 1/2025)

Applicator Change of Information (eff. 1/2025)

Commercial Pesticide Applicator Certification Application and Eligibility Requirements for Commercial Applicator Certification, VDACS-07211 (eff. 1/2025)

Commercial Pesticide Applicator Request for Authorization to Take Pesticide Applicator Examination and Commercial Pesticide Applicator Categories, VDACS-07218 (eff. 1/2025)

Instructions for Completing the Application for Commercial Pesticide Applicator Certification (eff. 1/2025)

Instructions for Completing the Application for Registered Technician Certification (eff. 1/2025)

Pesticide Registered Technician Application and General Training Requirements for Registered Technicians, VDACS-07212A (eff. 1/2025)

Pesticide Registered Technician Request for Authorization to Take Pesticide Applicator Examination, VDACS-07212B (eff. 1/2025)

Request to Take the Virginia Pesticide Business License Examination (eff. 1/2025)

VA.R. Doc. No. R25-7815; Filed October 29, 2024, 3:49 p.m.

# TITLE 3. ALCOHOLIC BEVERAGE AND CANNABIS CONTROL

## BOARD OF DIRECTORS OF THE VIRGINIA CANNABIS CONTROL AUTHORITY

### Proposed Regulation

REGISTRAR'S NOTICE: The Board of Directors of the Virginia Cannabis Control Authority is claiming an exemption from the Administrative Process Act in accordance with § 4.1-1602 of the Code of Virginia, which exempts adoption of regulations if prior to adoption, the board publishes a notice of opportunity to comment in the Virginia Register of Regulations and posts the action on the Virginia Regulatory Town Hall. Such notice of opportunity to comment shall contain (i) a summary of the proposed regulation; (ii) the text of the proposed regulation; and (iii) the name, address, and telephone number of the agency contact person responsible for receiving public comments. Such notice shall be made at least 60 days in advance of the last date prescribed in such notice for submittals of public comment.

Titles of Regulations: **3VAC10-20. Medical Cannabis Program Fees (amending 3VAC10-20-10).**

**3VAC10-30. Applications, Licenses, Permits, and Registrations (amending 3VAC10-30-10, 3VAC10-30-30, 3VAC10-30-40, 3VAC10-30-50, 3VAC10-30-70, 3VAC10-30-100 through 3VAC10-30-140, 3VAC10-30-160).**

Statutory Authority: §§ 4.1-601, 4.1-604, and 4.1-606 of the Code of Virginia.

Public Comment Deadline: December 17, 2024.

Follow the link here to enter a comment on the proposed regulation.

Agency Contact: Jake Shuford, Legislative and Regulatory Manager, Virginia Cannabis Control Authority, 333 East Franklin Street, Richmond, VA 23219, telephone (804) 873-9038, or email jake.shuford@cca.virginia.gov.

Summary:

*Pursuant to Chapter 812 of the 2023 Acts of Assembly and Chapter 732 of the 2024 Acts of Assembly, the proposed amendments update the application procedures for pharmaceutical processor permits to reflect updated business standards and practices, specify when pharmaceutical processor operations commence, and add requirements for additional cultivation facilities. Proposed amendments also update definitions and clarify other regulatory requirements.*

**3VAC10-20-10. Definitions.**

In addition to words and terms defined in the Cannabis Control Act (§ 4.1-600 et seq. of the Code of Virginia), the following words and terms when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise:

~~"Board" means the Board of Directors of the Virginia Cannabis Control Authority.~~

"Cannabis cultivation facility" means a location at which the board has authorized a pharmaceutical processor to cultivate cannabis plants pursuant to § 4.1-1602 of the Code of Virginia and the requirements of 3VAC10-30-160.

"Certification" means a written statement, consistent with requirements of § 4.1-1601 of the Code of Virginia, issued by a practitioner for the use of cannabis products for treatment of or to alleviate the symptoms of any diagnosed condition or disease determined by the practitioner to benefit from such use.

"Medical cannabis facility" means a pharmaceutical processor, cannabis dispensing facility, or cannabis cultivation facility.

"PIC" means the pharmacist-in-charge whose name is on the pharmaceutical processor or cannabis dispensing facility application for a permit that has been issued and who shall have oversight of the processor's dispensing area or cannabis dispensing facility.

"Production" or "produce" means the manufacture, planting, preparation, cultivation, growing, harvesting, propagation, conversion, or processing of marijuana for the creation of usable cannabis, botanical cannabis, or a cannabis product derived thereof, (i) directly or indirectly by extraction from substances of natural origin, (ii) independently by means of chemical synthesis, or (iii) by a combination of extraction and chemical synthesis. "Production" or "produce" includes any packaging or repackaging of the substance or labeling or relabeling of its container.

"Qualifying patient" means a Virginia resident who has received from a practitioner, as defined in § 4.1-1600 of the Code of Virginia, a written certification for the use of cannabis products for treatment of or to alleviate the symptoms of any diagnosed condition or disease.

"Registration" means an identification card or other document issued by the board that identifies a person as a qualifying patient, parent, legal guardian, or registered agent that has voluntarily registered with the board.

"Resident" means ~~a person whose principal place of residence is within the Commonwealth as evidenced by a federal or state income tax return or a current Virginia driver's license~~ an individual who resides within the geographical boundaries of the Commonwealth. If a person is a minor, residency may be established by evidence of Virginia residency by a parent or legal guardian.

"Responsible party" means the person designated on the pharmaceutical processor application who shall have oversight

of the cultivation and production areas of the pharmaceutical processor.

**3VAC10-30-10. Definitions.**

In addition to words and terms defined in the Cannabis Control Act (§ 4.1-600 et seq. of the Code of Virginia), the following words and terms when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise:

"90-day supply" means the amount of cannabis products reasonably necessary to ensure an uninterrupted availability of supply for a 90-day period for patients ~~with~~ either included on a valid, unexpired written certification issued by a practitioner ~~for the use of cannabis products~~ or established by a pharmacist during initial consultation.

~~"Board" means the Board of Directors of the Cannabis Control Authority.~~

"Cannabis cultivation facility" means a location at which the board has authorized a pharmaceutical processor to cultivate cannabis plants pursuant to § 4.1-1602 of the Code of Virginia and the requirements of 3VAC10-30-160.

"Certification" means a written statement, consistent with requirements of § 4.1-1601 of the Code of Virginia, issued by a practitioner for the use of cannabis products for treatment of or to alleviate the symptoms of any diagnosed condition or disease determined by the practitioner to benefit from such use.

"Daycare" means a "child day center" or "family day home" as defined in § 22.1-289.02 of the Code of Virginia.

"Electronic tracking system" means an electronic radio-frequency identification (RFID) seed-to-sale tracking system that tracks the cannabis from either the seed or immature plant stage until the cannabis product is sold to a patient, parent, legal guardian, or registered agent or until the cannabis, including the seeds, parts of plants, and extracts, are destroyed. The electronic tracking system shall include, at a minimum, a central inventory management system and standard and ad hoc reporting functions as required by the board and shall be capable of otherwise satisfying required recordkeeping.

"Material owner" means (i) for a publicly traded entity, voting rights that entitle a person to individually elect or appoint one or more of the members of the board of directors or other governing board or the ownership or beneficial holding of 5.0% or more of the securities of the publicly traded entity and (ii) for a privately held entity, the ownership of any security or beneficial interest in the entity.

"Medical cannabis facility" means a pharmaceutical processor, cannabis dispensing facility, or cannabis cultivation facility.

"On duty" means that a pharmacist, the responsible party, or a person who is qualified to provide supervision in accordance with 3VAC10-30-90 is on the premises at the address of the ~~permitted~~ pharmaceutical processor and is available as needed.

"PIC" means the pharmacist-in-charge whose name is on the pharmaceutical processor or cannabis dispensing facility application for a permit that has been issued and who shall have oversight of the processor's dispensing area or cannabis dispensing facility.

"Production" or "produce" means the manufacture, planting, preparation, cultivation, growing, harvesting, propagation, conversion, or processing of marijuana for the creation of usable cannabis, botanical cannabis, or a cannabis product derived thereof, (i) directly or indirectly by extraction from substances of natural origin, (ii) independently by means of chemical synthesis, or (iii) by a combination of extraction and chemical synthesis. "Production" or "produce" includes any packaging or repackaging of the substance or labeling or relabeling of its container.

"Qualifying patient" means a Virginia resident who has received from a practitioner, as defined in § 4.1-1600 of the Code of Virginia, a written certification for the use of cannabis products for treatment of or to alleviate the symptoms of any diagnosed condition or disease.

"Registration" means an identification card or other document issued by the board that identifies a person as a qualifying patient, parent, legal guardian, or registered agent that has voluntarily registered with the board.

"Resident" means ~~a person whose principal place of residence is within the Commonwealth as evidenced by a federal or state income tax return or a current Virginia driver's license~~ an individual who resides within the geographical boundaries of the Commonwealth. If a person is a minor, residency may be established by evidence of Virginia residency by a parent or legal guardian.

"Responsible party" means the person designated on the pharmaceutical processor application who shall have oversight of the cultivation and production areas of the pharmaceutical processor.

"School" means (i) any public school from kindergarten through grade 12 operated under the authority of any locality within the Commonwealth, (ii) any private or religious school that offers instruction at any level or grade from kindergarten through grade 12, and (iii) any private or religious nursery school or preschool or any private or religious childcare center required to be licensed by the Commonwealth.

"Temporary residency" means a person does not maintain a principal place of residence within Virginia but resides in Virginia on a temporary basis as evidenced by documentation substantiating such temporary residence.

**3VAC10-30-30. Requirements for practitioner issuing a certification.**

A. Prior to issuing a certification for cannabis products for any diagnosed condition or disease, the practitioner shall meet the requirements of § 4.1-1601 of the Code of Virginia.

B. A practitioner issuing a certification shall:

1. Conduct an assessment and evaluation of the patient in order to ~~develop a treatment plan for~~ diagnose the patient~~, which~~ or confirm another medical provider's diagnosis. This shall include an examination of the patient and the patient's medical history, prescription history, and current medical condition;

2. ~~Diagnose~~ Develop a treatment plan for the patient;

3. Be of the opinion that the potential benefits of cannabis products would likely outweigh the health risks of such use to the qualifying patient;

4. Authorize on the written certification the use of botanical cannabis for a minor patient if the practitioner determines such use is consistent with the standard of care to dispense botanical cannabis to a minor. If not specifically included on the initial written certification, authorization for botanical cannabis may be communicated verbally or in writing to the pharmacist at the time of dispensing;

5. Explain proper administration and the potential risks and benefits of the cannabis product to the qualifying patient, and if the qualifying patient lacks legal capacity, to a parent or legal guardian prior to issuing the written certification;

6. Be available or ensure that another practitioner, as defined in § 4.1-1600 of the Code of Virginia, is available to provide follow-up care and treatment to the qualifying patient, including physical examinations, to determine the efficacy of cannabis products for treating the diagnosed condition or disease;

7. Comply with generally accepted standards of medical practice, except to the extent such standards would counsel against certifying a qualifying patient for cannabis products;

8. Maintain medical records in accordance with 18VAC85-20-26 for all patients for whom the practitioner has issued a certification; and

9. Access or direct the practitioner's delegate to access the Virginia Prescription Monitoring Program of the Department of Health Professions for the purpose of determining which, if any, covered substances have been dispensed to the patient.

C. The practitioner shall use the practitioner's professional judgment to determine the manner and frequency of patient care and evaluation, which may include the use of telemedicine, provided that the use of telemedicine:

1. Includes the delivery of patient care through real-time interactive audio-visual technology;

2. Conforms to the standard of care expected for in-person care; and

3. Transmits information in a manner that protects patient confidentiality.

D. A practitioner shall not delegate the responsibility of diagnosing a patient or determining whether a patient should be issued a certification. Employees under the direct supervision of the practitioner may assist with preparing a certification, so long as the final certification is approved and signed by the practitioner before it is issued to the patient.

E. The practitioner shall provide instructions for the use of cannabis products to the patient, parent, or guardian, as applicable~~, and shall also securely transmit such instructions to the permitted pharmaceutical processor~~.

F. Upon request, a practitioner shall make a copy of medical records available to an agent of the Board of Medicine or Board of Pharmacy for the purpose of enabling the board to ensure compliance with the law and regulations or to investigate a possible violation.

G. If the authority determines that a practitioner has violated, attempted to violate, solicited any person to violate, or consented to any violation of this chapter, the authority may restrict that practitioner's ability to issue written certifications for patients in the future or report information to the applicable licensing board.

**3VAC10-30-40. Prohibited practices for practitioners.**

A. A practitioner who issues certifications shall not:

1. Directly or indirectly accept, solicit, or receive anything of value from any person associated with a pharmaceutical processor or provider of paraphernalia, excluding information on products or educational materials on the benefits and risks of cannabis products;

2. Offer a discount or any other thing of value to a qualifying patient, parent, guardian, or registered agent based on the patient's agreement or decision to use a particular pharmaceutical processor or cannabis product;

3. Examine a qualifying patient for purposes of diagnosing the condition or disease at a location where medical cannabis products are dispensed or produced; or

4. Directly or indirectly benefit from a patient obtaining a certification. Such prohibition shall not prohibit a practitioner from charging an appropriate fee for the patient visit.

B. A practitioner who issues certifications and such practitioner's coworker, employee, spouse, parent, or child shall not have a direct or indirect financial interest in a pharmaceutical processor, a cannabis dispensing facility, or

any other entity that may benefit from a qualifying patient's acquisition, purchase, or use of cannabis products, including any formal or informal agreement whereby a pharmaceutical processor or other person provides compensation if the practitioner issues a certification for a qualifying patient or steers a qualifying patient to a specific pharmaceutical processor or cannabis product.

C. A practitioner shall not issue a certification for himself or for family members, employees, or coworkers.

D. A practitioner shall not provide product samples containing cannabis other than those approved by the U.S. Food and Drug Administration.

**3VAC10-30-50. Registration of a patient, parent, legal guardian, or registered agent.**

A. A qualifying patient~~,~~ or a parent or legal guardian of a minor or vulnerable adult~~,~~ for whom a practitioner has issued a certification may voluntarily request registration in accordance with this section. For issuance of a registration, the following items shall be submitted:

1. A copy of the certification issued by a practitioner;

2. Proof of residency of the qualifying patient and proof of residency of a parent or legal guardian, if applicable, such as a government-issued identification card or tax receipt or proof of temporary residency, if applicable, such as a current academic identification card from a Virginia institution of higher learning, rental agreement, utility bill, or attestation ~~on a form~~ in a manner prescribed by the board that contains information sufficient to document temporary residency in Virginia;

3. Proof of identity of the qualifying patient, and if the patient is a minor, proof of identity of the parent or legal guardian in the form of a government-issued identification card;

4. Proof of the qualifying patient's age in the form of a birth certificate or other government-issued identification;

5. Payment of the appropriate fees; and

6. Such other information as the board may require to determine the applicant's suitability for registration or to protect public health and safety.

B. A patient or the patient's parent or legal guardian may choose a registered agent to receive cannabis products on behalf of the patient. An individual may serve as a registered agent for no more than two patients. For a voluntary registration application to be approved, the following shall be submitted:

1. The name, address, and birth date of each patient for whom the individual intends to act as a registered agent;

2. A copy of the written certification issued to the patient for the use of cannabis products for treatment of or to alleviate the symptoms of any diagnosed condition or disease;

3. Proof of identity in the form of a copy of a government-issued identification card;

4. Payment of the applicable fee; and

5. Such other information as the board may require to determine the applicant's suitability for registration or to protect public health and safety.

C. A qualifying patient shall not be issued a written certification by more than one practitioner during a given time period.

**3VAC10-30-70. Reporting requirements for practitioners, patients, parents, legal guardians, or registered agents.**

A. A practitioner shall report to the board, in a manner prescribed by the board, the death of a patient or a change in status of a patient for whom the practitioner has issued a certification if such change affects the patient's continued eligibility to use cannabis products or the practitioner's inability to continue treating the patient. A practitioner shall report such death, change of status, or inability to continue treatment not more than 15 days after the practitioner becomes aware of such fact.

B. A patient, parent, or legal guardian who has been issued a registration shall notify the board of any change in the information provided to the board not later than 15 days after such change. The patient, parent, or legal guardian shall report changes that include a change in name, address, contact information, medical status of the patient, or change of the certifying practitioner. The patient, parent, or legal guardian shall report such changes ~~on a form~~ in a manner prescribed by the board.

C. A registered agent who has been issued a registration shall notify the board of any change in the information provided to the board not later than 15 days after such change, ~~to include~~ including a change in the identifying information of the patient for whom the registered agent is serving as a registered agent.

D. If a patient, parent, legal guardian, or registered agent notifies the board of any change that results in information on the registration of the patient, parent, legal guardian, or registered agent being inaccurate, the board shall issue a replacement registration. Upon receipt of a new registration, the qualifying patient, parent, legal guardian, or registered agent shall destroy in a nonrecoverable manner the registration that was replaced.

E. If a patient, parent, legal guardian, or registered agent becomes aware of the loss, theft, or destruction of the registration of such patient, parent, legal guardian, or registered agent, the registrant shall notify the board not later than five business days after becoming aware of the loss, theft, or

destruction and submit the fee for a replacement registration. The board shall issue a replacement registration upon receiving the applicable fee, provided the applicant continues to satisfy the requirements of law and regulation.

**3VAC10-30-100. Publication of notice ~~for submission~~ of open applications.**

A. ~~The board~~ When there is an available pharmaceutical processor permit, the authority shall publish a notice of open applications ~~for pharmaceutical processor permits~~.

1. Such notice shall include information on how to obtain and complete an application, the required fees, the criteria for issuance of a permit, and the deadline for receipt of applications.

2. The criteria set forth in the notice of open applications shall include the following:

a. Any history of disciplinary action imposed by a state or federal regulatory agency;

b. The applicant's ability to maintain adequate control against the diversion, theft, and loss of the cannabis, including the seeds, any parts, or extracts of the cannabis plants or the cannabis products;

c. The applicant's ability to maintain the knowledge, understanding, judgment, procedures, security controls, and ethics to ensure optimal safety and accuracy in the dispensing and sale of cannabis products; and

d. The extent to which the applicant or any of the applicant's pharmaceutical processor material owners have a financial interest in another license, permit, registrant, or applicant.

B. The board shall have the right to amend the notice of open applications prior to the deadline ~~for submitting~~ to submit an application. Such amended notice shall be published in the same manner as the original notice of open applications.

C. The board shall have the right to cancel a notice of open applications prior to the award of a pharmaceutical processor permit.

**3VAC10-30-110. ~~Application process for pharmaceutical processor permits~~ Initial application and award of conditional approval.**

~~A. The application process for permits shall occur in the following three stages: submission of initial application, award of conditional approval, and grant of a pharmaceutical processor permit.~~

~~B.~~ A. Submission of initial application.

1. A pharmaceutical processor permit applicant shall submit the required application fee and all requested application materials ~~with the following information and documentation~~, including:

a. The name and address of the applicant and the applicant's owners;

b. The location within the health service area ~~established by the State Board of Health that is to be operated under such~~ where the applicant intends to operate the pharmaceutical processor permit; and

c. Detailed information regarding the applicant's financial position indicating all assets, liabilities, income, and net worth to demonstrate the financial capacity of the applicant to build and operate a facility to cultivate cannabis plants intended only for the production and dispensing of cannabis products pursuant to §§ 4.1-1602 and 4.1-1603 of the Code of Virginia, which may include evidence of an escrow account, letter of credit, or performance surety bond~~;~~.

~~d. Details regarding the applicant's plans for security to maintain adequate control against the diversion, theft, or loss of the cannabis plants and the cannabis products;~~

~~e. Documents sufficient to establish that the applicant is authorized to conduct business in Virginia and that all applicable state and local building, fire, and zoning requirements and local ordinances are met or will be met prior to issuance of a permit;~~

~~f. Information necessary for the board to conduct a criminal background check on the applicant;~~

~~g. Information about any previous or current involvement in the medical cannabis industry;~~

~~h. Whether the applicant has ever applied for a permit or registration related to medical cannabis in any state, and if so, the status of that application, permit, or registration, to include any disciplinary action taken by any state on the permit, the registration, or an associated license;~~

~~i. Any business and marketing plans related to the operation of the pharmaceutical processor or the sale of cannabis products;~~

~~j. Text and graphic materials showing the exterior appearance of the proposed pharmaceutical processor;~~

~~k. A blueprint of the proposed pharmaceutical processor that shall show and identify (i) the square footage of each area of the facility; (ii) the location of all safes or vaults used to store the cannabis plants and products; (iii) the location of all areas that may contain cannabis plants or cannabis products; (iv) the placement of walls, partitions, and counters; and (v) all areas of ingress and egress;~~

~~l. Documents related to any compassionate need program the pharmaceutical processor intends to offer;~~

~~m. Information about the applicant's expertise in agriculture and other production techniques required to produce cannabis products and to safely dispense such products; and~~

~~n. Such other documents and information required by the board to determine the applicant's suitability for permitting or to protect public health and safety.~~

2. An applicant may only submit one application for a pharmaceutical processor permit in response to any notice of open applications issued by the authority unless the applicant meets the following criteria:

a. Each application identifies a separate and distinct physical address where the applicant intends to operate a pharmaceutical processor permit; and

b. Each application contains documentation of separate and distinct capital to support the operations of the proposed pharmaceutical processor.

3. In the event any information contained in the application or accompanying documents changes after being submitted ~~to the board~~, the applicant shall immediately notify the ~~board~~ authority in writing and provide corrected information in a timely manner so as not to disrupt the permit selection process.

~~3. The board shall conduct criminal background checks on applicants and may verify information contained in each application and accompanying documentation in order to assess the applicant's ability to operate a pharmaceutical processor.~~

B. Identification of qualified applicants.

1. Following the deadline for receipt of applications, the authority shall identify qualified applicants by evaluating each complete and timely submitted application based on compliance with requirements set forth in notice of open applications.

a. When circumstances warrant, the authority may verify information contained in an application and accompanying documentation in order to assess the applicant's ability to operate a pharmaceutical processor.

b. The authority shall disqualify any applicant who:

(1) Fails to submit an application by the published deadline;

(2) Fails to pay all applicable fees;

(3) Fails to timely notify the board of any changes or corrected information; or

(4) Fails to cooperate with any authority inquiries or investigations related to an application or accompanying documentation.

C. Award of conditional approval.

1. Following review, the board shall notify applicants of denial or conditional approval. The decision of the board not to grant conditional approval to an applicant shall be final.

2. In the event the authority determines there is more than one qualified applicant, the authority may hold a lottery or similar process to select the applicant to award conditional approval for a pharmaceutical processor.

3. In the event the board determines that there are no qualified applicants to award conditional approval for a pharmaceutical processor permit in a health service area, the board may republish, in accordance with 3VAC10-30-100, a notice of open applications for pharmaceutical processor permits.

~~D. No person who has been convicted of a felony under the Code of Virginia or another jurisdiction within the last five years shall have a 5.0% or greater ownership, be employed by, or act as an agent of a pharmaceutical processor.~~

**3VAC10-30-120. Conditional approval.**

A. Following the ~~deadline for receipt of applications, the board shall evaluate each complete and timely submitted application and may grant~~ award of conditional approval ~~on a competitive basis based on compliance with requirements set forth in 3VAC10-30-110~~, the selected applicant shall submit information necessary for the board to conduct a criminal background check on the selected applicant's material owners. No person who has been convicted of a felony under the Code of Virginia or another jurisdiction within the last five years shall be a material owner of, be employed by, or act as an agent of a pharmaceutical processor.

~~B. The board shall consider, but is not limited to, the following criteria in evaluating pharmaceutical processor permit applications:~~

~~1. The results of the criminal background checks required in 3VAC10-30-110 B 3 or any history of disciplinary action imposed by a state or federal regulatory agency;~~

~~2. The location for the proposed pharmaceutical processor, which shall not be within 1,000 feet of a school or daycare;~~

~~3. The applicant's ability to maintain adequate control against the diversion, theft, and loss of the cannabis, to include the seeds, any parts, or extracts of the cannabis plants or the cannabis products;~~

~~4. The applicant's ability to maintain the knowledge, understanding, judgment, procedures, security controls, and ethics to ensure optimal safety and accuracy in the dispensing and sale of cannabis products;~~

~~5. The extent to which the applicant or any of the applicant's pharmaceutical processor owners have a financial interest in another license, permit, registrant, or applicant; and~~

~~6. Any other reason provided by state or federal statute or regulation that is not inconsistent with the law and regulations regarding pharmaceutical processors.~~

B. Upon request of the authority, the selected applicant shall provide additional information or documents.

C. The board may ~~disqualify any~~ revoke conditional approval if the authority determines the selected applicant ~~who~~:

1. Submits ~~an~~ incomplete, false, inaccurate, or misleading ~~application~~ information or documentation;

2. Fails to ~~submit an application by the published deadline~~ cooperate in any investigation conducted by the authority;

3. Fails to ~~pay all applicable fees; or~~ secure property to operate the proposed pharmaceutical processor at a location that is more than 1,000 feet from a school or daycare;

4. Is in violation of § 4.1-1602 K of the Code of Virginia based on the results of criminal background checks of the selected applicant's material owners; or

5. Fails to comply with all requirements for a pharmaceutical processor.

~~D. Following review, the board shall notify applicants of denial or conditional approval. The decision of the board not to grant conditional approval to an applicant shall be final.~~

~~E.~~ D. If granted conditional approval, an applicant shall have one year from date of notification to complete all requirements for issuance of a permit, ~~to include~~ including employment of a PIC, responsible party, and other personnel necessary for operation of a pharmaceutical processor, construction or remodeling of a facility, installation of equipment, and securing local zoning approval.

E. In the event conditional approval is rescinded pursuant to this section, the board may award conditional approval for a pharmaceutical processor permit by selecting from among the qualified applicants who applied for the pharmaceutical processor permit or publishing a new notice of open applications.

**3VAC10-30-130. Granting of a pharmaceutical processor permit.**

A. The board may issue a pharmaceutical processor permit when all requirements of the board have been met, ~~to include~~ including:

1. Designation of a PIC and responsible party;

2. Evidence of criminal background checks for all employees and delivery agents of the pharmaceutical processor to ensure compliance with § 4.1-1602 of the Code of Virginia;

3. Evidence of utilization of an electronic tracking system; and

4. A satisfactory inspection of the facility conducted by agents of the board.

B. The board shall not award a permit until the pharmaceutical processor has corrected any deficiency identified by inspectors, and if warranted, the facility has been satisfactorily reinspected.

C. Before the board issues any permit, the applicant shall attest to compliance with all state and local laws and ordinances.

D. A pharmaceutical processor permit shall not be issued to any person to operate from a private dwelling or residence.

~~D.~~ E. If an applicant has been awarded a pharmaceutical processor permit and has not commenced operation of such facility within 180 days of being notified of the issuance of a pharmaceutical processor permit, the board may rescind such permit, unless such delay was caused by circumstances beyond the control of the permit holder.

~~E.~~ F. A pharmaceutical processor shall be deemed to have commenced operation if cannabis plants are under cultivation by the processor in accordance with the approved application or the processor has received cannabis products from another pharmaceutical processor holding a permit issued by the board.

G. Once the pharmaceutical processor has commenced operation, it shall inform the authority of its normal hours of operation.

~~F.~~ H. In the event a permit is rescinded pursuant to this section, the board may award conditional approval for a pharmaceutical processor permit by selecting from among the qualified applicants who applied for the pharmaceutical processor permit subject to rescission. If no other qualified applicant who applied for such pharmaceutical processor permit satisfied the criteria for awarding a permit, the board shall publish ~~in accordance with this section~~ a notice of open applications for a pharmaceutical processor permit in accordance with 3VAC10-30-100.

~~G.~~ I. Once the board issues a permit ~~is issued~~, a processor may begin ~~cultivation of~~ cultivating cannabis~~,~~ and ~~the~~ receiving cannabis through wholesale distribution. The responsible party or a person who is qualified to provide supervision in accordance with 3VAC10-30-90 shall be present during hours of operation to ensure the safety, security, and integrity of the cannabis. Once cannabis has been placed in the dispensing area of the pharmaceutical processor, a pharmacist shall be present during hours of operation to ensure the safety, security, and integrity of the cannabis. The responsible party shall ensure security measures are adequate to protect the cannabis in the cultivation and production area from diversion at all times, and the PIC shall have concurrent responsibility for preventing diversion from the dispensing area. If there is a change in the designated opening date, the pharmaceutical processor shall notify the board ~~office~~, and a pharmacist or the responsible party shall continue to be on site on a daily basis.

**3VAC10-30-140. Application for and granting of a permit for a cannabis dispensing facility.**

A. Pursuant to § 4.1-1602 of the Code of Virginia, the board may issue up to five cannabis dispensing facility permits for each health service area. A permit may be issued to a facility

that is owned, at least in part, by the pharmaceutical processor located in that health service area for the dispensing of cannabis products that have been cultivated and produced on the premises of a pharmaceutical processor. Each cannabis dispensing facility shall be located within the same health service area as the pharmaceutical processor.

B. A separate application and fee for each cannabis dispensing facility permit shall be submitted to the board, along with the following information and documentation:

1. The name and address of the facility, which shall not be within 1,000 feet of a school or daycare;

2. The name and address of the facility's material owners ~~with 5.0% or greater ownership~~;

3. Name and signature of pharmacist-in-charge practicing at the facility;

4. Details regarding the applicant's plans for security to maintain adequate control against the diversion, theft, or loss of cannabis products; and

5. Information necessary for the board to conduct a criminal background check on the facility material owners ~~with 5.0% or greater ownership~~.

C. Prior to issuing the permit, an agent of the board shall perform an inspection of the facility. The permit shall not be awarded until any deficiency identified by inspectors has been corrected and the facility has been satisfactorily reinspected if warranted.

D. A cannabis dispensing facility shall comply with all state and local laws and ordinances.

E. A cannabis dispensing facility permit shall not be issued to any person to operate from a private dwelling or residence.

F. No person who has been convicted of a felony under the laws of the Commonwealth or another jurisdiction within the last five years shall be employed by or act as an agent of a cannabis dispensing facility.

G. If the cannabis dispensing facility is not operational within 90 days from the date the permit is issued, the board shall rescind the permit unless an extension is granted for good cause shown.

H. A cannabis dispensing facility shall be deemed to have commenced operation if it is in receipt of cannabis products from a pharmaceutical processor.

I. Once the facility is in possession of cannabis products, a pharmacist shall be on site at all times during the declared hours of operation.

**3VAC10-30-160. Application for and granting of authorization for a cannabis cultivation facility.**

A. Pursuant to § 4.1-1602 of the Code of Virginia, the board may authorize a pharmaceutical processor to establish one cannabis cultivation facility. The cannabis cultivation facility shall be located within the same health service area as the pharmaceutical processor.

B. A separate application and fee for a cannabis cultivation facility shall be submitted to the board, along with the following information and documentation:

1. The name and address of the facility, which shall not be within 1,000 feet of a school or daycare;

~~2. The name and address of the facility's owners with 5.0% or greater ownership;~~

~~3.~~ 2. Details regarding the applicant's plans for security to maintain adequate control against the diversion, theft, or loss of cannabis; ~~and~~

~~4. Information necessary for the board to conduct a criminal background check on the facilities' owners with 5.0% or greater ownership.~~

3. The distance of the proposed additional cannabis cultivation location from the pharmaceutical processor;

4. Details regarding access to a secure transportation network between the proposed additional cannabis cultivation location and the pharmaceutical processor;

5. The economic viability of the additional cannabis cultivation at the proposed location; and

6. Any demonstrated demand for additional cannabis cultivation.

C. Prior to authorizing a cannabis cultivation facility, an agent of the board shall perform an inspection of the facility. If inspectors identify any deficiency, the board shall not authorize a cannabis cultivation facility until the pharmaceutical processor has corrected any deficiency identified and the facility has been satisfactorily reinspected, if warranted.

D. A cannabis cultivation facility shall comply with all state and local laws and ordinances.

E. A cannabis cultivation facility authorization shall not be issued to any person to operate from a private dwelling or residence.

F. No person who has been convicted of a felony under the laws of the Commonwealth or another jurisdiction within the last five years shall be employed by or act as an agent of a cannabis cultivation facility.

G. If the cannabis cultivation facility is not operational within 180 days from the date the authorization is issued, the board shall rescind the authorization unless an extension is granted for good cause shown.

H. A cannabis cultivation facility shall be deemed to have commenced operation if cannabis plants are under cultivation by the processor in accordance with the approved application.

I. Once the board has authorized a cannabis cultivation facility, a pharmaceutical processor may begin cultivation of cannabis, and the responsible party or a person who is qualified to provide supervision in accordance with this section shall be present during hours of operation to ensure the safety, security, and integrity of the cannabis.

VA.R. Doc. No. R25-8122; Filed October 24, 2024, 4:38 p.m.

## Proposed Regulation

REGISTRAR'S NOTICE: The Board of Directors of the Virginia Cannabis Control Authority is claiming an exemption from the Administrative Process Act in accordance with § 4.1-1602 of the Code of Virginia, which exempts adoption of regulations if prior to adoption, the board publishes a notice of opportunity to comment in the Virginia Register of Regulations and posts the action on the Virginia Regulatory Town Hall. Such notice of opportunity to comment shall contain (i) a summary of the proposed regulation; (ii) the text of the proposed regulation; and (iii) the name, address, and telephone number of the agency contact person responsible for receiving public comments. Such notice shall be made at least 60 days in advance of the last date prescribed in such notice for submittals of public comment.

Title of Regulation: **3VAC10-40. Regulated Operations (amending 3VAC10-40-10 through 3VAC10-40-60, 3VAC10-40-100, 3VAC10-40-120 through 3VAC10-40-170, 3VAC10-40-190, 3VAC10-40-210; adding 3VAC10-40-230 through 3VAC10-40-280).**

Statutory Authority: §§ 4.1-601, 4.1-604, and 4.1-606 of the Code of Virginia.

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: January 16, 2025.

Agency Contact: Jake Shuford, Legislative and Regulatory Manager, Virginia Cannabis Control Authority, 333 East Franklin Street, Richmond, VA 23219, telephone (804) 873-9038, or email jake.shuford@cca.virginia.gov.

Summary:

*The amendments (i) add definitions; (ii) prohibit permittees from endorsing practitioners; (iii) codify the current practice of permittees using electronic tracking; and (iv) establish public health and safety standards for the transportation and delivery of medical cannabis, including vehicle inspections, global positioning system (GPS) tracking, and incident and accident protocols.*

**3VAC10-40-10. Definitions.**

In addition to words and terms defined in the Cannabis Control Act (§ 4.1-600 et seq. of the Code of Virginia), the following words and terms when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise:

"Batch" means a quantity of (i) cannabis oil from a production lot or (ii) harvested botanical cannabis product that is identified by a batch number or other unique identifier.

~~"Board" means the Board of Directors of the Cannabis Control Authority.~~

"Cannabis cultivation facility" means a location at which the board has authorized a pharmaceutical processor to cultivate cannabis plants pursuant to § 4.1-1602 of the Code of Virginia and the requirements of 3VAC10-30-160.

"Cannabis product advertising" means the act of providing consideration for the publication, dissemination, solicitation, or circulation of visual, oral, or written communication through any means to directly induce any person to patronize a particular pharmaceutical processor or cannabis dispensing facility or to purchase particular approved cannabis products. Advertising includes marketing.

~~"Certification" means a written statement, consistent with requirements of § 4.1-1601 of the Code of Virginia, issued by a practitioner for the use of cannabis products for treatment of or to alleviate the symptoms of any diagnosed condition or disease determined by the practitioner to benefit from such use.~~

"Cartoon" means any drawing, sketch, computer-generated illustration, or other depiction of an object, person, animal, creature, or any similar caricature that meets any of the following criteria:

1. The use of comically exaggerated features;

2. The attribution of human characteristics to animals, plants, or other objects;

3. The attribution of animal, plant, or other object characteristics to humans; or

4. The attribution of unnatural or extra-human abilities.

"Companion" means a person who provides fellowship and protection for an elderly person or person with an illness, injury, or disability who requires assistance with self-care.

"Endorse" means declaring public approval, support, or recommendation of a practitioner, including sharing information online and hosting or facilitating events that would promote a particular practitioner's services above others. Patient education events are permissible provided the event (i) is clearly focused on patient education and (ii) offers information about multiple practitioners without favor or emphasis on a particular practitioner.

"Immediate container" means a container that is in direct contact with cannabis or a cannabis product or, if a wrapper is in direct contact with the cannabis or the cannabis product, with the wrapper.

"Medical cannabis facility" means a pharmaceutical processor, cannabis dispensing facility, or cannabis cultivation facility.

"On duty" means that a pharmacist, the responsible party, or a person who is qualified to provide supervision in accordance with 3VAC10-30-90 is on the premises at the address of the ~~permitted~~ pharmaceutical processor and is available as needed.

"Package" or "packaging" means any inner or outer container or covering.

"Perpetual inventory" means an ongoing system for recording quantities of cannabis products received, dispensed, or otherwise distributed by a cannabis dispensing facility.

"PIC" means the pharmacist-in-charge whose name is on the pharmaceutical processor or cannabis dispensing facility application for a permit that has been issued and who shall have oversight of the processor's dispensing area or cannabis dispensing facility.

"Production" or "produce" means the manufacture, planting, preparation, cultivation, growing, harvesting, propagation, conversion, or processing of marijuana for the creation of usable cannabis, botanical cannabis, or a cannabis product derived thereof, (i) directly or indirectly by extraction from substances of natural origin, (ii) independently by means of chemical synthesis, or (iii) by a combination of extraction and chemical synthesis. "Production" or "produce" includes any packaging or repackaging of the substance or labeling or relabeling of its container.

"Qualifying patient" means a Virginia resident who has received from a practitioner, as defined in § 4.1-1600 of the Code of Virginia, a written certification for the use of cannabis products for treatment of or to alleviate the symptoms of any diagnosed condition or disease.

"Registered cannabis product" means cannabis flower, concentrated cannabis, cannabis extracts, and products that are infused with cannabis or an extract thereof intended for use or consumption by humans and approved by the board.

"Registration" means an identification card or other document issued by the board that identifies a person as a qualifying patient, parent, legal guardian, or registered agent that has voluntarily registered with the board.

"Responsible party" means the person designated on the pharmaceutical processor application who shall have oversight of the cultivation and production areas of the pharmaceutical processor.

**3VAC10-40-20. General provisions.**

A. A pharmaceutical processor or cannabis dispensing facility shall only sell cannabis products in a child-resistant, secure, and light-resistant container. Upon a written request from the patient, parent, legal guardian, or registered agent, the product may be dispensed in a non-child-resistant container so long as all labeling is maintained with the product.

B. Only a pharmacist may dispense cannabis products to patients or parents or legal guardians of patients who are minors or vulnerable adults, or to a registered agent. A pharmacy technician who meets the requirements of 3VAC10-30-90 ~~C~~ D may assist, under the direct supervision of a pharmacist, in the dispensing and selling of cannabis products.

C. The PIC, pharmacist, responsible party, or person who is qualified to provide supervision in accordance with 3VAC10-30-90 on duty shall restrict access to the pharmaceutical processor or cannabis dispensing facility to:

1. A person whose responsibilities necessitate access to the pharmaceutical processor or cannabis dispensing facility and then for only as long as necessary to perform the person's job duties; or

2. A person who is a patient, parent, legal guardian, registered agent, or a companion of the patient, in which case such person shall not be permitted behind the service counter or in other areas where cannabis plants, extracts, or cannabis products are stored.

D. A pharmacist, pharmacy technician, or an employee of the pharmaceutical processor or cannabis dispensing facility who has routine access to confidential patient data and who has signed a patient data confidentiality agreement with the processor or dispensing facility may determine eligibility for access to the processor or facility by verifying through a verification source recognized by the board that the registration of the patient, parent, legal guardian, or registered agent is current.

E. All pharmacists and pharmacy technicians shall, at all times while at the pharmaceutical processor or cannabis dispensing facility, have their current license or registration available for inspection by the board or the board's agent.

F. While inside the pharmaceutical processor or cannabis dispensing facility, all employees shall wear name tags or similar forms of identification that clearly identify them, including their position at the pharmaceutical processor or cannabis dispensing facility.

G. A pharmaceutical processor or cannabis dispensing facility shall be open for patients, parents, legal guardians, or registered agents to purchase cannabis products for a minimum of 35 hours a week, except as otherwise authorized by the board.

H. A pharmaceutical processor or cannabis dispensing facility that closes the dispensing area during its normal hours of operation shall implement procedures to notify patients, parents, legal guardians, and registered agents of when the pharmaceutical processor or cannabis dispensing facility will resume normal hours of operation. Such procedures may include telephone system messages and conspicuously posted signs. If the cultivation, production, or dispensing area of the pharmaceutical processor or if a cannabis dispensing facility is or will be closed during its normal hours of operation for longer than two business days, the pharmaceutical processor or

cannabis dispensing facility shall immediately notify the board.

~~I. A pharmacist shall counsel patients, parents, legal guardians, and registered agents, if applicable, regarding the use of cannabis products. Such counseling shall include information related to safe techniques for proper use and storage of cannabis products and for disposal of the products in a manner that renders them nonrecoverable.~~

~~J.~~ I. The medical cannabis facility shall establish, implement, and adhere to a written alcohol-free, drug-free, and smoke-free workplace policy that shall be available to the board or the board's agent upon request.

**3VAC10-40-30. Facility prohibitions.**

A. No pharmaceutical processor shall:

1. Cultivate cannabis plants or produce or dispense cannabis products in any place except the approved facility at the address of record on the application for the pharmaceutical processor permit;

2. Sell, deliver, transport, or distribute cannabis, including cannabis products, to any other facility except for wholesale distribution pursuant to 3VAC10-40-50;

3. Produce or manufacture cannabis products for use outside of Virginia; ~~or~~

4. Provide cannabis products samples;

5. Endorse or promote a practitioner; or

6. Provide anything of value, directly or indirectly, to a practitioner.

B. No cannabis dispensing facility shall:

1. Dispense cannabis products in any place except the approved facility at the address of record on the application for the cannabis dispensing facility permit;

2. Sell, deliver, transport, or distribute cannabis products to any other facility, except for wholesale distribution pursuant to 3VAC10-40-50; or

3. Provide cannabis product samples.

C. No cannabis cultivation facility shall:

1. Sell, deliver, transport, or distribute cannabis to any other facility, except for the pharmaceutical processor that established the cannabis cultivation facility;

2. Produce, manufacture, or dispense cannabis products; or

3. Provide cannabis samples.

D. When a pharmacist is not on the premises and directly supervising the activity within the dispensing area of the pharmaceutical processor or a cannabis dispensing facility:

1. The dispensing area shall not be open or in operation;

2. No person shall be in the dispensing area unless all cannabis products are contained in a vault or other similar container to which only the pharmacist has access controls; and

3. The dispensing area shall be closed and properly secured.

E. Employee access to secured areas designated for cultivation and production, as authorized by the responsible party pursuant to § 4.1-1602 of the Code of Virginia, is permissible when a pharmacist is not on the premises.

F. No pharmaceutical processor or cannabis dispensing facility shall sell anything other than cannabis products except for devices for administration of dispensed products or hemp-based CBD products.

G. Except as provided in subsections H and I of this section, no person other than a medical cannabis facility employee, a patient, parent, legal guardian, registered agent, or a companion of a patient shall be allowed on the premises of a processor or facility.

H. Laboratory staff may enter a pharmaceutical processor or cannabis cultivation facility for the sole purpose of identifying and collecting cannabis or cannabis products samples to conduct laboratory tests.

I. A medical cannabis facility may submit a written request for entry by other persons to the board or the board's authorized representative.

J. An employee of a business that is contracted by a pharmaceutical processor may be allowed on the premises of the processor to perform the employee's duties (e.g. security, cleaning, electrical, plumbing) without requesting board authorization. The pharmaceutical processor should apply the requirements for visitor access found in subsection K of this section to the contracted employee.

K. All persons who the board or the board’s representative has authorized in writing to enter the medical cannabis facility shall obtain a visitor identification badge from a medical cannabis facility employee prior to entering the processor or facility.

1. An employee shall escort and monitor an authorized visitor at all times the visitor is in the medical cannabis facility.

2. The visitor identification badge shall remain visible at all times the visitor is in the medical cannabis facility, and the visitor shall return the visitor identification badge to an employee upon exiting the medical cannabis facility.

3. All visitors shall log in and out. The medical cannabis facility shall maintain the visitor log that shall include the date, time, and purpose of the visit and be available to the board.

4. If an emergency requires the presence of a visitor and makes it impractical for the medical cannabis facility to obtain prior authorization from the board, the medical cannabis facility shall provide written notice to the board as soon as practicable after the onset of the emergency. Such notice shall include the name and company affiliation of the visitor, the purpose of the visit, and the date and time of the visit. A medical cannabis facility shall monitor the visitor and maintain a log of such visit as required by this subsection.

L. No cannabis products shall be sold, dispensed, or distributed via a delivery service or any other manner outside of a pharmaceutical processor or cannabis dispensing facility; however, a parent, legal guardian, or registered agent or an agent of the processor or cannabis dispensing facility may deliver cannabis products to the patient or in accordance with 3VAC10-50-80 A.

M. Notwithstanding the requirements of subsection G of this section, an agent of the board or local law enforcement or other federal, state, or local government officials may enter any area of a medical cannabis facility if necessary to perform such individual's governmental duties.

**3VAC10-40-40. ~~Reserved~~ Electronic tracking.**

A. A pharmaceutical processor must implement and maintain an electronic tracking system as prescribed by the authority.

B. A pharmaceutical processor shall identify, monitor, and track all cannabis through a unique identifier assigned at seed acquisition or plant propagation.

C. A pharmaceutical processor shall maintain a record of all cannabis through cultivation and processing until transferred, distributed to qualifying patients, parents, legal guardians, or registered agents, or otherwise disposed of according to 3VAC10-50-110.

Part II

~~Cannabis Production,~~ Wholesale Distribution~~,~~ and Inventory

**3VAC10-40-50. Wholesale distribution of cannabis products, bulk cannabis oil, botanical cannabis, and usable cannabis.**

A. Cannabis oil, cannabis products, botanical cannabis, and usable cannabis from a batch that have passed the tests required in 3VAC10-60-20 G and H and are packaged and labeled for sale with an appropriate expiration date in accordance with 3VAC10-60-20 may be wholesale distributed between pharmaceutical processors, between a pharmaceutical processor and a cannabis dispensing facility, and between cannabis dispensing facilities.

B. Bulk cannabis oil, botanical cannabis, and usable cannabis that have not been packaged for sale and have not passed the tests required in 3VAC10-60-20 G and H and do not bear an appropriate expiration date may be wholesale distributed between pharmaceutical processors. Prior to distribution, the bulk cannabis oil, botanical cannabis, and usable cannabis shall be labeled in compliance with 3VAC10-70-30.

C. A pharmaceutical processor or cannabis dispensing facility engaged in wholesale distribution of cannabis products shall create a record of the transaction that shows (i) the date of distribution; (ii) the names and addresses of the processor or cannabis dispensing facility distributing the product and the processor or cannabis dispensing facility receiving the product; (iii) the kind and quantity of product being distributed; and (iv) the batch and lot identifying information ~~to include harvest date~~, including testing date, processing or manufacturing date, and expiration date. The record of the transaction shall be maintained by the distributing pharmaceutical processor or cannabis dispensing facility with its records of distribution, and a copy of the record shall be provided to and maintained by the processor or facility receiving the product in its records of receipt. Such records shall be maintained by each processor or facility for three years in compliance with 3VAC10-40-200.

D. A pharmaceutical processor engaged in wholesale distribution of bulk cannabis oil, botanical cannabis, and usable cannabis shall create a record of the transaction.

1. The record of the transaction shall show (i) the date of distribution; (ii) the names and addresses of the processor distributing the bulk cannabis oil, botanical cannabis, and usable cannabis and the processor receiving the bulk cannabis oil, botanical cannabis, and usable cannabis; (iii) the quantity or weight of the cannabis oil, botanical cannabis, or usable cannabis in each container; (iv) the quantity of each type of container being distributed; (v) the identification of the contents of each container, including a brief description of the type or form of cannabis oil, botanical cannabis, or usable cannabis and the strain name, as appropriate; (vi) the lot or batch number or unique identifier so as to facilitate any warnings or recalls the board or pharmaceutical processor deem appropriate; and (vii) the dates of harvest and packaging.

2. The record of the transaction shall be maintained by the distributing pharmaceutical processor with its records of distribution, and a copy of the record shall be provided to and maintained by the processor receiving the product in its records of receipt.

3. Such records shall be maintained by each processor for three years in compliance with 3VAC10-40-200.

E. A pharmaceutical processor or cannabis dispensing facility engaged in the wholesale distribution of cannabis products shall provide the receiving processor or cannabis dispensing facility with a copy of the lab results for the distributed product or electronic access to the information that can be shared upon request to patients, parents, legal guardians, registered agents,

practitioners who have certified qualifying patients, or an agent of the board.

F. A pharmaceutical processor or cannabis dispensing facility engaged in the wholesale distribution of cannabis products and pharmaceutical processors engaged in the wholesale distribution of bulk cannabis oil, botanical cannabis, and usable cannabis shall store and handle the items and maintain policies and procedures that include a process for executing or responding to mandatory and voluntary recalls in a manner that complies with 3VAC10-40-210.

G. If a pharmaceutical processor or cannabis dispensing facility participating in wholesale distribution uses an electronic system for the storage and retrieval of records related to distribution, the pharmaceutical processor shall use a system that is compliant with 3VAC10-40-200.

**3VAC10-40-60. Inventory requirements.**

A. ~~Each~~ Upon commencing operation, each medical cannabis facility ~~prior to commencing business~~ shall~~: 1. Conduct~~ conduct an initial comprehensive inventory of all cannabis plants, including the seeds, parts of plants, extracts, and cannabis products, at the facility. If a facility commences business with no cannabis or cannabis products on hand, the pharmacist or responsible party shall record this fact as the initial inventory.

~~2. Establish ongoing inventory controls and procedures for the conduct of inventory reviews and comprehensive inventories of all cannabis plants, including the seeds, parts of plants, extracts, and cannabis products, that shall enable the facility to detect any diversion, theft, or loss in a timely manner.~~

B. Each medical cannabis facility shall establish ongoing inventory controls and procedures to conduct inventory reviews and comprehensive inventories of all cannabis plants, including the seeds, parts of plants, extracts, and cannabis products, that shall enable the facility to detect any diversion, theft, or loss in a timely manner.

C. For all inventories conducted by a medical cannabis facility:

1. The responsible party shall ensure all required inventories are performed in the cultivation and production areas, and the PIC shall ensure all required inventories are performed in the dispensing area.

2. The inventory shall be conducted by a pharmacist, pharmacy technician, responsible party, or person authorized by the responsible party who provides supervision of cultivation or production-related activities.

3. The inventories shall include, at a minimum, the date of the inventory, a summary of the inventory findings, and the name, signature, and title of the person who conducted the inventory.

~~C.~~ D. Upon commencing ~~business~~ operation, each pharmaceutical processor shall conduct a weekly inventory of all cannabis plants, including the seeds, parts of plants, and cannabis products in stock, that shall comply with the requirements of subsection ~~B~~ C of this section.

~~D.~~ E. Upon commencing ~~business~~ operation, each cannabis dispensing facility shall maintain a perpetual inventory of all cannabis products received and dispensed that accurately indicates the physical count of each cannabis product on hand at the time of performing the inventory. The perpetual inventory shall include a reconciliation of each cannabis product at least monthly with a written explanation for any difference between the physical count and the theoretical count.

~~E.~~ F. Upon commencing ~~business~~ operation, each cannabis cultivation facility shall conduct a weekly inventory of all cannabis plants, including the seeds and parts of plants, in stock that shall comply with the requirements of subsection ~~B~~ C of this section.

~~F.~~ G. The record of all cannabis products sold, dispensed, or otherwise disposed of shall show the date of sale or disposition; the name of the pharmaceutical processor or cannabis dispensing facility; the name and address of the patient, parent, legal guardian, or registered agent to whom the cannabis product was sold; the kind and quantity of cannabis product sold or disposed of; and the method of disposal.

~~G.~~ H. A complete and accurate record of all cannabis plants, including the seeds, parts of plants, and cannabis products on hand, shall be prepared annually on the anniversary of the initial inventory or such other date that the PIC or responsible party may choose, so long as it is not more than one year following the prior year's inventory.

~~H.~~ I. All inventories, procedures, and other documents required by this section shall be maintained on the premises and made available to the board or its agent.

~~I.~~ J. Inventory records shall be maintained for three years from the date the inventory was taken.

~~J.~~ K. Whenever a person authorized to enforce state or federal law for the purpose of investigation or as evidence removes any sample or record, such person shall tender a receipt in lieu thereof and the receipt shall be kept for a period of at least three years.

**3VAC10-40-100. Employee training.**

A. All employees of a medical cannabis facility shall complete training prior to the employee commencing work at the medical cannabis facility. At a minimum, the training shall be in the following areas:

1. The proper use of security measures and controls that have been adopted for the prevention of diversion, theft, or loss of

cannabis, ~~to include~~ including the seeds, any parts or extracts of the cannabis plants, and cannabis products;

2. Procedures and instructions for responding to an emergency;

3. Professional conduct, ethics, and state and federal statutes and regulations regarding patient confidentiality; and

4. Developments in the field of the medical use of cannabis products.

B. The PIC and the responsible party shall ensure the continued competency of all employees~~,~~ in the respective areas for which they have oversight~~,~~ through continuing in-service training that is provided at least annually, is designed to supplement initial training, and includes any guidance specified by the board.

C. The PIC and the responsible party shall be responsible for maintaining a written record documenting the initial and continuing training of all ~~their~~ respective employees that shall contain:

1. The name of the person receiving the training;

2. The dates of the training;

3. A general description of the topics covered;

4. The name of the person supervising the training; and

5. The signatures of the person receiving the training and the PIC or the responsible party.

D. When a change of PIC or responsible party for the medical cannabis facility occurs, the new PIC or responsible party shall review the training record and sign it, indicating that the new PIC or responsible party understands its contents.

E. A medical cannabis facility shall maintain the record documenting the employee training and make it available in accordance with regulations.

**3VAC10-40-120. Responsibilities of the responsible party.**

A. A person may only serve as the responsible party for one pharmaceutical processor or cannabis cultivation facility at any one time. The responsible party shall be employed full time in a managerial position at the location of the pharmaceutical processor or cannabis cultivation facility and shall be actively engaged in daily operations of the processor during normal hours of operation.

B. The responsible party shall be aware of and knowledgeable about all policies and procedures pertaining to the operations of the pharmaceutical processor or cannabis cultivation facility.

C. The responsible party shall ensure compliance with all security measures to protect the cannabis within the cultivation and production areas from diversion at all times and ensure that cultivation and production is performed in a safe and compliant manner and free of adulteration and misbranding.

D. The responsible party shall be responsible for ensuring that:

1. All employees practicing in the cultivation and production areas are properly trained;

2. All record retention requirements are met;

3. All requirements are met for the physical security of the cannabis, ~~to include~~ including the seeds, any parts or extracts of the cannabis plants, and the cannabis products within the cultivation and production area; and

4. Any other required filings or notifications regarding the cultivation and production areas are made on behalf of the processor as set forth in this chapter.

E. When the responsible party ceases practice at a pharmaceutical processor or cannabis cultivation facility or no longer wishes to be designated as the responsible party, the responsible party shall immediately ~~return the pharmaceutical processor permit to~~ notify the board ~~indicating~~ and indicate the effective date on which the responsible party ceased or will cease to be the responsible party.

~~F. The outgoing responsible party shall have the opportunity to take a complete and accurate inventory of all cannabis, to include plants, extracts, or cannabis products on hand in the cultivation and production areas, on the date he ceases to be the responsible party unless the owner submits written notice to the board showing good cause as to why this opportunity should not be allowed.~~

~~G.~~ F. A responsible party who is absent from ~~practice~~ a pharmaceutical processor or cannabis cultivation facility for more than 30 consecutive days shall be deemed to no longer be the responsible party. If the responsible party knows of an upcoming absence of longer than 30 days, the responsible party shall be responsible for notifying the board ~~and returning the permit~~. For unanticipated absences by the responsible party that exceed 15 days with no known return date within the next 15 days, the permit holder shall immediately notify the board and shall obtain a new responsible party.

~~H. An application for a permit designating the new responsible party shall be filed with the required fee within 14 days of the original date of resignation or termination of the responsible party in a manner provided by the board.~~ G. If the responsible party resigns or otherwise ceases employment, the pharmaceutical processor or cannabis cultivation facility shall submit a change of responsible party application designating the new responsible party within 14 days of the former responsible party's resignation or termination date. It shall be unlawful for a pharmaceutical processor to operate without a new ~~permit~~ responsible party designated past the 14-day deadline unless the board receives a request for an extension prior to the deadline. The ~~chair of the board, or the chair's~~

~~designee,~~ authority may grant an extension for up to an additional 14 days for good cause shown.

**3VAC10-40-130. Responsibilities of the PIC.**

A. The PIC of a pharmaceutical processor shall not serve as PIC of any other medical cannabis facility at any one time. A processor shall employ the PIC at the pharmaceutical processor for at least 35 hours per week, except as otherwise authorized by the board. A person may serve simultaneously as the PIC for no more than two cannabis dispensing facilities located within the same health service area at any one time.

B. The PIC or the pharmacist on duty shall control all aspects of the practice in the dispensing area of the pharmaceutical processor or in a cannabis dispensing facility. Any decision overriding such control of the PIC or other pharmacist on duty may be grounds for disciplinary action against the pharmaceutical processor or cannabis dispensing facility permit.

C. The PIC of a pharmaceutical processor or cannabis dispensing facility shall be responsible for ensuring that:

1. Pharmacy technicians are registered and properly trained;

2. All record retention requirements pertaining to the dispensing area are met;

3. All requirements for the physical security of the cannabis products are met;

4. The pharmaceutical processor or cannabis dispensing facility has appropriate pharmaceutical reference materials to ensure that cannabis products can be properly dispensed;

5. The following items are conspicuously posted in the pharmaceutical processor or cannabis dispensing facility in a location and in a manner so as to be clearly and readily identifiable to patients, parents, legal guardians, or registered agents:

a. Pharmaceutical processor permit or cannabis dispensing facility permit;

b. Licenses for all pharmacists practicing at the pharmaceutical processor or cannabis dispensing facility; and

c. The price of all cannabis products offered by the pharmaceutical processor or cannabis dispensing facility; and

6. Any other required filings or notifications are made on behalf of the dispensing area of the pharmaceutical processor or the dispensing facility as set forth in this chapter.

D. When the PIC ceases practice at a pharmaceutical processor or cannabis dispensing facility or no longer wishes to be designated as PIC, the PIC shall immediately return the permit to the board indicating the effective date on which the PIC ceased to be the PIC.

~~E. An outgoing PIC shall have the opportunity to take a complete and accurate inventory of all cannabis products on hand in the dispensing area of the pharmaceutical processor or the dispensing facility on the date the PIC ceases to be the PIC, unless the owner submits written notice to the board showing good cause as to why this opportunity should not be allowed.~~

~~F.~~ E. A PIC who is absent from practice for more than 30 consecutive days shall be deemed to no longer be the PIC. If the PIC knows of an upcoming absence of longer than 30 days, the PIC shall be responsible for notifying the board ~~and returning the permit~~. For unanticipated absences by the PIC that exceed 15 days with no known return date within the next 15 days, the permit holder shall immediately notify the board and shall obtain a new PIC.

~~G. An application for a permit designating the new PIC shall be filed with the required fee within 14 days of the original date of resignation or termination of the PIC on a form provided by the board~~ F. If the PIC resigns or otherwise ceases employment, the pharmaceutical processor or cannabis dispensing facility shall submit a change of PIC application within 14 days of the PIC's resignation or termination date. It shall be unlawful for a pharmaceutical processor or cannabis dispensing facility to operate without a new ~~permit~~ PIC designated past the 14-day deadline unless the board receives a request for an extension prior to the deadline. The ~~executive director for the board~~ authority may grant an extension for up to an additional 14 days for good cause shown.

**3VAC10-40-140. Security requirements.**

A. A pharmaceutical processor shall initially cultivate only the number of cannabis plants necessary to produce cannabis products for the number of patients anticipated within the first nine months of operation. Thereafter, the processor shall not maintain cannabis product in excess of the quantity required for normal, efficient operation.

B. At no time shall a cannabis dispensing facility maintain cannabis products in excess of the quantity required for normal, efficient operation.

C. A medical cannabis facility shall properly secure cannabis plants, seeds, parts of plants, extracts, and cannabis products. To secure these items, a medical cannabis facility shall:

1. Maintain all cannabis plants, seeds, parts of plants, extracts, and cannabis products in a secure area or location accessible only by the minimum number of authorized employees essential for efficient operation;

2. Store all cut parts of cannabis plants, extracts, or cannabis products in an approved safe or approved vault within the medical cannabis facility and not sell cannabis products when the regulated cannabis facility is closed;

3. Keep all approved safes, approved vaults, or any other approved equipment or areas used for the production, cultivation, harvesting, processing, manufacturing, or

storage of cannabis products securely locked or protected from entry, except for the actual time required to remove or replace the cannabis, seeds, parts of plants, extracts, or cannabis products;

4. Keep all locks and security equipment in good working order;

5. Restrict access to keys or codes to all safes, approved vaults, or other approved equipment or areas in the dispensing area to pharmacists practicing at the pharmaceutical processor or cannabis dispensing facility;

6. Restrict access to keys or codes to all safes, approved vaults, or other approved equipment or areas in the cultivation and production areas to the responsible party and to those authorized by the responsible party. The responsible party shall authorize access to pharmacists practicing in the processor or persons supervising cultivation-related or production-related activities at the processor; and

7. Not allow keys to be left in the locks or otherwise accessible to persons not authorized by the PIC or responsible party.

D. The PIC or responsible party may designate employees, other than a pharmacist or person supervising cultivation-related or production-related activities at the processor, to have the ability to unlock a secured area to gain entrance to perform required job duties, but only during hours of operation of the processor or dispensing facility. At no time shall these employees have access to the security system.

E. The regulated cannabis facility shall have an adequate security system to prevent and detect diversion, theft, or loss of cannabis seeds, plants, extracts, or cannabis products. A failure notification system and a back-up alarm system with an ability to remain operational during a power outage shall be installed in each pharmaceutical processor or cannabis dispensing facility. The installation and the operation of the system shall meet accepted alarm industry standards, subject to the following conditions:

1. The system shall include a sound, microwave, photoelectric, ultrasonic, or other generally accepted and suitable device;

2. The system shall be monitored in accordance with accepted industry standards, be maintained in operating order, have an auxiliary source of power, and be capable of sending an alarm signal to the monitoring entity when breached if the communication line is not operational;

3. The system shall fully protect the entire processor or facility and shall be capable of detecting any failure in the system when activated;

4. The system shall include a duress alarm, a panic alarm, and an automatic voice dialer;

5. Access to the alarm system for the dispensing area of the pharmaceutical processor or cannabis dispensing facility shall be restricted to the pharmacists working at the pharmaceutical processor or cannabis dispensing facility, and the system shall be activated whenever the pharmaceutical processor or cannabis dispensing facility is closed for business; and

6. Access to the alarm system in a cannabis cultivation facility or areas of a pharmaceutical processor that are designated for cultivation and production shall be restricted to the responsible party and to those authorized by the responsible party who shall be the pharmacists practicing at the pharmaceutical processor or person supervising cultivation-related or production-related activities.

F. A medical cannabis facility shall keep the outside perimeter of the premises well lit.

G. A medical cannabis facility shall have video cameras in all areas that may contain cannabis plants, seeds, parts of plants, extracts, or cannabis products and at all points of entry and exit, which shall be appropriate for the normal lighting conditions of the area under surveillance.

1. The medical cannabis facility shall direct cameras at all approved safes, approved vaults, dispensing areas, or cannabis products sales areas, and any other area where cannabis plants, seeds, extracts, or cannabis products are being produced, harvested, manufactured, stored, or handled. At entry and exit points, the medical cannabis facility shall angle cameras so as to allow for the capture of clear and certain identification of any person entering or exiting the facility;

2. The video system shall have:

a. A failure notification system that provides an audible, text, or visual notification of any failure in the surveillance system. The failure notification system shall provide an alert to the medical cannabis facility within five minutes of the failure, either by telephone, email, or text message;

b. The ability to immediately produce a clear color still photo that is a minimum of 9600 dpi from any camera image, live or recorded;

c. A date and time stamp embedded on all recordings. The date and time shall be synchronized and set correctly and shall not significantly obscure the picture; and

d. The ability to remain operational during a power outage;

3. All video recordings shall allow for the exporting of still images in an industry standard image format. Exported video shall have the ability to be archived in a proprietary format that ensures authentication of the video and guarantees that no alteration of the recorded image has taken place. Exported video shall also have the ability to be saved in an industry standard file format that can be played on a standard computer operating system~~. A medical cannabis facility~~

~~shall erase all recordings prior to disposal or sale of the facility~~; and

4. The medical cannabis facility shall make 24-hour recordings from all video cameras available for immediate viewing by the board or the board's agent upon request and shall retain the recordings for at least 30 days. If a medical cannabis facility is aware of a pending criminal, civil, or administrative investigation or legal proceeding for which a recording may contain relevant information, the medical cannabis facility shall retain an unaltered copy of the recording until the investigation or proceeding is closed or the entity conducting the investigation or proceeding notifies the medical cannabis facility PIC or responsible party that it is not necessary to retain the recording.

H. The medical cannabis facility shall maintain all security system equipment and recordings in a secure location so as to prevent theft, loss, destruction, or alterations. All security equipment shall be maintained in good working order and shall be tested at least every six months. The pharmaceutical processor or cannabis dispensing facility shall keep all onsite surveillance rooms locked and shall not use such rooms for any other function.

I. A medical cannabis facility shall limit access to surveillance areas to persons who are essential to surveillance operations, law-enforcement agencies, security system service employees, the board or the board's agent, and others when approved by the board. A medical cannabis facility shall make available a current list of authorized employees and security system service employees who have access to the surveillance room of the processor or facility.

J. If diversion, theft, or loss of cannabis plants, seeds, parts of plants, extracts, or cannabis products has occurred from a medical cannabis facility, the board may require additional safeguards to ensure the security of the products.

**3VAC10-40-150. Reportable events.**

A. ~~Upon~~ A medical cannabis facility shall immediately notify appropriate law-enforcement authorities and the board upon becoming aware of ~~(i) diversion~~ any of the following:

1. Diversion, theft, loss, or discrepancies identified during inventory;

~~(ii) unauthorized~~ 2. Unauthorized destruction of any cannabis products; or

~~(iii) any~~ 3. Any loss or unauthorized alteration of records related to cannabis products or qualifying patients~~, a pharmacist, responsible party, or medical cannabis facility shall immediately notify appropriate law enforcement authorities and the board~~.

B. A ~~pharmacist, responsible party, or~~ medical cannabis facility shall provide the notice required by subsection A of this section to the board by way of a signed statement that details the circumstances of the event, including an accurate inventory of the quantity and registered cannabis product names of cannabis product diverted, stolen, lost, destroyed, or damaged and confirmation that the local law-enforcement authorities were notified. A ~~pharmacist, responsible party, or~~ medical cannabis facility shall make such notice no later than 24 hours after discovery of the event.

C. A ~~pharmacist, responsible party, or~~ medical cannabis facility shall notify the board no later than the next business day, followed by written notification no later than 10 business days, of any of the following:

1. An alarm activation or other event that requires a response by public safety personnel;

2. A breach of security; or

3. The failure of the security alarm system due to a loss of electrical support or mechanical malfunction that is expected to last longer than eight hours~~; and 4. Corrective measures taken, if any~~.

D. In addition to the notice required by subsection C of this section, the medical cannabis facility shall provide written notification to the board no later than 10 business days that details the circumstances of the event and identifies corrective measures taken, if any.

E. A pharmacist, responsible party, pharmaceutical processor, or cannabis dispensing facility shall immediately notify the board of an employee convicted of a felony.

F. A medical cannabis facility shall immediately notify the board upon becoming aware or having reasonable suspicion of a violation of any provision of 3VAC10-30-30 or 3VAC10-30-40.

**3VAC10-40-160. General provisions.**

A medical cannabis facility may engage in marketing activities related to products, the medical cannabis program, the pharmaceutical processor company, and related communications, except those marketing activities that:

1. Include false or misleading statements;

2. Promote excessive consumption;

3. Depict a person younger than 21 years of age consuming cannabis;

4. Include any image designed or likely to appeal to minors, specifically including cartoons, toys, animals, fruit, children, or any other likeness to images, character, or phrases that are popularly used to advertise to children;

5. Depict products or product packaging or labeling that bears reasonable resemblance to any product legally available for consumption as a candy or that promotes cannabis consumption; or

6. Contain any seal, flag, crest, coat of arms, or other insignia that is likely to mislead patients or the general public to believe that the cannabis product has been endorsed, made, or used by the Commonwealth of Virginia or any of its representatives except where specifically authorized.

**3VAC10-40-170. Prohibited practices.**

A. A medical cannabis facility shall not advertise (i) through any means unless at least 85% of the audience is reasonably expected to be 18 years of age or older, as determined by reliable, up-to-date audience composition data or (ii) on television or the radio at any time outside of regular school hours for elementary and secondary schools.

B. Advertising shall not:

1. Display cannabis products or images of products where the advertisement is visible to members of the public from any street, sidewalk, park, or other public place; ~~and~~ or

2. Include coupons, giveaways of free cannabis products, or distribution of merchandise that displays anything other than the facility name and contact information.

C. No outdoor cannabis product advertising shall be placed within ~~1,000~~ 500 feet of (i) a school or daycare~~;~~, (ii) a public or private playground or similar recreational or child-centered facility~~;~~, or (iii) a substance use disorder treatment facility.

D. Signs placed on the property of a medical cannabis facility shall not:

1. Display imagery of cannabis or the use of cannabis ~~or utilize long luminous gas discharge tubes that contain rarefied neon or other gases~~; or

2. Draw undue attention to the facility, but may be designed to assist patients, parents, legal guardians, and registered agents to find the medical cannabis facility~~; or~~

~~3. Be illuminated during nonbusiness hours~~.

E. A medical cannabis facility shall not advertise at any sporting event or use any billboard advertisements.

F. No cannabis product advertising shall be on or in a public transit vehicle, public transit shelter, bus stop, taxi stand, transportation waiting area, train station, airport, or any similar transit-related location.

G. No advertising shall be conducted through the marketing of free promotional items, including gifts and "free" or "donated" cannabis.

**3VAC10-40-190. Advertising requirements.**

A. Advertising must accurately and legibly identify the medical cannabis facility responsible for its content and include a statement that cannabis products are for use by patients only.

B. Any advertisement for cannabis products that is related to the benefits, safety, or efficacy, including therapeutic or medical claims, shall:

1. Be supported by substantial, current clinical evidence or data; and

2. Include information on side effects or risks associated with the use of cannabis.

~~B.~~ C. Any website or social media site owned, managed, or operated by a medical cannabis facility shall employ a neutral age-screening mechanism that verifies that the user is at least 18 years of age, including by using an age-gate, age-screen, or age verification mechanism.

~~C.~~ D. All outdoor signage must comply with local or state requirements.

Part V

Records, Storage, and ~~Administration~~ Transportation

**3VAC10-40-210. Storage and handling requirements.**

A. A medical cannabis facility shall:

1. Have storage areas that provide adequate lighting, ventilation, sanitation, space, equipment, and security conditions for the cultivation of cannabis and the production and dispensing of cannabis products;

~~2. Have storage areas with temperature and humidity maintained in the following ranges:~~

| ~~Room or Phase~~ | ~~Temperature~~ | ~~Humidity~~ |
|---|---|---|
| ~~Mother room~~ | ~~65 - 85° F~~ | ~~50% - 75%~~ |
| ~~Nursery phase~~ | ~~65 - 85° F~~ | ~~50% - 75%~~ |
| ~~Vegetation phase~~ | ~~65 - 85° F~~ | ~~50% - 75%~~ |
| ~~Flower/harvest phase~~ | ~~65 - 85° F~~ | ~~40% - 75%~~ |
| ~~Drying/extraction rooms~~ | ~~< 75° F~~ | ~~40% - 75%~~ |

~~3.~~ 2. Store cannabis plants, seeds, parts of plants, extracts, including cannabis products, that are outdated, damaged, deteriorated, misbranded, adulterated, or whose containers or packaging have been opened or breached, in a separate quarantined storage area until such cannabis plants, seeds, parts of plants, extracts, or cannabis products are destroyed;

~~4.~~ 3. Be maintained in a clean, sanitary, and orderly condition; and

~~5.~~ 4. Be free from infestation by insects, rodents, birds, or vermin of any kind.

B. A medical cannabis facility shall compartmentalize all areas in the facility based on function and shall restrict access between compartments.

C. The pharmaceutical processor or cannabis cultivation facility shall establish, maintain, and comply with written policies and procedures regarding best practices for the secure and proper cultivation of cannabis and production of cannabis products. These shall include policies and procedures that:

1. Restrict movement between compartments;

2. Provide for different colored identification cards for employees based on the compartment to which the employees are assigned at a given time so as to ensure that only employees necessary for a particular function have access to that compartment of the facility;

~~3. Require pocketless clothing for all employees working in an area containing cannabis plants, seeds, and extracts, including cannabis oil and cannabis products;~~ and

~~4.~~ 3. Document the chain of custody of all cannabis plants, parts of plants, seeds, extracts, and cannabis products.

D. A cannabis dispensing facility shall establish, maintain, and comply with written policies and procedures regarding best practices for the secure and proper dispensing of cannabis products~~, including a requirement for pocketless clothing for all facility employees working in an area containing cannabis products~~.

E. The PIC or responsible party of a medical cannabis facility shall establish, maintain, and comply with written policies and procedures for the cultivation, production, security, storage, and inventory of cannabis, including the seeds, parts of plants, extracts, and cannabis products, as applicable. Such policies and procedures shall include methods for identifying, recording, and reporting diversion, theft, or loss and for correcting all errors and inaccuracies in inventories. Medical cannabis facilities shall include in their written policies and procedures a process for:

1. Handling mandatory and voluntary recalls of cannabis products and bulk cannabis oil, botanical cannabis, and usable cannabis distributed or received via wholesale distribution. The process shall be adequate to deal with recalls due to any action initiated at the request of the board and any voluntary action by the pharmaceutical processor or cannabis dispensing facility to (i) remove defective or potentially defective cannabis products from the market or (ii) promote public health and safety by replacing existing cannabis products with improved products or packaging;

2. Preparing for, protecting against, and handling any crises that affect the security or operation of any facility in the event of labor strike, fire, flood, or other natural disaster, or other situations of local, state, or national emergency;

3. Ensuring that any outdated, damaged, deteriorated, misbranded, or adulterated cannabis, including seeds, parts of plants, extracts, and cannabis products, is segregated from all other cannabis, seeds, parts of plants, extracts, and cannabis products and destroyed. This procedure shall provide for written documentation of the cannabis, including seeds, parts of plants, extracts, and cannabis product disposition; and

4. Ensuring the oldest stock of cannabis, including seeds, parts of plants, extracts, and cannabis products are used first. The procedure may permit deviation from this requirement if such deviation is temporary and appropriate.

F. The pharmaceutical processor or cannabis cultivation facility shall ~~store~~:

1. Store all cannabis, including seeds, parts of plants, extracts, and cannabis products, in the process of production, transfer, or analysis in such a manner as to prevent diversion, theft, or loss;

~~shall make~~ 2. Make cannabis, including the seeds, parts of plants, extracts, and cannabis products, accessible only to the minimum number of specifically authorized employees essential for efficient operation; and

~~shall return~~ 3. Return such items to their secure location immediately after completion of the production, transfer, or analysis process or at the end of the scheduled business day.

G. If a production process cannot be completed at the end of a working day, the pharmacist, responsible party, or other person authorized by the responsible party to supervise cultivation and production at the pharmaceutical processor or cannabis cultivation facility shall securely lock the processing area or tanks, vessels, bins, or bulk containers containing cannabis, including the seeds, parts of plants, extracts, and cannabis products, inside an area or building that affords adequate security.

~~G.~~ H. The cannabis dispensing facility shall store all cannabis products in such a manner as to prevent diversion, theft, or loss; shall make cannabis products accessible only to the minimum number of specifically authorized employees essential for efficient operation; and shall return the cannabis products to their secure location at the completion of the dispensing or at end of the scheduled business day.

**3VAC10-40-230. Cannabis delivery and transportation general requirements.**

A. Prior to transporting medical cannabis to another medical cannabis facility or offering cannabis delivery to patients, a medical cannabis facility shall submit the following items to the authority:

1. A list of the employees authorized to transport or deliver cannabis, along with a copy of each authorized employee's valid driver license; and

2. For each transport or delivery vehicle:

a. License plate number, vehicle identification number, make, and model;

b. An attestation that the vehicle is properly registered and insured;

c. A description of the locked, safe, and secure storage compartments in the vehicle; and

d. A description of the security system, form of secure communication, global positioning system (GPS) monitoring device, and any other equipment or system required pursuant to 3VAC10-40-240.

B. A medical cannabis facility shall provide written notice to the authority, along with the documentation required in subsection A of this section, in the event the facility adds or removes a transport or delivery vehicle or an authorized employee.

C. No medical cannabis facility shall advertise, offer, or commence delivery or transport operations prior to receiving written approval from the authority.

**3VAC10-40-240. Vehicle security.**

A. All transport or delivery vehicles shall be properly registered with the Commonwealth and be insured in the Commonwealth. Medical cannabis facilities shall maintain registration and insurance documents and provide the documents to the authority and law-enforcement officials upon request.

B. A transport or delivery vehicle shall bear no marking or outward appearance, including brand or company names, that would indicate to a reasonable person that the vehicle is used to transport cannabis.

C. At all times during the transportation of cannabis, a transport or delivery vehicle shall be equipped with the following functioning features:

1. Heating and air conditioning systems sufficient for maintaining appropriate temperatures for the storage of cannabis during transport in accordance with recommendations provided by the originating medical cannabis facility to protect the quality and integrity of the cannabis;

2. A locked, safe, and secure storage compartment where cannabis will be stored during transport that is (i) a secured part of the vehicle, (ii) not easily removed, and (iii) not visible from the outside of the vehicle;

3. A global positioning system (GPS) monitoring device that is secured to the vehicle in a manner not easily removed and able to remain powered on when the transport vehicle is not running, the information from which shall be maintained in accordance with 3VAC10-40-260;

4. A secure form of communication between the transporting agent and the transporting facility, and any originating facility if required by 3VAC10-40-260 G, at all times during the transportation of cannabis. Secure forms of communication shall include a two-way digital or analog radio, cellular telephone, and satellite telephone, taking into consideration the functionality of the communication device within the geographic area of the transport; and

5. An adequate vehicle security system to prevent adulteration, diversion, theft, and loss of cannabis, including an audible alarm system.

D. Access to transport vehicle security equipment and records shall be limited to (i) persons that are essential to security operations, (ii) law-enforcement agencies, (iii) security system service employees, (iv) the authority, and (v) other persons approved by the authority. A transporting facility shall maintain a current list of all individuals that have access to any transport vehicle security equipment and records.

E. The authority may inspect a transport or delivery vehicle as well as its equipment, including security systems, forms of secure communication, and GPS monitoring devices at any time without prior notice. If the authority determines that the transport or delivery vehicle does not satisfy the requirements of this section, or that such transport or delivery vehicle requires additional security measures to address public health and safety concerns, the medical cannabis facility shall not use the transport vehicle until such time as it receives a satisfactory inspection from the authority.

**3VAC10-40-250. Manifests.**

A. Prior to transporting cannabis between medical cannabis facilities or from a medical cannabis facility to a testing laboratory:

1. The originating facility shall prepare a transport manifest on a form and in a manner prescribed by the authority, itemizing all cannabis to be transported. A separate copy of the transport manifest shall be provided to the transporting employee to accompany the itemized cannabis at all times during transport.

2. The originating facility shall securely transmit a copy of the transport manifest to the receiving facility at least 24 hours prior to transport.

3. An authorized transportation employee shall review the transport manifest prepared by the originating facility and confirm that it accurately describes the type and quantity of cannabis in the transport vehicle to be transported by the transporting employee, in the aggregate and for each delivery.

B. Prior to delivering cannabis to a qualifying patient, parent, legal guardian, or registered agent:

1. The pharmaceutical processor or cannabis dispensing facility shall prepare a delivery manifest on a form and in a manner prescribed by the authority, itemizing all cannabis to be delivered. A separate copy of the delivery manifest shall

be provided to the delivery employee to accompany the itemized cannabis at all times during transport.

2. The delivery employee shall review the delivery manifest prepared by the medical cannabis facility and confirm that it includes sufficient identifying information for each patient, parent, legal guardian, or registered agent, including name and day and month of birth.

C. No transport vehicle shall carry any cannabis for which a manifest has not been provided, and all cannabis shall be packaged in sealed, labeled, and tamper-resistant packaging at all times.

**3VAC10-40-260. Transportation of cannabis.**

A. A transporting employee shall remain with the transport vehicle at all times that the vehicle contains cannabis, provided that if there is only one transporting employee, the transporting employee may leave the vehicle, which shall be securely locked, only for:

1. Delivering or transferring cannabis to a qualifying patient, parent, legal guardian, registered agent, or medical cannabis facility;

2. Meals, when the transport lasts more than three hours round trip;

3. Rest periods required by law;

4. Refueling; or

5. Exigent circumstances, including collisions, traffic stops, mechanical breakdowns, weather emergencies, or medical emergencies.

B. A transporting employee shall carry transportation credentials at all times during the transportation of cannabis and display such credentials to the appropriate persons at the originating facility prior to each instance of transportation of cannabis, and to any law-enforcement official or authorized authority representative upon request. For purposes of this section, "transportation credentials" shall mean the transporting employee's valid driver's license, a copy of the medical cannabis facility's permit, and all transport or delivery manifests for cannabis contained in the transport vehicle.

C. A transporting facility shall inspect and test all security systems, secure communications, and global positioning system (GPS) monitoring devices of each transport vehicle at least once per day of use, prior to the transport vehicle's first departure. The individual conducting the inspection on behalf of the transporting facility shall create a signed record of the inspection that includes (i) the name of the individual, (ii) the vehicle identification number of the transport vehicle, (iii) the date of inspection, and (iv) the status of all inspected systems, equipment, and devices. The transporting facility shall maintain all inspection records.

D. No transport vehicle shall transport cannabis unless every security system, form of secure communication, and GPS monitoring device is in good working order and functioning properly.

E. If any security system, form of secure communication, or GPS monitoring device fails during the transportation of cannabis, the transporting employee shall immediately notify the transporting facility and all impacted originating facilities of the specific failure and return directly to the transporting facility or originating facility. Such transport vehicle shall not resume transportation of cannabis until all systems resume full functioning capacity.

F. The transporting facility shall create a confidential delivery schedule within 24 hours of the transport and only provide the transporting employee with a copy of such confidential delivery schedule immediately prior to departure.

G. A transporting employee shall communicate with the transporting facility upon arriving at and departing from each scheduled delivery location.

H. A transporting employee shall strictly adhere to the delivery schedule provided by the transporting facility and not make any unscheduled stops. In the case of an emergency unscheduled stop, the transport vehicle shall remain securely locked, and the transporting employee shall verbally communicate with the transporting facility, describing the reason for the emergency unscheduled stop, the location and the duration of the emergency unscheduled stop, any activities of the transporting employee, and the identities and activities of any persons interacting with the transport vehicle or the transporting employee. The transporting facility shall maintain a record of any communications related to an unscheduled stop.

I. For a period of not less than 90 days, a transporting facility shall maintain a record of the GPS information of each of its transport vehicles for the entire duration of any transportation of cannabis and make such information available to the authority upon request. A transporting facility may contract with the GPS provider or similar service provider to conduct GPS monitoring, provided that any such third-party GPS monitor shall comply with all applicable state and federal laws regarding patient confidentiality.

J. A transporting employee shall return any undeliverable cannabis to the respective originating facility directly after the last scheduled delivery.

K. No cannabis shall be stored in a transport vehicle after the facility's hours of operation, and in no event longer than 24 hours, unless the vehicle is contained within an enclosed, secure part of the facility.

L. A transporting facility shall report to the authority and local law enforcement any transport vehicle accidents, transport vehicle theft, cannabis diversion, loss, or adulteration, and any

other event deemed by the authority to be a reportable event in connection with the transportation of cannabis within 24 hours of such event being discovered.

**3VAC10-40-270. Delivery to qualifying patients, parents, legal guardians, and registered agents.**

A. Medical cannabis facilities offering delivery shall require each qualifying patient, parent, legal guardian, or registered agent that purchases cannabis for delivery to provide the medical cannabis facility with the full legal name, date of birth, address, email address, and telephone number of the qualifying patient and, if applicable, the legal name, date of birth, and address of the parent, legal guardian, or registered agent.

B. For each delivery of cannabis to a qualifying patient, parent, legal guardian, or registered agent, a transporting employee shall confirm from a valid driver's license or other valid, government-issued photographic identification that the identity of the individual accepting the cannabis delivery is the same as the individual that ordered the cannabis and confirm the qualifying patient's registration number.

C. If the identity, age, or registration of the individual accepting the cannabis delivery remains in question after presentation of the required documentation, the transporting employee shall (i) immediately alert the originating facility and (ii) return the cannabis to the originating facility directly after the last scheduled delivery.

D. Medical cannabis may only be delivered to a residence in Virginia. "Residence" means a dwelling such as a house, apartment, nursing home, or retirement center. It does not include a dormitory, hotel, motel, bed and breakfast, or other commercial business.

E. Medical cannabis may only be delivered between the hours of 6 a.m. and midnight.

**3VAC10-40-280. Delivery and transportation incident notification.**

A. A pharmaceutical processor transporting or delivering medical cannabis must report any traffic stop, breakdown, collision, or unscheduled stop lasting more than two hours to the authority with 24 hours.

B. An originating facility's authorized employees shall make a good faith effort to contact the authority if exigent circumstances require removal of cannabis or cannabis products from the vehicle prior to arrival at the destination listed on the transport manifest. Authorized employees shall make a good faith effort to protect the shipment from diversion.

VA.R. Doc. No. R25-8121; Filed October 28, 2024, 5:19 p.m.

## Proposed Regulation

REGISTRAR'S NOTICE: The Board of Directors of the Virginia Cannabis Control Authority is claiming an exemption from the Administrative Process Act in accordance with § 4.1-1602 of the Code of Virginia, which exempts adoption of regulations if prior to adoption, the board publishes a notice of opportunity to comment in the Virginia Register of Regulations and posts the action on the Virginia Regulatory Town Hall. Such notice of opportunity to comment shall contain (i) a summary of the proposed regulation; (ii) the text of the proposed regulation; and (iii) the name, address, and telephone number of the agency contact person responsible for receiving public comments. Such notice shall be made at least 60 days in advance of the last date prescribed in such notice for submittals of public comment.

Title of Regulation: **3VAC10-50. Cannabis Products (amending 3VAC10-50-10, 3VAC10-50-50 through 3VAC10-50-80, 3VAC10-50-110).**

Statutory Authority: §§ 4.1-601, 4.1-604, and 4.1-606 of the Code of Virginia.

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: January 16, 2025.

Agency Contact: Jake Shuford, Legislative and Regulatory Manager, Virginia Cannabis Control Authority, 333 East Franklin Street, Richmond, VA 23219, telephone (804) 873-9038, or email jake.shuford@cca.virginia.gov.

Summary:

*The amendments (i) adopt a common practice in the industry of restricting non-cannabinoid additives that could increase the potency, toxicity, or addictive properties of cannabis to protect patients and the integrity of medicinal cannabis products; (ii) codify a list of previously approved chemicals for use in the cultivation, extraction, production, or manufacturing of cannabis products to avoid potential patient exposure to harmful chemicals; and (iii) ensure patients are offered the opportunity to consult with a pharmacist or pharmacy technician during the patient's initial visit to a dispensary. Other amendments relocate certain provisions within the medical cannabis program regulations and remove the redundant requirement for a pharmacist or pharmacy technician to physically witness certain actions that are required to be conducted under video surveillance.*

**3VAC10-50-10. Definitions.**

In addition to words and terms defined in the Cannabis Control Act (§ 4.1-600 et seq. of the Code of Virginia), the following words and terms when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise:

"90-day supply" means the amount of cannabis products reasonably necessary to ensure an uninterrupted availability of supply for a 90-day period for patients ~~with~~ either included on a valid, unexpired written certification issued by a practitioner ~~for the use of cannabis products~~ or established by a pharmacist during initial consultation.

~~"Batch" means a quantity of (i) cannabis oil from a production lot or (ii) harvested botanical cannabis product that is identified by a batch number or other unique identifier.~~

~~"Board" means the Board of Directors of the Cannabis Control Authority.~~

"Certification" means a written statement, consistent with requirements of § 4.1-1601 of the Code of Virginia, issued by a practitioner for the use of cannabis products for treatment of or to alleviate the symptoms of any diagnosed condition or disease determined by the practitioner to benefit from such use.

"Dispensing error" means one or more of the following was discovered after the final verification by the pharmacist, regardless of whether the patient received the product:

1. Variation from the intended product to be dispensed, including:

a. Incorrect product;

b. Incorrect product strength;

c. Incorrect dosage form;

d. Incorrect patient; or

e. Inadequate or incorrect packaging, labeling, or directions.

2. Failure to exercise professional judgment in identifying and managing:

a. Known therapeutic duplication;

b. Known drug-disease contraindications;

c. Known drug-drug interactions;

d. Incorrect drug dosage or duration of drug treatment;

e. Known drug-allergy interactions;

f. A clinically significant, avoidable delay in therapy; or

g. Any other significant, actual, or potential problem with a patient's drug therapy.

3. Delivery of a cannabis product to the incorrect patient.

4. An act or omission relating to the dispensing of cannabis product that results in, or may reasonably be expected to result in, injury to or death of a patient or results in any detrimental change to the medical treatment for the patient.

"Medical cannabis facility" means a pharmaceutical processor, cannabis dispensing facility, or cannabis cultivation facility.

~~"On duty" means that a pharmacist, the responsible party, or a person who is qualified to provide supervision in accordance with 3VAC10-30-90 is on the premises at the address of the permitted pharmaceutical processor and is available as needed.~~

"PIC" means the pharmacist-in-charge whose name is on the pharmaceutical processor or cannabis dispensing facility application for a permit that has been issued and who shall have oversight of the processor's dispensing area or cannabis dispensing facility.

"Production" or "produce" means the manufacture, planting, preparation, cultivation, growing, harvesting, propagation, conversion, or processing of marijuana for the creation of usable cannabis, botanical cannabis, or a cannabis product derived thereof, (i) directly or indirectly by extraction from substances of natural origin, (ii) independently by means of chemical synthesis, or (iii) by a combination of extraction and chemical synthesis. "Production" or "produce" includes any packaging or repackaging of the substance or labeling or relabeling of its container.

"Qualifying patient" means a Virginia resident who has received from a practitioner, as defined in § 4.1-1600 of the Code of Virginia, a written certification for the use of cannabis products for treatment of or to alleviate the symptoms of any diagnosed condition or disease.

"Registration" means an identification card or other document issued by the board that identifies a person as a qualifying patient, parent, legal guardian, or registered agent that has voluntarily registered with the board.

~~"Responsible party" means the person designated on the pharmaceutical processor application who shall have oversight of the cultivation and production areas of the pharmaceutical processor.~~

**3VAC10-50-50. Cultivation and production of cannabis products.**

A. No cannabis products shall have had pesticide chemicals or petroleum-based solvents, except for hydrocarbon-based solvents described in this chapter, used during the cultivation, extraction, production, or manufacturing process, except that the board may authorize the use of pesticide chemicals for purposes of addressing an infestation that could result in a catastrophic loss of cannabis crops.

B. No cannabis product shall contain any of the following:

1. Any regulated drug or controlled substance other than cannabis.

2. Non-cannabinoid additives that are psychotropic or would increase the potency, toxicity, or addictive properties of cannabis, including alcohol, caffeine, and nicotine. This prohibition shall not apply to the combination of cannabis with sugar or a product in which caffeine is naturally occurring, such as chocolate.

C. Cultivation methods for cannabis plants, extraction methods used to produce the cannabis products, and the

manufacturing of cannabis products shall be performed in a manner deemed safe and effective based on current standards or scientific literature.

1. The cultivation, extraction, production, and manufacturing of cannabis products may include the use of hydrocarbon-based solvents as described in 3VAC10-50-60.

2. The cultivation, extraction, production, and manufacturing of cannabis products may include any other generally accepted technology, provided that:

a. The pharmaceutical processor complies with any applicable requirements contained in 3VAC10-50-60 regarding flammable solvents as defined in that section;

b. The pharmaceutical processor complies with any licensing, permitting, and general safety laws or regulations of any state or federal agency that governs the technology and the use of such technology; and

c. The pharmaceutical processor maintains sole responsibility for any adverse outcomes or violations of state or federal laws or regulations caused by such use.

~~C.~~ D. Any cannabis plant, seed, parts of plant, extract, or cannabis products not in compliance with this section shall be deemed adulterated.

~~D.~~ E. A pharmaceutical processor may acquire industrial hemp extract, including isolates and distillates, for the purpose of formulating such extracts into allowable dosages of cannabis products provided:

1. The pharmaceutical processor acquires the extracts from industrial hemp extract processed in Virginia and in compliance with state or federal law from a registered industrial hemp dealer or processor;

2. The extracts from industrial hemp acquired by a pharmaceutical processor is subject to the same third-party testing requirements applicable to cannabis plant extract as verified by testing performed by a laboratory located in Virginia and in compliance with state law; and

3. The industrial hemp dealer or processor provides such third-party testing results to the pharmaceutical processor before extracts from industrial hemp are acquired.

~~E.~~ F. A pharmaceutical processor acquiring industrial hemp extract shall ensure receipt of a record of the transaction that shows the date of distribution, the names and addresses of the registered industrial hemp dealer or processor distributing the product and the pharmaceutical processor receiving the product, and the kind and quantity of product being distributed. The record of the transaction shall be maintained by the pharmaceutical processor with its records of receipt. Such records shall be maintained by each pharmaceutical processor for three years.

~~F.~~ G. A pharmaceutical processor shall maintain policies and procedures for the proper storage and handling of industrial hemp extracts, ~~to include~~ including a process for executing or responding to mandatory and voluntary recalls in a manner that complies with 3VAC10-40-210.

~~G.~~ H. No cannabis oil intended to be vaporized or inhaled shall contain vitamin E acetate.

**3VAC10-50-60. Use of hydrocarbon-based solvents or other flammable solvents.**

A. The following words and phrases used in this section have the following meaning:

1. "Closed-loop system" means machinery in which volatile hydrocarbon substances are self-contained without the loss or escape of those substances.

2. "Flammable solvent" means a liquid that has a flash point below 100 degrees Fahrenheit. Flammable solvents include hydrocarbon-based solvents.

3. "Hydrocarbon-based solvent" means a type of solvent composed of hydrogen and carbon compounds, such as N-butane, isobutene, propane, or any isomer or combination thereof.

B. Hydrocarbon-based solvents may be used in the cultivation, extraction, production, or manufacturing of cannabis products provided that:

1. A pharmaceutical processor complies with all requirements in this section.

2. A pharmaceutical processor using hydrocarbon-based solvents shall comply with all regulations regarding use of hydrocarbon-based solvents in general industrial use as promulgated by the Occupational Safety and Health Administration and published in 29 CFR 1910 or any subsequent regulation governing such use, including regulations governing:

a. Ventilation requirements;

b. Air contaminants; and

c. Hazard communication.

3. A pharmaceutical processor using hydrocarbon-based solvents shall comply with any requirements issued by the Virginia Department of Labor and Industry regarding use of hydrocarbon-based solvents.

4. A pharmaceutical processor using hydrocarbon-based solvents shall comply with any requirements issued by the Virginia Department of Environmental Quality regarding use of hydrocarbon-based solvents promulgated.

5. A pharmaceutical processor using hydrocarbon-based solvents maintains sole responsibility for any adverse outcomes or violations of state or federal laws or regulations caused by such use.

6. A pharmaceutical processor using hydrocarbon-based solvents shall ensure that all equipment, counters, and

surfaces used in the cultivation, extraction, production, or manufacturing of cannabis products are food-grade and do not react adversely with any hydrocarbon solvent used. All counters and surface areas shall be constructed in a manner that reduces the potential development of microbials, molds, and fungi and can be easily cleaned.

7. A pharmaceutical processor using hydrocarbon-based solvents shall ensure that any room in which hydrocarbon-based solvents will be used contains an emergency eye-wash station.

8. A pharmaceutical processor using hydrocarbon-based solvents shall ensure that a professional grade, closed-loop extraction system capable of recovering solvent is used in the cultivation, extraction, production, or manufacturing of cannabis products.

a. Closed-loop extraction systems must be commercially manufactured and bear a permanently affixed and visible serial number.

b. A pharmaceutical processor using a closed-loop extraction system must obtain certification from a licensed engineer that certifies that the system was commercially manufactured, is safe for its intended use, and is built to codes of recognized and generally accepted good engineering practices, such as the following: (i) the American Society of Mechanical Engineers (ASME); (ii) American National Standards Institute (ANSI); (iii) Underwriters Laboratories (UL); or (iv) the American Society for Testing and Materials (ASTM).

c. The certification must contain the signature and stamp of a professional engineer and include the serial number of the extraction unit certified.

9. A pharmaceutical processor using hydrocarbon-based solvents shall obtain a safety data sheet for each hydrocarbon-based solvent used and store such data sheet on the premises. All such records shall be subject to inspection by the board.

10. A pharmaceutical processor using hydrocarbon-based solvents shall develop standard operating procedures, good manufacturing practices, and a training plan prior to using such solvents. Standard operating procedures shall specifically address:

a. Safe and proper handling and use of hydrocarbon-based solvents;

b. Safe and proper operation of machinery and equipment;

c. Adequate cleaning and maintenance of machinery and equipment;

d. Incident reporting for any instances where the operator does not follow the stated standard operating procedures that identifies (i) the operator's name; (ii) the date and time of the incident; (iii) the supervising employees to ~~which~~ whom the incident report will be sent; and (iv) an incident summary that includes whether any cannabis products or other substances escaped from the closed-loop system, the amount of escaped material, whether the material was destroyed, and how the incident was resolved; and

e. Safe and proper disposal of waste created during processes using hydrocarbon-based solvents.

11. A pharmaceutical processor using hydrocarbon-based solvents shall ensure that any person using such solvents in a closed-loop system:

a. Is fully trained on how to use the system;

b. Has direct access to applicable material safety data sheets; and

c. Handles and stores the solvents safely.

C. If a pharmaceutical processor intends to use a flammable solvent, then a designated industrial hygienist or professional engineer that is not an employee of the pharmaceutical processor must:

1. Establish a maximum amount of flammable solvents and other flammable materials that may be stored within the pharmaceutical processor facility in accordance with applicable laws and regulations;

2. Determine what type of electrical equipment must be installed within the room in which flammable solvents are to be stored in accordance with applicable laws and regulations;

3. Determine whether a gas monitoring system must be installed within the room in which flammable solvents are to be used or stored, and if required, the system's specifications in accordance with applicable laws and regulations;

4. Determine whether a fire suppression system must be installed within the room in which the flammable solvents are to be used or stored, and if required, the system's specifications in accordance with applicable laws and regulations; and

5. Determine whether a fume vent hood or exhaust system must be installed within the room in which a flammable solvent will be used, and if required, the system's specifications in accordance with applicable laws and regulations.

D. If a pharmaceutical processor makes a material change to its use of flammable solvents in any part of the manufacturing process, a designated industrial hygienist or professional engineer who is not an employee of the pharmaceutical processor must recertify the standard operating procedures for use of flammable solvents determined under subsection C of this section.

E. A pharmaceutical processor shall maintain copies of all reports generated by or received from the designated industrial hygienist or professional engineer for inspection by the board.

F. A pharmaceutical processor shall not store more flammable solvents ~~onsite that~~ on site than exceeds the maximum amount allowable as identified by the designated industrial hygienist or professional engineer.

G. A pharmaceutical processor shall ensure that all appropriate safety and sanitary equipment, including personal protective equipment, is provided to and appropriately used by each employee handling a flammable solvent.

H. The board shall approve chemicals for use as hydrocarbon or other flammable solvents in the cultivation, extraction, production, or manufacturing of cannabis products based on availability of testing for residual material of individual solvents. Approved chemicals include:

1. Ethanol;

2. Ethyl acetate;

3. Ethyl ether;

4. Heptane;

5. Hexane;

6. Pentane;

7. 2-propanol (IPA);

8. Butane; and

9. Propane.

The board recognizes butane and propane as Class 3 solvents with a permissible daily exposure of 50 mg per day.

**3VAC10-50-70. Registration of products.**

A. A pharmaceutical processor shall assign a product name to each product of cannabis. The pharmaceutical processor shall register each cannabis product name with the board in a manner prescribed by the board prior to any dispensing and shall associate each registered cannabis product name with a specific laboratory test that includes the total cannabidiol (CBD) and total tetrahydrocannabinol (THC), a terpenes profile, and a list of all active ingredients, including:

1. Tetrahydrocannabinol (THC);

2. Tetrahydrocannabinol acid (THC-A);

3. Cannabidiols (CBD); and

4. Cannabidiolic acid (CBDA).

~~For botanical cannabis products, only the total cannabidiol (CBD) and total tetrahydrocannabinol (THC) are required.~~

B. A pharmaceutical processor shall not label two products with the same registered cannabis product name unless the laboratory test results for each product indicate that the level of each listed active ingredient varies by no more than 15%. However, in cases where (i) the total tetrahydrocannabinol (THC) concentration is less than five milligrams per dose, the concentration of THC shall be within 0.5 milligrams per dose and (ii) the total cannabidiol (CBD) concentration is less than five milligrams per dose, the concentration of total CBD shall be within 0.5 milligrams per dose.

C. The board shall not register any cannabis product name that:

1. Is identical to or confusingly similar to the name of an existing commercially available product;

2. Is identical to or confusingly similar to the name of an unlawful product or substance;

3. Is confusingly similar to the registered cannabis product name of a previously approved cannabis product;

4. Is obscene or indecent;

5. May encourage the use of marijuana or cannabis products for recreational purposes;

6. May encourage the use of cannabis products for a disease or condition other than the disease or condition the practitioner intended to treat;

7. Is customarily associated with persons younger than ~~the age of~~ 18 years of age; or

8. Is related to the benefits, safety, or efficacy of the cannabis product unless supported by substantial evidence or substantial clinical data.

**3VAC10-50-80. Dispensing of cannabis products.**

A. A pharmacist in good faith may dispense cannabis products to any patient, parent, legal guardian, or registered agent as indicated on the written certification.

1. Prior to the initial dispensing of cannabis products pursuant to each written certification, the pharmacist or pharmacy technician at the location of the pharmaceutical processor or cannabis dispensing facility shall ~~view~~:

a. Offer patients, parents, legal guardians, and registered agents the opportunity to consult with a pharmacist regarding the use of cannabis products, including information related to safe techniques for proper use and storage of cannabis products and for disposal of the products in a manner that renders them nonrecoverable;

b. View in person or by audiovisual means a current photo identification of the patient, parent, legal guardian, or registered agent~~. The pharmacist or pharmacy technician shall verify~~; and

c. Verify in the Virginia Prescription Monitoring Program of the Department of Health Professions or other program recognized by the board that ~~any registrations, if applicable, are current,~~ the written certification ~~has not expired,~~ is valid and the date and quantity of the last dispensing of cannabis products to the patient.

2. A pharmacist or pharmacy technician employed by the pharmaceutical processor or cannabis dispensing facility shall make a paper or electronic copy of the current written certification that provides an exact image of the document that is clearly legible and shall maintain it on site or by electronic means for two years. The pharmaceutical processor and cannabis dispensing facility shall also provide an electronic copy of the written certification to the board.

3. Prior to any subsequent dispensing, the pharmacist or pharmacy technician shall verify that the written certification on file has not expired. An employee or delivery agent shall view a current photo identification and current registration of the patient, parent, legal guardian, or registered agent and shall maintain record of such viewing in accordance with policies and procedures of the pharmaceutical processor or cannabis dispensing facility.

B. A pharmacist may dispense a portion of a patient's 90-day supply of cannabis product. The pharmacist may dispense the remaining portion of the 90-day supply of cannabis products at any time except that no patient, parent, legal guardian, or registered agent shall receive more than a 90-day supply of cannabis products for a patient in a 90-day period from any pharmaceutical processor or cannabis dispensing facility. A pharmaceutical processor or cannabis dispensing facility may dispense more than one cannabis product to a patient at one time. However, no more than four ounces of botanical cannabis shall be dispensed for each 30-day period for which botanical cannabis is dispensed. In determining the appropriate amount of cannabis product to be dispensed to a patient, a pharmacist shall consider all cannabis products dispensed and adjust the amount dispensed accordingly.

C. A dispensing record shall be maintained for three years from the date of dispensing, and the pharmacist or pharmacy technician under the direct supervision of the pharmacist shall affix a label to the container of cannabis product ~~that contains:~~ according to 3VAC10-70-40.

~~1. A serial number assigned to the dispensing of the product;~~

~~2. The cannabis product name that was registered with the board pursuant to 3VAC10-50-70 and its strength;~~

~~3. The serial number assigned to the product during production;~~

~~4. The date of dispensing the cannabis product;~~

~~5. The quantity of cannabis products dispensed;~~

~~6. A terpenes profile and a list of all active ingredients, including:~~

~~a. Tetrahydrocannabinol (THC);~~

~~b. Tetrahydrocannabinol acid (THC-A);~~

~~c. Cannabidiol (CBD); and~~

~~d. Cannabidiolic acid (CBDA);~~

~~For botanical cannabis products, only the total cannabidiol (CBD) and total tetrahydrocannabinol (THC) are required;~~

~~7. A pass rating based on the laboratory's microbiological, mycotoxins, heavy metals, residual solvents, pesticide chemical residue analysis, and for botanical cannabis, the water activity and moisture content analysis;~~

~~8. The name of the patient;~~

~~9. The name of the certifying practitioner;~~

~~10. Directions for use as may be included in the practitioner's written certification or otherwise provided by the practitioner;~~

~~11. For botanical cannabis, the amount recommended by the practitioner or dispensing pharmacist;~~

~~12. The name or initials of the dispensing pharmacist;~~

~~13. Name, address, and telephone number of the pharmaceutical processor or cannabis dispensing facility;~~

~~14. Any necessary cautionary statement;~~

~~15. A prominently printed expiration date based on stability testing; and~~

~~16. The pharmaceutical processor's or cannabis dispensing facility's recommended conditions of use and storage that can be read and understood by the ordinary individual.~~

~~D. The label shall be exempt from containing the items listed in subdivisions C 6, C 7, and C 15 of this section if the items are included on the batch label as required in 3VAC10-70-20 and are clearly visible to the patient.~~

~~E. A pharmaceutical processor shall not label cannabis products as "organic" unless the cannabis plants have been organically grown and the cannabis oil products have been produced, processed, manufactured, and certified to be consistent with organic standards in compliance with 7 CFR Part 205.~~

~~F. The cannabis products shall be dispensed in child-resistant packaging, except as provided in 3VAC10-40-20 A. A package shall be deemed child-resistant if it satisfies the standard for "special packaging" as set forth in the Poison Prevention Packaging Act of 1970 Regulations, 16 CFR 1700.1(b)(4).~~

~~G. No person except a pharmacist or a pharmacy technician operating under the direct supervision of a pharmacist shall alter, deface, or remove any label so affixed.~~

~~H.~~ D. A pharmacist shall be responsible for verifying the accuracy of the dispensed product in all respects prior to dispensing and shall document that each verification has been performed.

~~I.~~ E. A pharmacist shall document a patient's self-assessment of the effects of cannabis products in treating the patient's diagnosed condition or disease or the symptoms thereof.

~~J.~~ F. If the authorization for botanical cannabis for a minor is communicated verbally or in writing to the pharmacist at the time of dispensing, the pharmacist shall also document such authorization. A pharmaceutical processor or cannabis dispensing facility shall maintain such documentation in writing or electronically for three years from the date of dispensing and such documentation shall be made available in accordance with regulation.

~~K.~~ G. A pharmacist shall exercise professional judgment to determine whether to dispense cannabis products to a patient, parent, legal guardian, or registered agent if the pharmacist suspects that dispensing cannabis products to the patient, parent, legal guardian, or registered agent may have negative health or safety consequences for the patient or the public.

**3VAC10-50-110. Disposal of cannabis products.**

A. To mitigate the risk of diversion, a pharmaceutical processor shall routinely and promptly dispose of undesired, excess, unauthorized, obsolete, adulterated, misbranded, or deteriorated green waste, extracts, and cannabis products, as applicable. Green waste includes cannabis plants, seeds, and parts of plants. Green waste shall be weighed, ground, and combined with a minimum of 51% non-cannabis waste to render the mixture inactive and unrecognizable. Once rendered unrecognizable, green waste shall be considered agricultural waste and may be disposed of accordingly.

B. The destruction and disposal of green waste, extracts, and cannabis products, as applicable, ~~shall be witnessed by a pharmacist or the responsible party of the medical cannabis facility and~~ shall be conducted under video surveillance. The persons destroying and disposing of the green waste, extracts, or cannabis products shall maintain and make available a separate record of each occurrence of destruction and disposal indicating:

1. The date and time of destruction and disposal;

2. The manner of destruction and disposal;

3. The name and quantity of cannabis product and green waste destroyed and disposed of; and

4. The signatures of the persons destroying and disposing of the green waste, extracts, or cannabis products.

C. Disposal of green waste may be by incineration, inert composting, or any other means of disposal or destruction.

D. A pharmaceutical processor may sell or otherwise distribute inert composted green waste.

E. The record of destruction and disposal shall be maintained at the pharmaceutical processor or cannabis dispensing facility for three years from the date of destruction and disposal.

VA.R. Doc. No. R25-8120; Filed October 28, 2024, 5:20 p.m.

## Proposed Regulation

REGISTRAR'S NOTICE: The Board of Directors of the Virginia Cannabis Control Authority is claiming an exemption from the Administrative Process Act in accordance with § 4.1-1602 of the Code of Virginia, which exempts adoption of regulations if prior to adoption, the board publishes a notice of opportunity to comment in the Virginia Register of Regulations and posts the action on the Virginia Regulatory Town Hall. Such notice of opportunity to comment shall contain (i) a summary of the proposed regulation; (ii) the text of the proposed regulation; and (iii) the name, address, and telephone number of the agency contact person responsible for receiving public comments. Such notice shall be made at least 60 days in advance of the last date prescribed in such notice for submittals of public comment.

Title of Regulation: **3VAC10-60. Testing of Cannabis Products (amending 3VAC10-60-10, 3VAC10-60-20).**

Statutory Authority: §§ 4.1-601, 4.1-604, and 4.1-606 of the Code of Virginia.

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: January 16, 2025.

Agency Contact: Jake Shuford, Legislative and Regulatory Manager, Virginia Cannabis Control Authority, 333 East Franklin Street, Richmond, VA 23219, telephone (804) 873-9038, or email jake.shuford@cca.virginia.gov.

Summary:

*The amendments (i) clarify and implement § 4.1-1602 D of the Code of Virginia, which addresses independent laboratory testing standards and requires certain cannabis products to be homogenized for laboratory testing; (ii) clarify the standards for microbiological, mycotoxin, and residual solvent testing standards by specifying the applicable part of a document incorporated by reference and, where possible, including standards in the regulation rather than referring to external documents; and (iii) pursuant to Chapter 732 of the 2024 Acts of Assembly, extend the expiration of cannabis products from six months to 12 months.*

**3VAC10-60-10. Definitions.**

In addition to words and terms defined in the Cannabis Control Act (§ 4.1-600 et seq. of the Code of Virginia), the following words and terms when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise:

"Batch" means a quantity of (i) cannabis oil from a production lot or (ii) harvested botanical cannabis product that is identified by a batch number or other unique identifier.

~~"Board" means the Board of Directors of the Cannabis Control Authority.~~

"Cannabis cultivation facility" means a location at which the board has authorized a pharmaceutical processor to cultivate cannabis plants pursuant to § 4.1-1602 of the Code of Virginia and the requirements of 3VAC10-30-160.

"ISO/IEC 17025" means the general requirements specified by the joint technical committee of the International Organization for Standardization (ISO) and the International Electrotechnical Commission (IEC) for the competence of testing and calibration laboratories.

"Medical cannabis facility" means a pharmaceutical processor, cannabis dispensing facility, or cannabis cultivation facility.

"Production" or "produce" means the manufacture, planting, preparation, cultivation, growing, harvesting, propagation, conversion, or processing of marijuana for the creation of usable cannabis, botanical cannabis, or a cannabis product derived thereof (i) directly or indirectly by extraction from substances of natural origin; (ii) independently by means of chemical synthesis; or (iii) by a combination of extraction and chemical synthesis. "Production" or "produce" includes any packaging or repackaging of the substance or labeling or relabeling of its container.

"Qualifying patient" means a Virginia resident who has received from a practitioner, as defined in § 4.1-1600 of the Code of Virginia, a written certification for the use of cannabis products for treatment of or to alleviate the symptoms of any diagnosed condition or disease.

**3VAC10-60-20. Laboratory requirements.**

A. No pharmaceutical processor or cannabis cultivation facility shall utilize a laboratory to handle, test, or analyze cannabis products unless such laboratory:

1. Is independent from all other persons involved in the cannabis industry in Virginia, which shall mean that no person with a direct or indirect interest in the laboratory shall have a direct or indirect financial interest in a pharmacist, pharmaceutical processor, cannabis dispensing facility, certifying practitioner, or any other entity that may benefit from the production, manufacture, dispensing, sale, purchase, or use of cannabis products;

2. Has employed at least one person to oversee and be responsible for the laboratory testing who has earned from a college or university accredited by a national or regional certifying authority at least (i) a master's level degree in chemical or biological sciences and a minimum of two years of post-degree laboratory experience or (ii) a bachelor's degree in chemical or biological sciences and a minimum of four years of post-degree laboratory experience;

3. Has obtained a controlled substances registration certificate pursuant to § 54.1-3423 of the Code of Virginia authorizing the testing of cannabis products;

4. Has provided proof to the board of accreditation in testing and calibration in accordance with the most current version of the International Standard for Organization and the ISO/IEC 17025 or proof that the laboratory has applied for accreditation in testing and calibration in the most current version of ISO/IEC 17025. Any testing and calibration method utilized to perform a cannabis-related analysis for pharmaceutical processors shall be in accordance with the laboratory's ISO/IEC 17025 accreditation. The accrediting body shall be recognized by International Laboratory Accreditation Cooperation.

a. A laboratory applying for authorization to provide cannabis-related analytical tests for pharmaceutical processors shall receive ISO/IEC 17025 accreditation within two years from the date the laboratory applied for ISO/IEC 17025 accreditation. A laboratory may request, and the board may grant for good cause shown, additional time for the laboratory to receive ISO/IEC 17025 accreditation.

b. A laboratory shall send proof of ISO/IEC 17025 accreditation to the board for cannabis-related analytical test methods for pharmaceutical processors for which it has received ISO/IEC 17025 accreditation no later than five business days after the date in which the accreditation was received.

c. A laboratory may use nonaccredited analytical test methods so long as the laboratory has commenced an application for ISO/IEC 17025 accreditation for analytical test methods for cannabis-related analysis for pharmaceutical processors. No laboratory shall use nonaccredited analytical test methods for cannabis-related analysis for pharmaceutical processors if it has applied for and has not received ISO/IEC 17025 accreditation within two years. The laboratory may request, and the board may grant for good cause shown, additional time for the laboratory to utilize nonaccredited analytical test methods for cannabis-related analysis.

d. At such time that a laboratory loses its ISO/IEC 17025 accreditation for any cannabis-related analytical test methods for pharmaceutical processors, it shall inform the board within 24 hours. The laboratory shall immediately stop handling, testing, or analyzing cannabis for pharmaceutical processors; and

5. Complies with a transportation protocol for transporting cannabis or cannabis products to or from itself or to or from pharmaceutical processors.

B. After processing and before dispensing the cannabis oil product, a pharmaceutical processor shall make a sample available from each homogenized batch of product for a laboratory to (i) test for microbiological contaminants, mycotoxins, heavy metals, residual solvents, and pesticide chemical residue~~;~~ and (ii) conduct an active ingredient analysis and terpenes profile. Each laboratory shall determine a valid

sample size for testing, which may vary due to sample matrix, analytical method, and laboratory-specific procedures. A minimum sample size of 0.5% of individual units for dispensing or distribution from each homogenized batch of cannabis oil is required to achieve a representative sample for analysis. Laboratories shall perform a visual inspection for homogeneity and reject heterogeneous samples.

C. A pharmaceutical processor or cannabis cultivation facility shall make a sample available from each harvest batch of botanical cannabis product to (i) test for microbiological contaminants, mycotoxins, heavy metals, pesticide chemical residue, water activity, and moisture content and (ii) conduct an active ingredient analysis and terpenes profile. ~~In determining the minimum sample size for testing from each batch of botanical cannabis, the~~ The certified testing laboratory may determine the minimum sample size for testing from each batch. The sample must be representative of the entire batch to include selection from various points in the batch lot and be of sufficient sample size to allow for analysis of all required tests.

D. From the time that a batch of cannabis product has been sampled for testing until the laboratory provides the results from its tests and analysis, the pharmaceutical processor shall segregate and withhold from use the entire batch, except the samples that have been removed by the laboratory for testing. During this period of segregation, the pharmaceutical processor shall maintain the batch in a secure, cool, and dry location so as to prevent the batch from becoming contaminated or losing its efficacy.

E. Under no circumstances shall a pharmaceutical processor or cannabis dispensing facility sell a cannabis product prior to the time that the laboratory has completed its testing and analysis and provided a certificate of analysis to the pharmaceutical processor.

F. The processor shall require the laboratory to immediately return or properly dispose of any cannabis products and materials upon the completion of any testing, use, or research.

G. A sample of cannabis oil product shall pass the microbiological, mycotoxin, heavy metal, or residual solvent test based on the standards set forth in this subsection~~, the~~. The batch may be remediated with further processing.

1. For purposes of the microbiological test, a cannabis oil sample shall be deemed to have passed if it satisfies the standards set forth in Table 1 of Section 1111 of the United States Pharmacopeia.

2. For purposes of the mycotoxin test, a sample of cannabis oil product shall be deemed to have passed if ~~it meets the following standards:~~ the sum of aflatoxins B1, B2, G1, and G2 and ochratoxin A is less than 20 parts per billion.

| ~~Test Specification~~ | |
|---|---|
| ~~Aflatoxin B1~~ | ~~<20 ug/kg of Substance~~ |
| ~~Aflatoxin B2~~ | ~~<20 ug/kg of Substance~~ |
| ~~Aflatoxin G1~~ | ~~<20 ug/kg of Substance~~ |
| ~~Aflatoxin G2~~ | ~~<20 ug/kg of Substance~~ |
| ~~Ochratoxin A~~ | ~~<20 ug/kg of Substance~~ |

3. For purposes of the heavy metal test, a sample of cannabis oil product shall be deemed to have passed if it meets the following standards:

| Metal | Limits - parts per million (ppm) |
|---|---|
| Arsenic | <10 ppm |
| Cadmium | <4.1 ppm |
| Lead | <10 ppm |
| Mercury | <2 ppm |

4. For purposes of the pesticide chemical residue test, a sample of cannabis oil product shall be deemed to have passed if it satisfies the most stringent acceptable standard for a pesticide chemical residue in any food item as set forth in Subpart C of the federal Environmental Protection Agency's regulations for Tolerances and Exemptions for Pesticide Chemical Residues in Food (40 CFR Part 180).

5. For purposes of the active ingredient analysis, a sample of the cannabis oil product shall be tested for:

a. Tetrahydrocannabinol (THC);

b. Tetrahydrocannabinol acid (THC-A);

c. Cannabidiols (CBD); and

d. Cannabidiolic acid (CBDA).

6. For the purposes of the residual solvent test, a sample of the cannabis oil product shall be deemed to have passed if ~~it meets the standards and limits recommended by the American Herbal Pharmacopia for Cannabis Inflorescence~~ the sample contains 290 parts per million or less of hexane and 5,000 parts per million or less of the other solvents approved under 3VAC10-50-60 H.

H. A sample of botanical cannabis product shall pass the microbiological, mycotoxin, heavy metal, water activity, or moisture content test based on the standards set forth in this subsection.

1. For purposes of the microbiological test, a botanical cannabis sample shall be deemed to have passed if it satisfies the standards set forth in the most current American Herbal Pharmacopoeia Cannabis Inflorescence Standards of Identity, Analysis, and Quality Control.

2. For purposes of the mycotoxin test, a sample of botanical cannabis shall be deemed to have passed if ~~it meets the~~

~~following standards:~~ the sum of aflatoxins B1, B2, G1, and G2 and ochratoxin A is less than 20 parts per billion.

| ~~Test Specification~~ | |
|---|---|
| ~~Aflatoxin B1~~ | ~~<20 ug/kg of Substance~~ |
| ~~Aflatoxin B2~~ | ~~<20 ug/kg of Substance~~ |
| ~~Aflatoxin G1~~ | ~~<20 ug/kg of Substance~~ |
| ~~Aflatoxin G2~~ | ~~<20 ug/kg of Substance~~ |
| ~~Ochratoxin A~~ | ~~<20 ug/kg of Substance~~ |

3. For purposes of the heavy metal test, a sample of botanical cannabis shall be deemed to have passed if it meets the following standards:

| Metal | Limits - parts per million (ppm) |
|---|---|
| Arsenic | <10 ppm |
| Cadmium | <4.1 ppm |
| Lead | <10 ppm |
| Mercury | <2 ppm |

4. For purposes of the pesticide chemical residue test, a sample of botanical cannabis shall be deemed to have passed if it satisfies the most stringent acceptable standard for a pesticide chemical residue in any food item as set forth in Subpart C of the federal Environmental Protection Agency's regulations for Tolerances and Exemptions for Pesticide Chemical Residues in Food (40 CFR Part 180).

5. For purposes of the active ingredient analysis, a sample of the botanical cannabis shall be tested for:

a. Total tetrahydrocannabinol (THC); and

b. Total cannabidiol (CBD).

6. For the purposes of water activity and moisture content for botanical cannabis, the botanical cannabis shall be deemed to have passed if the water activity rate does not exceed 0.65Aw and the moisture content does not exceed 15%.

I. If a sample of cannabis product passes the required tests listed in subsections G and H of this section, the entire batch may be utilized by the processor for immediate packaging and labeling for sale. An expiration date shall be assigned to the product that is based upon validated stability testing that addresses product stability when opened and the ~~shelf life~~ shelf life for unopened products, except stability testing shall not be required for cannabis products if an expiration date of ~~six~~ 12 months or less from the date of the cannabis product registration approval is signed.

J. The processor shall require the laboratory to file with the board an electronic copy of each laboratory test result for any batch that does not pass the required tests listed in subsections G and H of this section at the same time that it transmits those results to the pharmaceutical processor. In addition, the laboratory shall maintain the laboratory test results and make them available to the board or an agent of the board.

K. Each medical cannabis facility shall have such laboratory results available upon request to patients, parents, legal guardians, registered agents, practitioners who have certified qualifying patients, the board, or an agent of the board.

VA.R. Doc. No. R25-8119; Filed October 28, 2024, 5:21 p.m.

## Proposed Regulation

REGISTRAR'S NOTICE: The Board of Directors of the Virginia Cannabis Control Authority is claiming an exemption from the Administrative Process Act in accordance with § 4.1-1602 of the Code of Virginia, which exempts adoption of regulations if prior to adoption, the board publishes a notice of opportunity to comment in the Virginia Register of Regulations and posts the action on the Virginia Regulatory Town Hall. Such notice of opportunity to comment shall contain (i) a summary of the proposed regulation; (ii) the text of the proposed regulation; and (iii) the name, address, and telephone number of the agency contact person responsible for receiving public comments. Such notice shall be made at least 60 days in advance of the last date prescribed in such notice for submittals of public comment.

Titles of Regulations: **3VAC10-70. Labeling and Packaging (amending 3VAC10-70-10, 3VAC10-70-20, 3VAC10-70-30; adding 3VAC10-70-40, 3VAC10-70-50).**

**3VAC10-80. Enforcement (amending 3VAC10-80-10).**

Statutory Authority: §§ 4.1-601, 4.1-604, and 4.1-606 of the Code of Virginia.

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: January 16, 2025.

Agency Contact: Jake Shuford, Legislative and Regulatory Manager, Virginia Cannabis Control Authority, 333 East Franklin Street, Richmond, VA 23219, telephone (804) 873-9038, or email jake.shuford@cca.virginia.gov.

Summary:

*The amendments (i) define "universal symbol" and require the symbol to be included on the package of cannabis products as is customary in other medical cannabis programs; (ii) increase product transparency for patients by adding or specifying labeling requirements such as product descriptions and use instructions, child and safety warnings, and information required on the immediate container; and (iii) pursuant to Chapter 732 of the 2024 Acts of Assembly,extend the expiration date of cannabis products from six months to 12 months.*

**3VAC10-70-10. Definitions.**

In addition to words and terms defined in the Cannabis Control Act (§ 4.1-600 et seq. of the Code of Virginia), the following words and terms when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise:

"Batch" means a quantity of (i) cannabis oil from a production lot or (ii) harvested botanical cannabis product that is identified by a batch number or other unique identifier.

~~"Board" means the Board of Directors of the Cannabis Control Authority.~~

"Production" or "produce" means the manufacture, planting, preparation, cultivation, growing, harvesting, propagation, conversion, or processing of marijuana for the creation of usable cannabis, botanical cannabis, or a cannabis product derived thereof (i) directly or indirectly by extraction from substances of natural origin; (ii) independently by means of chemical synthesis; or (iii) by a combination of extraction and chemical synthesis. "Production" or "produce" includes any packaging or repackaging of the substance or labeling or relabeling of its container.

"Universal symbol" means the image established by the authority and made available on the authority's website indicating that the package contains medical cannabis.

**3VAC10-70-20. Labeling of ~~batch of~~ cannabis products.**

A. ~~Cannabis products produced as a batch shall not be adulterated~~ Each container and layer of packaging containing cannabis shall prominently display the universal symbol.

B. Cannabis products produced as a batch shall be:

1. Unadulterated;

2. Processed, packaged, and labeled according to the U.S. Food and Drug Administration's Current Good Manufacturing Practice in Manufacturing, Packaging, Labeling, or Holding Operations for Dietary Supplements (21 CFR Part 111); and

~~2.~~ 3. Labeled with:

a. The name and address of the pharmaceutical processor;

b. The cannabis product name that was registered with the board pursuant to ~~18VAC110-20-285~~ § 4.1-1603.2 of the Code of Virginia;

c. A description of the product's purpose and instructions for use;

d. Child and safety warnings, as approved by the authority, in a conspicuous font;

e. A unique serial number that matches the product with the pharmaceutical processor batch and lot number, including the cultivator and manufacturer if produced from bulk cannabis oil, botanical cannabis, or usable cannabis obtained through distribution from another pharmaceutical processor, so as to facilitate any warnings or recalls the board or pharmaceutical processor deem appropriate;

~~d.~~ f. The date of testing and packaging;

~~e.~~ g. For products produced from bulk cannabis oil, botanical cannabis, or usable cannabis obtained through distribution from another pharmaceutical processor, the name and address of the testing laboratory;

~~f.~~ h. The expiration date, which shall be ~~six~~ 12 months or less from the date of the cannabis product registration approval, unless supported by stability testing;

~~g.~~ i. The quantity of cannabis products contained in the batch;

~~h.~~ j. A terpenes profile and a list of all active and inactive ingredients, including:

(1) Tetrahydrocannabinol (THC);

(2) Tetrahydrocannabinol acid (THC-A);

(3) Cannabidiol (CBD); and

(4) Cannabidiolic acid (CBDA);

~~i. For botanical cannabis products, list of only total cannabidiol (CBD) and total tetrahydrocannabinol (THC);~~

~~j.~~ k. For cannabis oil products, pass or fail rating based on the laboratory's microbiological, mycotoxins, heavy metals, residual solvents, and pesticide chemical residue analysis; and

~~k.~~ l. For botanical cannabis products, a pass or fail rating based on the laboratory's microbiological, mycotoxins, heavy metals, pesticide chemical residue analysis, water activity, and moisture content.

C. If the immediate container is too small, then an outer layer of packaging shall include the requirements of subdivision B 3 of this section and the immediate container shall include:

1. Pharmaceutical processor name, telephone number, and email or website;

2. The cannabis product name that was registered with the board pursuant to § 4.1-1603.2 of the Code of Virginia;

3. The serial number assigned to the product during production;

4. A prominently printed expiration date;

5. The quantity of cannabis products by weight, volume, or count and weight; and

6. A list of all active ingredients, including:

a. Tetrahydrocannabinol (THC);

b. Tetrahydrocannabinol acid (THC-A);

c. Cannabidiol (CBD); and

d. Cannabidiolic acid (CBDA).

D. Labels may be accordion, expandable, extendable, or layered to permit labeling of containers of any manner of size or shape.

E. Cannabis vaporizer cartridges shall bear a universal symbol no smaller than one-quarter-inch wide by one-quarter-inch high that is engraved, printed, or affixed with a sticker.

F. No pharmaceutical processor shall label cannabis products as "organic" unless the cannabis plants have been organically grown and the cannabis oil products have been produced, processed, manufactured, and certified to be consistent with organic standards in compliance with 7 CFR Part 205.

**3VAC10-70-30. Labeling of bulk cannabis oil, botanical cannabis, and usable cannabis.**

A. Bulk cannabis oil, botanical cannabis, and usable cannabis shall not be adulterated.

B. Bulk cannabis oil, botanical cannabis, and usable cannabis produced for wholesale distribution shall be:

1. Processed, packaged, and labeled according to the U.S. Food and Drug Administration's Current Good Manufacturing Practice in Manufacturing, Packaging, Labeling, or Holding Operations for Dietary Supplements (21 CFR Part 111), except as exempted in this section;

2. Packaged in a tamper-evident container; and

3. Labeled with:

a. The name and addresses of the pharmaceutical processor distributing the product and the pharmaceutical processor receiving the product;

b. The quantity or weight of the cannabis oil, botanical cannabis, or usable cannabis in the container;

c. Identification of the contents of the container, including a brief description of the type or form of cannabis oil, botanical cannabis, or usable cannabis and the strain name, as appropriate;

d. The prominent statement "Not Packaged for Final Sale";

e. A unique serial number that will match a cannabis product with the cultivator and manufacturer and lot or batch number so as to facilitate any warnings or recalls the board or pharmaceutical processor deem appropriate; and

f. The ~~dates~~ date of ~~harvest and~~ packaging and, for botanical cannabis, the date of harvest.

C. Cannabis products produced from bulk cannabis oil, botanical cannabis, and usable cannabis shall comply with all laboratory testing and labeling requirements prior to dispensing.

**3VAC10-70-40. Dispensing label requirements.**

A. The pharmacist or pharmacy technician under the direct supervision of the pharmacist shall affix a label, in a manner provided by the board, to each cannabis product, including:

1. A serial number assigned to the dispensing of the product;

2. The cannabis product name that was registered with the board pursuant to 3VAC10-50-70 and its strength;

3. The serial number assigned to the product during production;

4. The date of dispensing the cannabis product;

5. The quantity of cannabis products dispensed;

6. A terpenes profile and a list of all active ingredients, including:

a. Tetrahydrocannabinol (THC);

b. Tetrahydrocannabinol acid (THC-A);

c. Cannabidiol (CBD); and

d. Cannabidiolic acid (CBDA);

7. A pass rating based on the laboratory's microbiological, mycotoxins, heavy metals, residual solvents, and pesticide chemical residue analysis and, for botanical cannabis, the water activity and moisture content analysis;

8. The name of the patient;

9. The name of the certifying practitioner;

10. Directions for use as may be provided by the practitioner, on the written certification or otherwise, or the dispensing pharmacist;

11. For botanical cannabis, the amount recommended by the practitioner or dispensing pharmacist;

12. The name or initials of the dispensing pharmacist;

13. The name, address, and telephone number of the pharmaceutical processor or cannabis dispensing facility;

14. Any necessary cautionary statement;

15. A prominently printed expiration date; and

16. The recommended conditions of use and storage from the pharmaceutical processor or cannabis dispensing facility that can be read and understood by the ordinary individual.

B. The label shall be exempt from containing the items listed in subdivisions A 6, A 7, and A 15 of this section if the items are included on the batch label as required in 3VAC10-70-20 and are clearly visible to the patient.

C. No person, except a pharmacist or a pharmacy technician operating under the direct supervision of a pharmacist, shall alter, deface, or remove any label so affixed.

**3VAC10-70-50. Medical cannabis packaging requirements.**

A. Packaging shall be child-resistant, except as provided in 3VAC10-40-20 A, tamper-resistant, and light-resistant based on the following standards:

1. A package shall be deemed child-resistant if it satisfies the standard for "special packaging" as set forth in the Poison Prevention Packaging Act of 1970 Regulations, 16 CFR 1700.1(b)(4). A pharmaceutical processor shall maintain a copy of the certificate showing that any packaging containing medical cannabis is child-resistant and complies with the requirements of 16 CFR 1700.15 and 16 CFR 1700.25;

2. A package shall be deemed tamper-resistant if it has one or more indicators or barriers to entry that would preclude its contents from being accessed or adulterated without indicating to a reasonable person that the package was breached; and

3. A package shall be deemed light-resistant if it is entirely and uniformly opaque and protects the whole of its contents from the effects of light.

B. No packaging shall (i) bear any reasonable resemblance to a trademarked, characteristic, or product-specialized packaging of any commercially available candy, snack, baked good, or beverage or (ii) be visually similar to packaging used for any good that is marketed to an audience reasonably expected to be younger than 21 years of age.

**3VAC10-80-10. Definitions.**

In addition to words and terms defined in the Cannabis Control Act (§ 4.1-600 et seq. of the Code of Virginia), the following words and terms when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise:

~~"Board" means the Board of Directors of the Cannabis Control Authority.~~

"Certification" means a written statement, consistent with requirements of § 4.1-1601 of the Code of Virginia, issued by a practitioner for the use of cannabis products for treatment of or to alleviate the symptoms of any diagnosed condition or disease determined by the practitioner to benefit from such use.

"Medical cannabis facility" means a pharmaceutical processor, cannabis dispensing facility, or cannabis cultivation facility.

"Qualifying patient" means a Virginia resident who has received from a practitioner, as defined in § 4.1-1600 of the Code of Virginia, a written certification for the use of cannabis products for treatment of or to alleviate the symptoms of any diagnosed condition or disease.

"Registration" means an identification card or other document issued by the board that identifies a person as a qualifying patient, parent, legal guardian, or registered agent that has voluntarily registered with the board.

VA.R. Doc. No. R25-8118; Filed October 28, 2024, 5:22 p.m.

◆ ◆

# TITLE 4. CONSERVATION AND NATURAL RESOURCES

## MARINE RESOURCES COMMISSION

### Final Regulation

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

Title of Regulation: **4VAC20-270. Pertaining to Blue Crab Fishery (adding 4VAC20-270-57).**

Statutory Authority: § 28.1-201 of the Code of Virginia.

Effective Date: November 1, 2024.

Agency Contact: Jennifer Farmer, Regulatory Coordinator, Marine Resources Commission, 380 Fenwick Road, Building 96, Fort Monroe, VA 23651, telephone (757) 247-2248, FAX (757) 247-2002, or email jennifer.farmer@mrc.virginia.gov.

Summary:

*The amendments close the winter crab dredge fishery season from December 1, 2024, through March 31, 2025.*

**4VAC20-270-57. Crab dredge fishery.**

In accordance with the provisions of § 28.2-707 of the Code of Virginia, the crab dredging season of December 1, 2024, through March 31, 2025, is closed, and it shall be unlawful to use a dredge for catching crabs from the waters of the Commonwealth during that season.

VA.R. Doc. No. R25-8110; Filed October 28, 2024, 3:06 p.m.

## DEPARTMENT OF ENERGY

### Final Regulation

REGISTRAR'S NOTICE: The Department of Energy is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved. The department will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **4VAC25-31. Reclamation Regulations for Mineral Mining (amending 4VAC25-31-70).**

Statutory Authority: §§ 45.2-103 and 45.2-1202 of the Code of Virginia.

Effective Date: December 18, 2024.

Agency Contact: Larry Corkey, Policy and Planning Manager, Department of Energy, 1100 Bank Street, Eighth Floor, Richmond, VA 23219-3402, telephone (804) 692-3239, or email larry.corkey@energy.virginia.gov.

Summary:

*Pursuant to Chapter 224 of the 2024 Acts of Assembly, the amendments update rules regarding the construction or expansion of farm ponds when the farm pond is being increased beyond a one-time occurrence.*

**4VAC25-31-70. Exemptions.**

A. These regulations shall not apply to:

1. Excavation or grading when conducted solely to aid on-site farming or construction. Such exemption shall not be construed to limit a landowner in a one-time construction or expansion of a farm pond for agricultural irrigation or provision of water for livestock to beneficially reuse the soil or sand, provided that such pond construction or expansion project (i) is a one-time activity on that parcel of land, (ii) is completed within six months, (iii) results in a pond that is less than three acres in total, and (iv) has all necessary permits and local approvals in place before such activity begins;

2. Mining of coal, unless the coal is mined incidental to the mining of minerals;

3. Searching, prospecting, exploring, or investigating for minerals by drilling; and

4. Excavation or grading when conducted by an agency or governmental unit of the Commonwealth, local government, or the federal government using government employees.

B. The surface extraction of minerals shall not constitute mineral mining unless:

1. The mineral is extracted for its unique or intrinsic characteristics; or~~:~~

2. The mineral requires processing prior to its intended use.

C. When considering whether an operation is exempt, the director shall consider the length of time or duration of the activity, whether it is a one-time activity, and whether all necessary permits and approvals are in place before the activity begins.

VA.R. Doc. No. R25-8024; Filed October 22, 2024, 9:29 a.m.

## Final Regulation

REGISTRAR'S NOTICE: The Department of Energy is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved. The department will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Titles of Regulations: **4VAC25-31. Reclamation Regulations for Mineral Mining (amending 4VAC25-31-360).**

**4VAC25-40. Safety and Health Regulations for Mineral Mining (adding 4VAC25-40-389).**

Statutory Authority: §§ 45.2-103 and 45.2-1202 of the Code of Virginia.

Effective Date: December 18, 2024.

Agency Contact: Larry Corkey, Policy and Planning Manager, Department of Energy, 1100 Bank Street, Eighth Floor, Richmond, VA 23219-3402, telephone (804) 692-3239, or email larry.corkey@energy.virginia.gov.

Summary:

*Pursuant to Chapter 135 of the 2024 Acts of Assembly, the amendments prohibit use of cyanide or cyanide compound in mineral mining or processing operations.*

**4VAC25-31-360. Operation and reclamation.**

A. Mining operations shall be conducted to minimize adverse effects on the environment and facilitate integration of reclamation with mining operations according to the special requirements of individual mineral types and the approved operation, drainage, and reclamation plans. Mining shall be conducted to minimize the acreage that is disturbed, and reclamation shall be conducted simultaneously with mining to the extent feasible. No mining operation shall use cyanide or a cyanide compound in any mineral mining or processing operation.

B. Open pit mining of unconsolidated material shall be performed in such a way that extraction and reclamation are conducted simultaneously.

C. Mining activities shall be conducted so that the impact on water quality and quantity are minimized. Mining below the water table shall be done in accordance with the mining plan under 4VAC25-31-130.

D. Permanent lakes or ponds created by mining shall be equal to or greater than four feet deep, or otherwise constructed in a manner acceptable to the director.

E. Excavation shall be done in such a manner as to keep storm drainage flowing toward sediment control structures. Diversions shall be used to minimize storm runoff over disturbed areas.

F. The mining operation shall be planned to enhance the appearance to the public during mining and to achieve simultaneous and final reclamation.

G. At the completion of mining, all entrances to underground mines shall be closed or secured and the surface area reclaimed in accordance with the mineral mining plan.

H. Reclamation shall be completed to allow the post-mining land use to be implemented. After reclamation, the post mining land use shall be achievable and compatible with surrounding land use. All necessary permits and approvals for the post-mining land use shall be obtained prior to implementation.

**4VAC25-40-389. Prohibition on cyanide.**

No miner or other person shall use cyanide or a cyanide compound in any mineral mining or processing operation.

VA.R. Doc. No. R25-8026; Filed October 22, 2024, 9:30 a.m.

# TITLE 9. ENVIRONMENT

## STATE WATER CONTROL BOARD

### Final Regulation

REGISTRAR'S NOTICE: The following regulatory action is exempt from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 4 c of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulation provided such regulations do not differ materially from those required by federal law or regulation. The State Water Control Board is also claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 3 of the Code of Virginia, which excludes regulations that consist only of changes in style or form or corrections of technical errors. The board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Titles of Regulations: **9VAC25-31. Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (amending 9VAC25-31-25).**

**9VAC25-32. Virginia Pollution Abatement (VPA) Permit Regulation (amending 9VAC25-32-25).**

**9VAC25-110. Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Domestic Sewage Discharges of Less Than or Equal to 1,000 Gallons Per Day (amending 9VAC25-110-15).**

**9VAC25-115. Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Seafood Processing Facilities (amending 9VAC25-115-15).**

**9VAC25-120. Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Discharges from Groundwater Remediation of Contaminated Sites, Dewatering Activities of Contaminated Sites, and Hydrostatic Tests (amending 9VAC25-120-15).**

**9VAC25-151. Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Discharges of Stormwater Associated with Industrial Activity (amending 9VAC25-151-15).**

**9VAC25-190. Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Nonmetallic Mineral Mining (amending 9VAC25-190-15).**

**9VAC25-193. Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Concrete Products Facilities (amending 9VAC25-193-15).**

**9VAC25-194. Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Vehicle Wash Facilities and Laundry Facilities (amending 9VAC25-194-15).**

**9VAC25-196. Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Noncontact Cooling Water Discharges of 50,000 Gallons Per Day or Less (amending 9VAC25-196-15).**

**9VAC25-210. Virginia Water Protection Permit Program Regulation (amending 9VAC25-210-90).**

**9VAC25-610. Groundwater Withdrawal Regulations (amending 9VAC25-610-130).**

**9VAC25-630. Virginia Pollution Abatement Regulation and General Permit for Poultry Waste Management (amending 9VAC25-630-50).**

**9VAC25-660. Virginia Water Protection General Permit for Impacts Less Than One-Half Acre (amending 9VAC25-660-100).**

**9VAC25-670. Virginia Water Protection General Permit for Facilities and Activities of Utility and Public Service Companies Regulated by the Federal Energy Regulatory Commission or the State Corporation Commission and Other Utility Line Activities (amending 9VAC25-670-100).**

**9VAC25-680. Virginia Water Protection General Permit for Linear Transportation Projects (amending 9VAC25-680-100).**

**9VAC25-690. Virginia Water Protection General Permit for Impacts from Development and Certain Mining Activities (amending 9VAC25-690-100).**

**9VAC25-790. Sewage Collection and Treatment Regulations (amending 9VAC25-790-210).**

**9VAC25-800. Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Discharges Resulting from the Application of Pesticides to Surface Waters (amending 9VAC25-800-15).**

**9VAC25-820. General Virginia Pollutant Discharge Elimination System (VPDES) Watershed Permit Regulation for Total Nitrogen and Total Phosphorus**

**Discharges and Nutrient Trading in the Chesapeake Bay Watershed in Virginia (amending 9VAC25-820-15).**

**9VAC25-860. Virginia Pollutant Discharge Elimination System General Permit Regulation for Potable Water Treatment Plants (amending 9VAC25-860-15).**

**9VAC25-875. Virginia Erosion and Stormwater Management Regulation (amending 9VAC25-875-30).**

**9VAC25-880. General VPDES Permit for Discharges of Stormwater from Construction Activities (amending 9VAC25-880-15).**

**9VAC25-890. Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems (MS4s) (amending 9VAC25-890-15).**

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

Effective Date: December 18, 2024.

Agency Contact: William K. Norris, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 350-2743, or email william.norris@deq.virginia.gov.

Background: The U.S. Environmental Protection Agency (EPA) finalized changes to its test procedures required by industries and municipalities when analyzing the chemical, physical, and biological properties of wastewater and other environmental samples for reporting under the EPA National Pollutant Discharge Elimination System (NPDES) Permit Program. The Clean Water Act (CWA) (33 USC § 1342) requires EPA to promulgate these test procedures (analytical methods) for analysis of pollutants. EPA anticipated that these changes would provide increased flexibility for the regulated community in meeting monitoring requirements while improving data quality. In addition, this update to the CWA methods incorporated technological advances in analytical technology. Section 402 of the Clean Water Act authorizes states to administer the NPDES Permit Program under state law. The Commonwealth of Virginia received such authorization in 1975 under the terms of a Memorandum of Understanding with EPA and operates the Virginia Pollutant Discharge Elimination System Program, and Virginia regulations need to maintain consistency with the federal regulations.

Summary:

*The amendments update 25 State Water Control Board regulations to incorporate the U.S. Environmental Protection Agency Methods Update Rule amendments, effective June 17, 2024, by bringing references to 40 CFR Part 136 up to date with the requirements published July 1, 2024.*

**9VAC25-31-25. Applicability of incorporated references based on the dates that they became effective.**

Except as noted, when a regulation of the U.S. Environmental Protection Agency set forth in Title 40 of the Code of Federal Regulations (CFR) is referenced and incorporated in this chapter, that regulation shall be as it exists and has been published in the July 1, 2023, update; however, references to 40 CFR Part 136 are incorporated as published in the July 1, 2024, update.

**9VAC25-32-25. Applicability of incorporated references based on the dates that they became effective.**

Except as noted, when a regulation of the U.S. Environmental Protection Agency set forth in Title 40 of the Code of Federal Regulations (CFR) is referenced and incorporated in this chapter, that regulation shall be as it exists and has been published in the July 1, 2023, update; however, references to 40 CFR Part 136 are incorporated as published in the July 1, 2024, update.

**9VAC25-110-15. Applicability of incorporated references based on the dates that they became effective.**

Except as noted, when a regulation of the U.S. Environmental Protection Agency set forth in Title 40 of the Code of Federal Regulations (CFR) is referenced and incorporated ~~herein~~ in this chapter, that regulation shall be as it exists and has been published as of July 1, 2021; however, references to 40 CFR Part 136 are incorporated as published in the July 1, 2024, update.

**9VAC25-115-15. Applicability of incorporated references based on the dates that they became effective.**

Except as noted, when a regulation of the U.S. Environmental Protection Agency set forth in Title 40 of the Code of Federal Regulations (CFR) is referenced or adopted in this chapter and incorporated by reference, that regulation shall be as it exists and has been published as of July 1, 2020; however, references to 40 CFR Part 136 are incorporated as published in the July 1, 2024, update.

**9VAC25-120-15. Applicability of incorporated references based on the dates that they became effective.**

Except as noted, when a regulation of the U.S. Environmental Protection Agency (EPA) set forth in Title 40 of the Code of Federal Regulations (CFR) is referenced or adopted in this chapter and incorporated by reference, that regulation shall be as it exists and has been published as of July 1, 2022; however, references to 40 CFR Part 136 are incorporated as published in the July 1, 2024, update.

**9VAC25-151-15. Applicability of incorporated references based on the dates that they became effective.**

Except as noted, when a regulation of the U.S. Environmental Protection Agency set forth in Title 40 of the Code of Federal Regulations (CFR) is referenced and incorporated into this chapter, that regulation shall be as it exists and has been published as of July 1, 2023; however, references to 40 CFR Part 136 are incorporated as published in the July 1, 2024, update.

**9VAC25-190-15. Applicability of incorporated references based on the dates that they became effective.**

Except as noted, when a regulation of the U.S. Environmental Protection Agency set forth in Title 40 of the Code of Federal Regulations (CFR) is referenced or adopted in this chapter and incorporated by reference, that regulation shall be as it exists and has been published as of July 1, 2023; however, references to 40 CFR Part 136 are incorporated as published in the July 1, 2024, update.

**9VAC25-193-15. Applicability of incorporated references based on the dates that they became effective.**

Except as noted, when a regulation of the U.S. Environmental Protection Agency set forth in Title 40 of the Code of Federal Regulations (CFR) is referenced or adopted in this chapter and incorporated by reference, that regulation shall be as it exists and has been published as of July 1, 2022; however, references to 40 CFR Part 136 are incorporated as published in the July 1, 2024, update.

**9VAC25-194-15. Applicability of incorporated references based on the dates that they became effective.**

Except as noted, when a regulation of the U.S. Environmental Protection Agency (EPA) set forth in Title 40 of the Code of Federal Regulations (CFR) is referenced or adopted in this chapter and incorporated by reference, that regulation shall be as it exists and has been published as of July 1, 2021; however, references to 40 CFR Part 136 are incorporated as published in the July 1, 2024, update.

**9VAC25-196-15. Applicability of incorporated references based on the dates that they became effective.**

Except as noted, when a regulation of the U.S. Environmental Protection Agency set forth in Title 40 of the Code of Federal Regulations (CFR) is referenced or adopted in this chapter and incorporated by reference, that regulation shall be as it exists and has been published as of July 1, 2022; however, references to 40 CFR Part 136 are incorporated as published in the July 1, 2024, update.

**9VAC25-210-90. Conditions applicable to all VWP permits.**

A. Duty to comply. The permittee shall comply with all conditions and limitations of the VWP permit. Nothing in this chapter shall be construed to relieve the permittee of the duty to comply with all applicable federal and state statutes, regulations, toxic standards, and prohibitions. Any VWP permit violation or noncompliance is a violation of the Clean Water Act and State Water Control Law and is grounds for enforcement action, VWP permit termination, VWP permit revocation, VWP permit modification, or denial of an application for a VWP permit extension or reissuance.

B. Duty to cease or confine activity. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the activity for which a VWP permit has been granted in order to maintain compliance with the conditions of the VWP permit.

C. Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent any impacts in violation of the VWP permit that may have a reasonable likelihood of adversely affecting human health or the environment.

D. Inspection and entry. Upon presentation of credentials, the permittee shall allow the department or any duly authorized agent of the department, at reasonable times and under reasonable circumstances, to conduct the actions listed in this section. For the purpose of this section, the time for inspection shall be deemed reasonable during regular business hours. Nothing contained herein shall make an inspection time unreasonable during an emergency.

1. Enter upon permittee's property, public or private, and have access to, inspect and copy any records that must be kept as part of the VWP permit conditions;

2. Inspect any facilities, operations or practices (including monitoring and control equipment) regulated or required under the VWP permit; and

3. Sample or monitor any substance, parameter, or activity for the purpose of ensuring compliance with the conditions of the VWP permit or as otherwise authorized by law.

E. Duty to provide information. Plans, maps, conceptual reports, and other relevant information shall be submitted as required by the department prior to commencing construction.

F. Monitoring and records requirements.

1. Monitoring of parameters, other than pollutants, shall be conducted according to approved analytical methods as specified in the VWP permit. Analysis of pollutants will be conducted according to 40 CFR Part 136 as published in the 40 CFR July 1, ~~2023~~ 2024, update.

2. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

3. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart or electronic recordings for continuous monitoring instrumentation, copies of all reports required by the VWP permit, and records of all data used to complete the application for the VWP permit, for a period of at least three years from the date of permit expiration. This period may be extended by request of the department at any time.

4. Records of monitoring information shall include as appropriate:

a. The date, exact place and time of sampling or measurements;

b. The name of the individuals who performed the sampling or measurements;

c. The date and time the analyses were performed;

d. The name of the individuals who performed the analyses;

e. The analytical techniques or methods supporting the information such as observations, readings, calculations, and bench data used;

f. The results of such analyses; and

g. Chain of custody documentation.

G. Duty to reapply. Any permittee desiring to continue a previously permitted activity after the expiration date of the VWP permit shall apply for and obtain a new permit or, if applicable, shall request an extension in accordance with 9VAC25-210-180.

**9VAC25-610-130. Conditions applicable to all groundwater permits.**

A. Duty to comply. The permittee shall comply with all conditions of the permit. Nothing in this chapter shall be construed to relieve the groundwater withdrawal permit holder of the duty to comply with all applicable federal and state statutes and prohibitions. At a minimum, a person must obtain a well construction permit or a well site approval letter from the Virginia Department of Health prior to the construction of any well for any withdrawal authorized by the Department of Environmental Quality. Any permit violation is a violation of the law and is grounds for enforcement action, permit termination, revocation, modification, or denial of a permit application.

B. Duty to cease or confine activity. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the activity for which a permit has been granted in order to maintain compliance with the conditions of the permit.

C. Duty to mitigate. The permittee shall take all reasonable steps to:

1. Avoid all adverse impacts to lawful groundwater users that could result from the withdrawal; and

2. Where impacts cannot be avoided, provide mitigation of the adverse impact as described in 9VAC25-610-110 D 3 g.

D. Inspection and entry. Upon presentation of credentials, the permittee shall allow the department or any duly authorized agent of the department, at reasonable times and under reasonable circumstances, to conduct actions listed in this section. For the purpose of this section, the time for inspection shall be deemed reasonable during regular business hours. Nothing contained herein shall make an inspection time unreasonable during an emergency.

1. Entry upon any permittee's property, public or private, and have access to, inspect and copy any records that must be kept as part of the permit conditions;

2. Inspect any facilities, operations, or practices (including monitoring and control equipment) regulated or required under the permit; and

3. Sample or monitor any substance, parameter, or activity for the purpose of ensuring compliance with the conditions of the permit or as otherwise authorized by law.

E. Duty to provide information. The permittee shall furnish to the department, within a reasonable time, any information that the department may request to determine whether cause exists for modifying or revoking, reissuing, or terminating the permit or to determine compliance with the permit. The permittee shall also furnish to the department, upon request, copies of records required to be kept by the permittee.

F. Monitoring and records requirements.

1. Monitoring of parameters, other than pollutants, shall be conducted according to approved analytical methods as specified in the permit. Analysis of pollutants will be conducted according to 40 CFR Part 136 as published in the 40 CFR July 1, ~~2023~~ 2024, update.

2. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

3. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart or electronic recordings for continuous monitoring instrumentation, copies of all reports required by the permit, and records of all data used to complete the application for the permit, for a period of at least three years from the date of the expiration of a granted permit. This period may be extended by request of the department at any time.

4. Records of monitoring information shall include as appropriate:

a. The date, exact place and time of sampling or measurements;

b. The name of the individuals who performed the sampling or measurements;

c. The date the analyses were performed;

d. The name of the individuals who performed the analyses;

e. The analytical techniques or methods supporting the information such as observations, readings, calculations, and bench data used;

f. The results of such analyses; and

g. Chain of custody documentation.

G. Permit action.

1. A permit may be modified or revoked as set forth in Part VI (9VAC25-610-290 et seq.) of this chapter.

2. If a permittee files a request for permit modification or revocation, or files a notification of planned changes, or

anticipated noncompliance, the permit terms and conditions shall remain effective until the department makes a final case decision. This provision shall not be used to extend the expiration date of the effective permit.

3. Permits may be modified or revoked upon the request of the permittee, or upon department initiative, to reflect the requirements of any changes in the statutes or regulations.

**9VAC25-630-50. Contents of the general permit.**

Any poultry grower, poultry waste end-user, or poultry waste broker whose registration statement is accepted by the board will receive the following general permit and shall comply with the requirements therein and be subject to the VPA Permit Regulation, 9VAC25-32.

General Permit No. VPG2

Effective Date: February 17, 2021

Expiration Date: February 16, 2031

GENERAL PERMIT FOR POULTRY WASTE MANAGEMENT

AUTHORIZATION TO MANAGE POLLUTANTS UNDER THE VIRGINIA POLLUTION ABATEMENT PROGRAM AND THE VIRGINIA STATE WATER CONTROL LAW

In compliance with the provisions of the State Water Control Law (§ 62.1-44 et seq. of the Code of Virginia) and State Water Control Board regulations adopted pursuant thereto, owners of confined poultry feeding operations having 200 or more animal units, poultry waste end-users, and poultry waste brokers are authorized to manage pollutants within the boundaries of the Commonwealth of Virginia, except where board regulations prohibit such activities.

The authorized pollutant management activities shall be in accordance with the registration statement and supporting documents submitted to the Department of Environmental Quality, this cover page, and Part I—Pollutant Management and Monitoring Requirements for Confined Poultry Feeding Operations and Part II—Conditions Applicable to All VPA Permits and Part III—Pollutant Management and Monitoring Requirements for Poultry Waste End-Users and Poultry Waste Brokers, as set forth herein.

Part I

Pollutant Management and Monitoring Requirements for Confined Poultry Feeding Operations

A. Pollutant management authorization and monitoring requirements.

1. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to manage pollutants at the location or locations identified in the registration statement and the facility's approved nutrient management plan.

2. If poultry waste is land applied, it shall be applied at the rates specified in the facility's approved nutrient management plan.

3. Soil at the land application sites shall be monitored as specified in the following table. Additional soils monitoring may be required in the facility's approved nutrient management plan.

| SOILS MONITORING | | | | |
|---|---|---|---|---|
| PARAMETERS | LIMITATIONS | UNITS | MONITORING REQUIREMENTS | |
| | | | Frequency | Sample Type |
| pH | NL | SU | 1/3 years | Composite * |
| Phosphorus | NL | ppm or lbs/ac | 1/3 years | Composite * |
| Potash | NL | ppm or lbs/ac | 1/3 years | Composite * |
| Calcium | NL | ppm or lbs/ac | 1/3 years | Composite * |
| Magnesium | NL | ppm or lbs/ac | 1/3 years | Composite * |
| NL = No limit, this is a monitoring requirement only. | | | | |
| SU = Standard Units | | | | |
| *Specific sampling requirements are found in the facility's approved nutrient management plan. | | | | |

4. Poultry waste shall be monitored as specified below. Additional waste monitoring may be required in the facility's approved nutrient management plan.

| WASTE MONITORING | | | | |
|---|---|---|---|---|
| PARAMETERS | LIMITATIONS | UNITS | MONITORING REQUIREMENTS | |
| | | | Frequency | Sample Type |
| Total Kjeldahl Nitrogen | NL | * | 1/3 years | Composite |
| Ammonia Nitrogen | NL | * | 1/3 years | Composite |
| Total Phosphorus | NL | * | 1/3 years | Composite |

| | | | | |
|---|---|---|---|---|
| Total Potassium | NL | * | 1/3 years | Composite |
| Moisture Content | NL | % | 1/3 years | Composite |
| NL = No limit, this is a monitoring requirement only. | | | | |
| *Parameters for waste may be reported as a percent, as lbs/ton or lbs/1000 gallons, or as ppm where appropriate. | | | | |

5. Analysis of soil and waste shall be according to methods specified in the facility's approved nutrient management plan.

6. All monitoring data required by Part I A shall be maintained on site in accordance with Part II B. Reporting of results to the department is not required; however, the monitoring results shall be made available to department personnel upon request.

B. Site design, storage, and operation requirements.

1. The confined poultry feeding operation shall be designed and operated to (i) prevent point source discharges of pollutants to state waters except in the case of a storm event greater than the 25-year, 24-hour storm and (ii) provide adequate waste storage capacity to accommodate periods when the ground is ice covered, snow covered or saturated, periods when land application of nutrients should not occur due to limited or nonexistent crop nutrient uptake, and periods when physical limitations prohibit the land application of waste.

2. Poultry waste shall be stored according to the nutrient management plan and in a manner that prevents contact with surface water and ground water. Poultry waste that is stockpiled outside of the growing house for more than 14 days shall be kept in a facility or at a site that provides adequate storage. Adequate storage shall, at a minimum, include the following:

a. Poultry waste shall be covered to protect it from precipitation and wind;

b. Storm water shall not run onto or under the stored poultry waste;

c. A minimum of two feet of separation distance to the seasonal high water table or an impermeable barrier shall be used under the stored poultry waste. All poultry waste storage facilities that use an impermeable barrier shall maintain a minimum of one foot of separation between the seasonal high water table and the impermeable barrier. Impermeable barriers must be constructed of at least 12 inches of compacted clay, at least four inches of reinforced concrete, or another material of similar structural integrity that has a minimum permeability rating of 0.0014 inches per hour ($1X10^{-6}$ centimeters per second); and

d. For poultry waste that is not stored under roof, the storage site must be at least:

(1) 100 feet from any surface water, intermittent drainage, wells, sinkholes, rock outcrops, and springs; and

(2) 200 feet from any occupied dwellings not on the permittee's property, unless the occupant of the dwelling signs a waiver of the storage site.

3. Poultry waste storage facilities constructed after December 1, 2000, shall not be located within a 100-year floodplain unless the poultry grower has no land outside the floodplain on which to construct the facility and the facility is constructed so that the poultry waste is stored above the 100-year flood elevation or otherwise protected from floodwaters through the construction of berms or similar best management flood control structures. New, expanded, or replacement poultry growing houses that are constructed after December 1, 2000, shall not be located within a 100-year floodplain unless they are part of an existing, ongoing confined poultry feeding operation and are constructed so that the poultry and poultry litter are housed above the 100-year flood elevation or otherwise protected from floodwaters through construction of berms or similar best management flood control structures. For the purposes of determining the 100-year floodplain, a Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map (FIRM), a FEMA Letter of Map Amendment (LOMA), or a FEMA Letter of Map Revision (LOMR) shall be used.

4. The permittee shall operate and manage the facility so that impervious surfaces such as concrete end pads or load-out pads and surrounding areas and ventilation outlets are kept clean of poultry waste.

5. When the poultry waste storage facility is no longer needed, the permittee shall close it in a manner that (i) minimizes the need for further maintenance and (ii) controls, minimizes, or eliminates, to the extent necessary to protect human health and the environment, the postclosure escape of uncontrolled leachate, surface runoff, or waste decomposition products to the ground water, surface water, or the atmosphere. At closure, the permittee shall remove all poultry waste residue from the waste storage facility. At waste storage facilities without permanent covers and impermeable ground barriers, all residual poultry waste shall be removed from the surface below the stockpile when the poultry waste is taken out of storage. Removed waste materials shall be utilized according to the NMP.

C. Poultry waste transfer and utilization requirements.

1. Poultry waste may be transferred from a permitted poultry grower to another person without identifying the fields where such waste will be utilized in the permitted poultry grower's approved nutrient management plan if the following conditions are met:

a. When a poultry grower transfers to another person more than 10 tons of poultry waste in any 365-day period, the poultry grower shall provide that person with:

(1) Grower name, address, and permit number;

(2) A copy of the most recent nutrient analysis of the poultry waste; and

(3) A fact sheet.

b. When a poultry grower transfers to another person more than 10 tons of poultry waste in any 365-day period, the poultry grower shall keep a record of the following:

(1) The recipient name and address;

(2) The amount of poultry waste received by the person;

(3) The date of the transaction;

(4) The nutrient analysis of the waste; and

(5) The signed waste transfer records form acknowledging the receipt of the following:

(a) The waste;

(b) The nutrient analysis of the waste; and

(c) A fact sheet.

c. When a poultry grower transfers to another person more than 10 tons of poultry waste in any 365-day period, and the recipient of the waste is someone other than a broker, the poultry grower shall keep a record of the following:

(1) The locality in which the recipient intends to utilize the waste (i.e., nearest town or city, county, and zip code); and

(2) The name of the stream or waterbody if known to the recipient that is nearest to the waste utilization or storage site.

2. Poultry growers shall maintain the records required by Part I C 1 for at least three years after the transaction and shall make them available to department personnel upon request.

3. Transfer records reporting requirements. The grower shall submit the records required by Part I C 1 in accordance with the timing outlined in Part I C 3 a and b.

a. Beginning February 17, 2022, upon request by the department, the grower shall submit the records in a format and method determined by the department.

b. Beginning February 17, 2023, the grower shall submit to the department, annually, the records for the preceding state fiscal year (July 1 through June 30) no later than September 15.

4. Poultry waste generated by this facility shall not be applied to fields owned by or under the operational control of either the poultry grower or a legal entity in which the poultry grower has an ownership interest unless the fields are included in the facility's approved nutrient management plan.

5. The poultry grower shall implement a nutrient management plan (NMP) developed by a certified nutrient management planner in accordance with § 10.1-104.2 of the Code of Virginia and approved by the Department of Conservation and Recreation and maintain the plan on site. The terms of the NMP shall be enforceable through this permit. The NMP shall contain at a minimum the following information:

a. Site map indicating the location of the waste storage facilities and the fields where waste generated by this facility will be applied by the poultry grower. The location of fields as identified in Part I C 4 shall also be included;

b. Site evaluation and assessment of soil types and potential productivities;

c. Nutrient management sampling including soil and waste monitoring;

d. Storage and land area requirements for the grower's poultry waste management activities;

e. Calculation of waste application rates; and

f. Waste application schedules.

6. Nitrogen application rates contained in the NMP shall be established in accordance with 4VAC50-85-140 A 2. The application of poultry waste shall be managed to minimize runoff, leachate, and volatilization losses, and reduce adverse water quality impacts from nitrogen.

7. Phosphorus application rates contained in the NMP shall be established in accordance with 4VAC50-85-140 A 2. The application of poultry waste shall be managed to minimize runoff and leaching and reduce adverse water quality impacts from phosphorous.

8. The timing of land application of poultry waste shall be according to the schedule contained in the NMP, except that no waste may be applied to ice covered or snow covered ground or to soils that are saturated. Poultry waste may be applied to frozen ground within the NMP scheduled times only under the following conditions:

a. Slopes are not greater than 6.0%;

b. A minimum of a 200-foot vegetative or adequate crop residue buffer is maintained between the application area and all surface water courses;

c. Only those soils characterized by USDA as "well drained" with good infiltration are used; and

d. At least 60% uniform cover by vegetation or crop residue is present in order to reduce surface runoff and the potential for leaching of nutrients to ground water.

9. In cases where poultry waste storage is threatened by emergencies such as fire or flood or where these conditions are imminent, poultry waste can be land applied outside of the spreading schedule outlined in the grower's NMP. If this occurs, the poultry grower shall document the land application information in accordance with Part I C 11 and notify the department in accordance with Part II H.

10. Poultry waste shall not be land applied within buffer zones. Buffer zones at waste application sites shall, at a minimum, be maintained as follows:

a. Distance from occupied dwellings not on the permittee's property: 200 feet (unless the occupant of the dwelling signs a waiver of the buffer zone);

b. Distance from water supply wells or springs: 100 feet;

c. Distance from surface water courses: 100 feet (without a permanent vegetated buffer) or 35 feet (if a permanent vegetated buffer exists).

Other site-specific conservation practices may be approved by the department that will provide pollutant reductions equivalent or better than the reductions that would be achieved by the 100-foot buffer;

d. Distance from rock outcropping (except limestone): 25 feet;

e. Distance from limestone outcroppings: 50 feet; and

f. Waste shall not be applied in such a manner that it would discharge to sinkholes that may exist in the area.

11. The following records shall be maintained:

a. The identification of the land application field sites where the waste is utilized or stored;

b. The application rate;

c. The application dates; and

d. What crops have been planted.

These records shall be maintained on site for a period of three years after recorded application is made and shall be made available to department personnel upon request.

D. Other special conditions.

1. Each poultry grower covered by this general permit shall complete a training program offered or approved by the department within one year of filing the registration statement for general permit coverage. All permitted poultry growers shall complete a training program at least once every five years.

2. Confined poultry feeding operations that use disposal pits for routine disposal of daily mortalities shall not be covered under this general permit. The use of a disposal pit for routine disposal of daily poultry mortalities by a permittee shall be a violation of this permit. This prohibition does not apply to the emergency disposal of dead poultry done according to regulations adopted pursuant to § 3.2-6002 of the Code of Virginia or Chapter 14 (§ 10.1-1400 et seq.) of Title 10.1 of the Code of Virginia.

Part II
Conditions Applicable to all VPA Permits

A. Monitoring.

1. Samples and measurements taken as required by this permit shall be representative of the monitored activity.

2. Monitoring shall be conducted according to procedures listed under 40 CFR Part 136, as published in the 40 CFR July 1, 2024, update, unless otherwise specified in this permit.

3. The permittee shall periodically calibrate and perform maintenance procedures on all monitoring and analytical instrumentation at intervals that will ensure accuracy of measurements.

B. Records.

1. Records of monitoring information shall include:

a. The date, exact place, and time of sampling or measurements;

b. The name of the individuals who performed the sampling or measurements;

c. The dates analyses were performed;

d. The name of the individuals who performed the analyses;

e. The analytical techniques or methods used, with supporting information such as observations, readings, calculations and bench data; and

f. The results of such analyses.

2. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit for a period of at least three years from the date of the sample, measurement, report or application. This period of retention may be extended by request of the board at any time.

C. Reporting monitoring results. If reporting is required by Part I or Part III of this general permit, the permittee shall follow the requirements of this subsection.

1. The permittee shall submit the results of the monitoring required by this permit not later than the 10th day of the month after the monitoring takes place, unless another reporting schedule is specified elsewhere in this permit. Monitoring results shall be submitted to the department's regional office.

2. Monitoring results shall be reported on forms provided or specified by the department.

3. If the permittee monitors the pollutant management activity, at a sampling location specified in this permit, for any pollutant more frequently than required by the permit using approved analytical methods, the permittee shall report the results of this monitoring on the monitoring report.

4. If the permittee monitors the pollutant management activity, at a sampling location specified in this permit, for any pollutant that is not required to be monitored by the permit, and uses approved analytical methods, the permittee shall report the results with the monitoring report.

5. Calculations for all limitations that require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in this permit.

D. Duty to provide information. The permittee shall furnish to the department, within a reasonable time, any information which the director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the department, upon request, copies of records required to be kept by the permittee. Plans, specifications, maps, conceptual reports, and other relevant information shall be submitted as requested by the director prior to commencing construction.

E. Compliance schedule reports. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date.

F. Unauthorized discharges. Except in compliance with this permit, or another permit issued by the board, it shall be unlawful for any person to:

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; or

2. Otherwise alter the physical, chemical, or biological properties of such state waters and make them detrimental to the public health, or to animal or aquatic life, or to the use of such waters for domestic or industrial consumption, or for recreation, or for other uses.

G. Reports of unauthorized discharges. Any permittee who discharges or causes or allows (i) a discharge of sewage, industrial waste, other wastes, or any noxious or deleterious substance into or upon state waters in violation of Part II F, or (ii) a discharge that may reasonably be expected to enter state waters in violation of Part II F shall notify the department of the discharge immediately upon discovery of the discharge, but in no case later than 24 hours after said discovery. A written report of the unauthorized discharge shall be submitted to the department within five days of discovery of the discharge. The written report shall contain:

1. A description of the nature and location of the discharge;

2. The cause of the discharge;

3. The date on which the discharge occurred;

4. The length of time that the discharge continued;

5. The volume of the discharge;

6. If the discharge is continuing, how long it is expected to continue;

7. If the discharge is continuing, what the expected total volume of the discharge will be; and

8. Any steps planned or taken to reduce, eliminate, and prevent a recurrence of the present discharge or any future discharges not authorized by this permit.

Discharges reportable to the department under the immediate reporting requirements of other regulations are exempted from this requirement.

H. Reports of unusual or extraordinary discharges. If any unusual or extraordinary discharge including a bypass or upset should occur from a treatment works and the discharge enters or could be expected to enter state waters, the permittee shall promptly notify, in no case later than 24 hours, the department by telephone after the discovery of the discharge. This notification shall provide all available details of the incident, including any adverse effects on aquatic life and the known number of fish killed. The permittee shall reduce the report to writing and shall submit it to the department within five days of discovery of the discharge in accordance with Part II I 2. Unusual and extraordinary discharges include but are not limited to any discharge resulting from:

1. Unusual spillage of materials resulting directly or indirectly from processing operations;

2. Breakdown of processing or accessory equipment;

3. Failure or taking out of service some or all of the treatment works; and

4. Flooding or other acts of nature.

I. Reports of noncompliance. The permittee shall report any noncompliance which may adversely affect state waters or may endanger public health.

1. An oral report shall be provided within 24 hours from the time the permittee becomes aware of the circumstances. The following shall be included as information which shall be reported within 24 hours under this paragraph:

a. Any unanticipated bypass; and

b. Any upset which causes a discharge to surface waters.

2. A written report shall be submitted within five days and shall contain:

a. A description of the noncompliance and its cause;

b. The period of noncompliance, including exact dates and times, and, if the noncompliance has not been corrected, the anticipated time it is expected to continue; and

c. Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

The board may waive the written report on a case-by-case basis for reports of noncompliance under Part II I if the oral report has been received within 24 hours and no adverse impact on state waters has been reported.

3. The permittee shall report all instances of noncompliance not reported under Part II I 1 or 2 in writing at the time the next monitoring reports are submitted. The reports shall contain the information listed in Part II I 2.

NOTE: The immediate (within 24 hours) reports required in Part II F, G, and H may be made to the department's regional office. For reports outside normal working hours, leave a message and this shall fulfill the immediate reporting requirement. For emergencies, the Virginia Department of Emergency Management maintains a 24-hour telephone service at 1-800-468-8892.

J. Notice of planned changes.

1. The permittee shall give notice to the department as soon as possible of any planned physical alterations or additions to the design or operation of the pollutant management activity.

2. The permittee shall give at least 10 days advance notice to the department of any planned changes in the permitted facility or activity that may result in noncompliance with permit requirements.

K. Signatory requirements.

1. Applications. All permit applications shall be signed as follows:

a. For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means: (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy-making or decision-making functions for the corporation or (ii) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

c. For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a public agency includes: (i) the chief executive officer of the agency or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

2. Reports, etc. All reports required by permits, and other information requested by the board shall be signed by a person described in Part II K 1, or by a duly authorized representative of that person. A person is a duly authorized representative only if:

a. The authorization is made in writing by a person described in Part II K 1;

b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, or a position of equivalent responsibility. A duly authorized representative may thus be either a named individual or any individual occupying a named position; and

c. The written authorization is submitted to the department.

3. Changes to authorization. If an authorization under Part II K 2 is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of Part II K 2 shall be submitted to the department prior to or together with any reports, or information to be signed by an authorized representative.

4. Certification. Any person signing a document under Part II K 1 or 2 shall make the following certification: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

L. Duty to comply. The permittee shall comply with all conditions of this general permit and 9VAC25-630. Any noncompliance with the general permit or 9VAC25-630 constitutes a violation of the State Water Control Law (§ 62.1-44 et seq. of the Code of Virginia). Permit noncompliance is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application. Compliance with a permit during its term constitutes compliance, for purposes of enforcement, with the State Water Control Law (§ 62.1-44 et seq. of the Code of Virginia).

M. Duty to reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee shall apply for and obtain a new permit. All permittees with a currently effective permit shall submit a new application at least 30 days before the expiration date of the existing permit unless permission for a later date has been granted by the board. The board shall not grant permission for applications to be submitted later than the expiration date of the existing permit.

N. Effect of a permit. This permit does not convey any property rights in either real or personal property or any exclusive privileges, nor does it authorize any injury to private property or invasion of personal rights, or any infringement of federal, state, or local law or regulations.

O. State law. Nothing in this permit shall be construed to preclude the institution of any legal action under, or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any other state law or regulation or under authority preserved by § 510 of the federal Clean Water Act. Except as provided in permit conditions on bypassing (Part II U), and upset (Part II V), nothing in this permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance.

P. Oil and hazardous substance liability. Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under §§ 62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law (§ 62.1-44 et seq. of the Code of Virginia).

Q. Proper operation and maintenance. The permittee shall be responsible for the proper operation and maintenance of all treatment works, systems and controls which are installed or used to achieve compliance with the conditions of this permit. Proper operation and maintenance includes effective plant performance, adequate funding, adequate staffing, and adequate laboratory and process controls, including appropriate quality assurance procedures.

R. Disposal of solids or sludges. Solids, sludges, or other pollutants removed in the course of treatment or management of pollutants shall be disposed of in a manner so as to prevent any pollutant from such materials from entering state waters.

S. Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent any pollutant management activity in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

T. Need to halt or reduce activity not a defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

U. Bypass.

1. Prohibition. "Bypass" means intentional diversion of waste streams from any portion of a treatment works. A bypass of the treatment works is prohibited except as provided herein.

2. Anticipated bypass. If the permittee knows in advance of the need for a bypass, he shall notify the department promptly at least 10 days prior to the bypass. After considering its adverse effects, the board may approve an anticipated bypass if:

a. The bypass will be unavoidable to prevent loss of human life, personal injury, or severe property damage. "Severe property damage" means substantial physical damage to property, damage to the treatment facilities that causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. "Severe property damage" does not mean economic loss caused by delays in production; and

b. There are no feasible alternatives to bypass such as the use of auxiliary treatment facilities, retention of untreated waste, or maintenance during normal periods of equipment downtime. However, if bypass occurs during normal periods of equipment downtime or preventive maintenance and in the exercise of reasonable engineering judgment the permittee could have installed adequate backup equipment to prevent such bypass, this exclusion shall not apply as a defense.

3. Unplanned bypass. If an unplanned bypass occurs, the permittee shall notify the department as soon as possible, but in no case later than 24 hours, and shall take steps to halt the bypass as early as possible. This notification will be a condition for defense to an enforcement action that an unplanned bypass met the conditions in Part II U 2 a and b and in light of the information reasonably available to the permittee at the time of the bypass.

V. Upset. A permittee may claim an upset as an affirmative defense to an action brought for noncompliance. In any enforcement proceedings a permittee shall have the burden of proof to establish the occurrence of any upset. In order to establish an affirmative defense of upset, the permittee shall present properly signed, contemporaneous operating logs or other relevant evidence that shows:

1. That an upset occurred and that the cause can be identified;

2. That the permitted facility was at the time being operated efficiently and in compliance with proper operation and maintenance procedures;

3. That the 24-hour reporting requirements to the department were met; and

4. That the permittee took all reasonable steps to minimize or correct any adverse impact on state waters resulting from noncompliance with the permit.

W. Inspection and entry. Upon presentation of credentials, any duly authorized agent of the board may, at reasonable times and under reasonable circumstances:

1. Enter upon any public or private property on which the pollutant management activities that are governed by this permit are located and have access to records required by this permit;

2. Have access to, inspect and copy any records that must be kept as part of permit conditions;

3. Inspect any facility's equipment (including monitoring and control equipment) practices or operations regulated or required under the permit; and

4. Sample or monitor any substances or parameters at any locations for the purpose of assuring permit compliance or as otherwise authorized by the State Water Control Law (§ 62.1-44 et seq. of the Code of Virginia).

For purposes of this section, the time for inspection shall be deemed reasonable during regular business hours, and whenever the facility is involved in managing pollutants. Nothing contained herein shall make an inspection unreasonable during an emergency.

X. Permit actions. Permits may be modified, revoked and reissued, or terminated for cause upon the request of the permittee or interested persons, or upon the board's initiative. If a permittee files a request for a permit modification, revocation, or termination, or files a notification of planned changes, or anticipated noncompliance, the permit terms and conditions shall remain effective until the request is acted upon by the board. This provision shall not be used to extend the expiration date of the effective VPA permit.

Y. Transfer of permits.

1. Permits are not transferable to any person except after notice to the department. The board may require modification or revocation and reissuance of the permit to change the name of the permittee and to incorporate such other requirements as may be necessary. Except as provided in Part II Y 2, a permit may be transferred by the permittee to a new owner or operator only if the permit has been modified to reflect the transfer or has been revoked and reissued to the new owner or operator.

2. As an alternative to transfers under Part II Y 1, this permit shall be automatically transferred to a new permittee if:

a. The current permittee notifies the department within 30 days of the transfer of the title to the facility or property;

b. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and

c. The board does not, within the 30-day time period, notify the existing permittee and the proposed new permittee of its intent to modify or revoke and reissue the permit. If the board notice is not received, the transfer is effective on the date specified in the agreement mentioned in Part II Y 2 b.

Z. Severability. The provisions of this permit are severable and, if any provision of this permit or the application of any provision of this permit to any circumstance is held invalid, the application of such provision to other circumstances and the remainder of this permit shall not be affected thereby.

Part III
Pollutant Management and Monitoring Requirements for Poultry Waste End-Users and Poultry Brokers

A. Pollutant management authorization and monitoring requirements.

1. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to manage pollutants at the location or locations identified in the registration statement and the permittee's approved nutrient management plan.

2. If poultry waste is land applied on land under the permittee's operational control, it shall be applied at the rates specified in the permittee's approved nutrient management plan.

3. Soil at the land application sites shall be monitored as specified in the following table. Additional soils monitoring may be required in the permittee's approved nutrient management plan.

| SOILS MONITORING | | | | |
|---|---|---|---|---|
| PARAMETERS | LIMITATIONS | UNITS | MONITORING REQUIREMENTS | |
| | | | Frequency | Sample Type |
| pH | NL | SU | 1/3 years | Composite * |
| Phosphorus | NL | ppm or lbs/ac | 1/3 years | Composite * |
| Potash | NL | ppm or lbs/ac | 1/3 years | Composite * |
| Calcium | NL | ppm or lbs/ac | 1/3 years | Composite * |
| Magnesium | NL | ppm or lbs/ac | 1/3 years | Composite * |
| NL = No limit, this is a monitoring requirement only. | | | | |
| SU = Standard Units | | | | |
| *Specific sampling requirements are outlined in the permittee's approved nutrient management plan. | | | | |

4. Poultry waste shall be monitored as specified in the following table. Additional waste monitoring may be required in the permittee's approved nutrient management plan.

| WASTE MONITORING | | | | |
|---|---|---|---|---|
| PARAMETERS | LIMITATIONS | UNITS | MONITORING REQUIREMENTS | |
| | | | Frequency | Sample Type |
| Total Kjeldahl Nitrogen | NL | * | 1/3 years | Composite |
| Ammonia Nitrogen | NL | * | 1/3 years | Composite |
| Total Phosphorus | NL | * | 1/3 years | Composite |
| Total Potassium | NL | * | 1/3 years | Composite |
| Moisture Content | NL | % | 1/3 years | Composite |
| NL = No limit, this is a monitoring requirement only. | | | | |
| *Parameters for waste may be reported as a percent, as lbs/ton or lbs/1000 gallons, or as ppm where appropriate. | | | | |

5. If waste from two or more poultry waste sources is commingled or stored then a sample that best represents the waste shall be used to calculate the nutrients available in the poultry waste for land application and shall be provided to the end-user of the waste.

6. Analysis of soil and waste shall be according to methods specified in the permittee's approved nutrient management plan.

7. All monitoring data required by Part III A shall be maintained on site in accordance with Part II B. Reporting of results to the department is not required; however, the monitoring results shall be made available to department personnel upon request.

B. Site design, storage, and operation requirements.

1. Poultry waste storage facilities shall be designed and operated to (i) prevent point source discharges of pollutants to state waters except in the case of a storm event greater than the 25-year, 24-hour storm and (ii) provide adequate waste storage capacity to accommodate periods when the ground is ice covered, snow covered or saturated, periods when land application of nutrients should not occur due to limited or nonexistent crop nutrient uptake, and periods when physical limitations prohibit the land application of waste.

2. Poultry waste shall be stored according to the approved nutrient management plan and in a manner that prevents contact with surface water and ground water. Poultry waste that is stockpiled outside for more than 14 days shall be kept in a facility or at a site that provides adequate storage.

Adequate storage shall, at a minimum, include the following:

a. Poultry waste shall be covered to protect it from precipitation and wind;

b. Storm water shall not run onto or under the stored poultry waste;

c. A minimum of two feet of separation distance to the seasonal high water table or an impermeable barrier shall be used under the stored poultry waste. All poultry waste storage facilities that use an impermeable barrier shall maintain a minimum of one foot of separation between the seasonal high water table and the impermeable barrier. Impermeable barriers must be constructed of at least 12 inches of compacted clay, at least four inches of reinforced concrete, or another material of similar structural integrity that has a minimum permeability rating of 0.0014 inches per hour ($1X10^{-6}$ centimeters per second); and

d. For poultry waste that is not stored under roof, the storage site must be at least:

(1) 100 feet from any surface water, intermittent drainage, wells, sinkholes, rock outcrops, and springs; and

(2) 200 feet from any occupied dwellings not on the permittee's property (unless the occupant of the dwelling signs a waiver of the storage site).

3. Poultry waste storage facilities constructed after December 1, 2000, shall not be located within a 100-year floodplain unless there is no land available outside the floodplain on which to construct the facility and the facility is constructed so that the poultry waste is stored above the 100-year flood elevation or otherwise protected from floodwaters through the construction of berms or similar best management flood control structures. For the purposes of determining the 100-year floodplain, a Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map (FIRM), a FEMA Letter of Map Amendment (LOMA), or a FEMA Letter of Map Revision (LOMR) shall be used.

4. The permittee shall operate and manage the facility so that impervious surfaces such as concrete end pads or load-out pads and surrounding areas and ventilation outlets are kept clean of poultry waste.

5. When the poultry waste storage facility is no longer needed, the permittee shall close it in a manner that (i) minimizes the need for further maintenance and (ii) controls, minimizes, or eliminates, to the extent necessary to protect human health and the environment, the postclosure escape of uncontrolled leachate, surface runoff, or waste decomposition products to the ground water, surface water, or the atmosphere. At closure, the permittee shall remove all poultry waste residue from the waste storage facility. At waste storage facilities without permanent covers and impermeable ground barriers, all residual poultry waste shall be removed from the surface below the stockpile when the poultry waste is taken out of storage. Removed waste materials shall be utilized according to the NMP.

C. Poultry waste transfer and utilization requirements.

1. When a poultry waste end-user or poultry waste broker receives, possesses, or has control over more than 10 tons of transferred poultry waste in any 365-day period, he shall provide the person from whom he received the poultry waste with:

a. The end-user or broker name, address, and permit number;

b. If the recipient of the poultry waste is an end-user, then he shall also provide the person from whom he received the poultry waste the following information:

(1) The locality in which the recipient intends to utilize the waste (i.e., nearest town or city, county and zip code);

(2) The name of the stream or waterbody if known to the recipient that is nearest to the waste utilization or storage site; and

c. Written acknowledgement of receipt of:

(1) The waste;

(2) The nutrient analysis of the waste; and

(3) The fact sheet.

If the person receiving the waste is a poultry waste broker, then he shall also certify in writing that he will provide a copy of the nutrient analysis and fact sheet to each end user to whom he transfers poultry waste.

2. When a poultry waste broker transfers or hauls poultry waste to other persons, he shall provide the person who received the poultry waste with:

a. Broker name, address, and permit number;

b. The nutrient analysis of the waste; and

c. A fact sheet.

3. When a poultry waste end-user or poultry waste broker is a recipient of more than 10 tons of transferred poultry waste in any 365-day period, the poultry waste end-user or poultry waste broker shall keep a record regarding the transferred poultry waste:

a. The following items shall be recorded regarding the source of the transferred poultry waste:

(1) The source name and address;

(2) The amount of poultry waste received from the source; and

(3) The date the poultry waste was acquired.

b. The following items shall be recorded regarding the recipient of the transferred poultry waste:

(1) The recipient name and address;

(2) The amount of poultry waste received by the person;

(3) The date of the transaction;

(4) The nutrient content of the waste;

(5) The locality in which the recipient intends to utilize the waste (i.e., nearest town or city, county, and zip code);

(6) The name of the stream or waterbody if known to the recipient that is nearest to the waste utilization or storage site; and

(7) The signed waste transfer records form acknowledging the receipt of the following:

(a) The waste;

(b) The nutrient analysis of the waste; and

(c) A fact sheet.

4. End-users or brokers shall maintain the records required by Part III C 3 for at least three years after the transaction and make them available to department personnel upon request.

5. Transfer records reporting requirements. The end-users and brokers shall submit the records required by Part III C 3 in accordance with the timing outlined in Part III C 5 a and 5 b.

a. Beginning February 17, 2022, upon request by the department, the end-users and brokers shall submit the records in a format and method determined by the department.

b. Beginning February 17, 2023, the end-users and brokers shall submit to the department, annually, the records for the preceding state fiscal year (July 1 through June 30) no later than September 15.

6. If poultry waste is also generated by this facility it shall not be applied to fields owned by or under the operational control of either the permittee or a legal entity in which the permittee has an ownership interest unless the fields are included in the permittee's approved nutrient management plan.

7. The permittee shall implement a nutrient management plan (NMP) developed by a certified nutrient management planner in accordance with § 10.1-104.2 of the Code of Virginia and approved by the Department of Conservation and Recreation and maintain the plan on site. The terms of the NMP shall be enforceable through this permit. The NMP shall contain at a minimum the following information:

a. Site map indicating the location of the waste storage facilities and the fields where waste will be applied by the permittee. The location of fields as identified in Part III C 6 shall also be included;

b. Site evaluation and assessment of soil types and potential productivities;

c. Nutrient management sampling including soil and waste monitoring;

d. Storage and land area requirements for the permittee's poultry waste management activities;

e. Calculation of waste application rates; and

f. Waste application schedules.

8. Nitrogen application rates contained in the NMP shall be established in accordance with 4VAC50-85-140 A 2. The application of poultry waste shall be managed to minimize runoff, leachate, and volatilization losses, and reduce adverse water quality impacts from nitrogen.

9. Phosphorus application rates contained in the NMP shall be established in accordance with 4VAC50-85-140 A 2. The application of poultry waste shall be managed to minimize runoff and leaching and reduce adverse water quality impacts from phosphorous.

10. The timing of land application of poultry waste shall be according to the schedule contained in the NMP, except that no waste may be applied to ice covered or snow covered ground or to soils that are saturated. Poultry waste may be applied to frozen ground within the NMP scheduled times only under the following conditions:

a. Slopes are not greater than 6.0%;

b. A minimum of a 200-foot vegetative or adequate crop residue buffer is maintained between the application area and all surface water courses;

c. Only those soils characterized by USDA as "well drained" with good infiltration are used; and

d. At least 60% uniform cover by vegetation or crop residue is present in order to reduce surface runoff and the potential for leaching of nutrients to ground water.

11. In cases where poultry waste storage is threatened by emergencies such as fire or flood or where these conditions are imminent, poultry waste can be land applied outside of the spreading schedule outlined in the permittee's NMP. If this occurs, the permittee shall document the land application information in accordance with Part III C 13 and notify the department in accordance with Part II H.

12. Poultry waste shall not be land applied within buffer zones. Buffer zones at waste application sites shall, at a minimum, be maintained as follows:

a. Distance from occupied dwellings not on the permittee's property: 200 feet (unless the occupant of the dwelling signs a waiver of the buffer zone);

b. Distance from water supply wells or springs: 100 feet;

c. Distance from surface water courses: 100 feet (without a permanent vegetated buffer) or 35 feet (if a permanent vegetated buffer exists). Other site-specific conservation practices may be approved by the department that will provide pollutant reductions equivalent or better than the reductions that would be achieved by the 100-foot buffer;

d. Distance from rock outcropping (except limestone): 25 feet;

e. Distance from limestone outcroppings: 50 feet; and

f. Waste shall not be applied in such a manner that it would discharge to sinkholes that may exist in the area.

13. The following records shall be maintained:

a. The identification of the land application field sites where the waste is utilized or stored;

b. The application rate;

c. The application dates; and

d. What crops have been planted.

These records shall be maintained on site for a period of three years after recorded application is made and shall be made available to department personnel upon request.

D. Other special conditions.

1. Each poultry waste end-user or poultry waste broker covered by this general permit shall complete a training program offered or approved by the department within one year of filing the registration statement for general permit coverage. All permitted poultry waste end-users or permitted poultry waste brokers shall complete a training program at least once every five years.

2. Poultry feeding operations that use disposal pits for routine disposal of daily mortalities shall not be covered under this general permit. The use of a disposal pit for routine disposal of daily poultry mortalities by a permittee shall be a violation of this permit. This prohibition does not apply to the emergency disposal of dead poultry done according to regulations adopted pursuant to § 3.2-6002 of the Code of Virginia or Chapter 14 (§ 10.1-1400 et seq.) of Title 10.1 of the Code of Virginia.

**9VAC25-660-100. VWP general permit.**

VWP GENERAL PERMIT NO. WP1 FOR IMPACTS LESS THAN ONE-HALF ACRE UNDER THE VIRGINIA WATER PROTECTION PERMIT AND THE VIRGINIA STATE WATER CONTROL LAW

Effective date: August 2, 2016
Expiration date: August 1, 2026

In compliance with § 401 of the Clean Water Act, as amended (33 USC § 1341) and the State Water Control Law and regulations adopted pursuant thereto, the board has determined that there is a reasonable assurance that this VWP general permit, if complied with, will protect instream beneficial uses, will not violate applicable water quality standards, and will not cause or contribute to a significant impairment of state waters or fish and wildlife resources. In issuing this VWP general permit, the board has not taken into consideration the structural stability of any proposed activities.

The permanent or temporary impact of less than one-half acre of nontidal wetlands or open water and up to 300 linear feet of nontidal stream bed shall be subject to the provisions of the VWP general permit set forth herein; any requirements in coverage granted under this VWP general permit; the Clean Water Act, as amended; and the State Water Control Law and regulations adopted pursuant to it.

Part I.

Special Conditions.

A. Authorized activities.

1. The activities authorized by this chapter shall not cause more than the permanent or temporary impacts to less than one-half acre of nontidal wetlands or open water and up to 300 linear feet of nontidal stream bed. Additional permit requirements as stipulated by the department in the coverage letter, if any, shall be enforceable conditions of this permit.

2. Any changes to the authorized permanent impacts to surface waters shall require a notice of planned change in accordance with 9VAC25-660-80. An application or request for modification to coverage or another VWP permit application may be required.

3. Any changes to the authorized temporary impacts to surface waters shall require written notification to and approval from the Department of Environmental Quality in accordance with 9VAC25-660-80 prior to initiating the impacts and restoration to preexisting conditions in accordance with the conditions of this permit.

4. Modification to compensation requirements may be approved at the request of the permittee when a decrease in the amount of authorized surface waters impacts occurs, provided that the adjusted compensation meets the initial compensation goals.

B. Overall conditions.

1. The activities authorized by this VWP general permit shall be executed in a manner so as to minimize adverse impacts on instream beneficial uses as defined in § 62.1-10 (b) of the Code of Virginia.

2. No activity may substantially disrupt the movement of aquatic life indigenous to the water body, including those species that normally migrate through the area, unless the primary purpose of the activity is to impound water. Pipes and culverts placed in streams must be installed to maintain low flow conditions and shall be countersunk at both inlet and outlet ends of the pipe or culvert, unless otherwise specifically approved by the Department of Environmental Quality on a case-by-case basis, and as follows: The requirement to countersink does not apply to extensions or maintenance of existing pipes and culverts that are not countersunk, floodplain pipes and culverts being placed above ordinary high water, pipes and culverts being placed on bedrock, or pipes and culverts required to be placed on

slopes 5.0% or greater. Bedrock encountered during construction must be identified and approved in advance of a design change where the countersunk condition cannot be met. Pipes and culverts 24 inches or less in diameter shall be countersunk three inches below the natural stream bed elevations, and pipes and culverts greater than 24 inches shall be countersunk at least six inches below the natural stream bed elevations. Hydraulic capacity shall be determined based on the reduced capacity due to the countersunk position. In all stream crossings appropriate measures shall be implemented to minimize any disruption of aquatic life movement.

3. Wet or uncured concrete shall be prohibited from entry into flowing surface waters, unless the area is contained within a cofferdam and the work is performed in the dry or unless otherwise approved by the Department of Environmental Quality. Excess or waste concrete shall not be disposed of in flowing surface waters or washed into flowing surface waters.

4. All fill material shall be clean and free of contaminants in toxic concentrations or amounts in accordance with all applicable laws and regulations.

5. Erosion and sedimentation controls shall be designed in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992. These controls shall be placed prior to clearing and grading and maintained in good working order to minimize impacts to state waters. These controls shall remain in place until the area is stabilized and shall then be removed.

6. Exposed slopes and streambanks shall be stabilized immediately upon completion of work in each permitted impact area. All denuded areas shall be properly stabilized in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.

7. All construction, construction access (e.g., cofferdams, sheetpiling, and causeways) and demolition activities associated with the project shall be accomplished in a manner that minimizes construction or waste materials from entering surface waters to the maximum extent practicable, unless authorized by this VWP general permit.

8. No machinery may enter flowing waters, unless authorized by this VWP general permit or approved prior to entry by the Department of Environmental Quality.

9. Heavy equipment in temporarily impacted wetland areas shall be placed on mats, geotextile fabric, or other suitable material to minimize soil disturbance to the maximum extent practicable. Equipment and materials shall be removed immediately upon completion of work.

10. All nonimpacted surface waters and compensatory mitigation areas within 50 feet of authorized activities and within the project or right-of-way limits shall be clearly flagged or marked for the life of the construction activity at that location to preclude unauthorized disturbances to these surface waters and compensatory mitigation areas during construction. The permittee shall notify contractors that no activities are to occur in these marked surface waters.

11. Temporary disturbances to surface waters during construction shall be avoided and minimized to the maximum extent practicable. All temporarily disturbed wetland areas shall be restored to preexisting conditions within 30 days of completing work at each respective temporary impact area, which shall include reestablishing preconstruction elevations and contours with topsoil from the impact area where practicable and planting or seeding with appropriate wetland vegetation according to cover type (i.e., emergent, scrub-shrub, or forested). The permittee shall take all appropriate measures to promote and maintain revegetation of temporarily disturbed wetland areas with wetland vegetation through the second year post-disturbance. All temporarily impacted streams and streambanks shall be restored to their preconstruction elevations and contours with topsoil from the impact area where practicable within 30 days following the construction at that stream segment. Streambanks shall be seeded or planted with the same vegetation cover type originally present, including any necessary, supplemental erosion control grasses. Invasive species identified on the Department of Conservation and Recreation's Virginia Invasive Plant Species List shall not be used to the maximum extent practicable or without prior approval from the Department of Environmental Quality.

12. Materials (including fill, construction debris, and excavated and woody materials) temporarily stockpiled in wetlands shall be placed on mats or geotextile fabric, immediately stabilized to prevent entry into state waters, managed such that leachate does not enter state waters, and completely removed within 30 days following completion of that construction activity. Disturbed areas shall be returned to preconstruction elevations and contours with topsoil from the impact area where practicable; restored within 30 days following removal of the stockpile; and restored with the same vegetation cover type originally present, including any necessary, supplemental erosion control grasses. Invasive species identified on the Department of Conservation and Recreation's Virginia Invasive Plant Species List shall not be used to the maximum extent practicable or without prior approval from the Department of Environmental Quality.

13. Continuous flow of perennial springs shall be maintained by the installation of spring boxes, french drains, or other similar structures.

14. The permittee shall employ measures to prevent spills of fuels or lubricants into state waters.

15. The permittee shall conduct his activities in accordance with the time-of-year restrictions recommended by the

Virginia Department of Wildlife Resources, the Virginia Marine Resources Commission, or other interested and affected agencies, as contained, when applicable, in a Department of Environmental Quality VWP general permit coverage letter, and shall ensure that all contractors are aware of the time-of-year restrictions imposed.

16. Water quality standards shall not be violated as a result of the construction activities.

17. If stream channelization or relocation is required, all work in surface waters shall be done in the dry, unless otherwise authorized by the Department of Environmental Quality, and all flows shall be diverted around the channelization or relocation area until the new channel is stabilized. This work shall be accomplished by leaving a plug at the inlet and outlet ends of the new channel during excavation. Once the new channel has been stabilized, flow shall be routed into the new channel by first removing the downstream plug and then the upstream plug. The rerouted stream flow must be fully established before construction activities in the old stream channel can begin.

C. Road crossings.

1. Access roads and associated bridges, pipes, and culverts shall be constructed to minimize the adverse effects on surface waters to the maximum extent practicable. Access roads constructed above preconstruction elevations and contours in surface waters must be bridged, piped, or culverted to maintain surface flows.

2. Installation of road crossings shall occur in the dry via the implementation of cofferdams, sheetpiling, stream diversions, or other similar structures.

D. Utility lines.

1. All utility line work in surface waters shall be performed in a manner that minimizes disturbance, and the area must be returned to its preconstruction elevations and contours with topsoil from the impact area where practicable and restored within 30 days of completing work in the area, unless otherwise authorized by the Department of Environmental Quality. Restoration shall be the seeding or planting of the same vegetation cover type originally present, including any necessary, supplemental erosion control grasses. Invasive species identified on the Department of Conservation and Recreation's Virginia Invasive Plant Species List shall not be used to the maximum extent practicable or without prior approval from the Department of Environmental Quality.

2. Material resulting from trench excavation may be temporarily sidecast into wetlands not to exceed a total of 90 days, provided the material is not placed in a manner such that it is dispersed by currents or other forces.

3. The trench for a utility line cannot be constructed in a manner that drains wetlands (e.g., backfilling with extensive gravel layers creating a french drain effect). For example, utility lines may be backfilled with clay blocks to ensure that the trench does not drain surface waters through which the utility line is installed.

E. Stream modification and stream bank protection.

1. Riprap bank stabilization shall be of an appropriate size and design in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.

2. Riprap apron for all outfalls shall be designed in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.

3. For stream bank protection activities, the structure and backfill shall be placed as close to the stream bank as practicable. No material shall be placed in excess of the minimum necessary for erosion protection.

4. All stream bank protection control structures shall be located to eliminate or minimize impacts to vegetated wetlands to the maximum extent practicable.

5. Asphalt and materials containing asphalt or other toxic substances shall not be used in the construction of submerged sills or breakwaters.

6. Redistribution of existing stream substrate for the purpose of erosion control is prohibited.

7. No material removed from the stream bottom shall be disposed of in surface waters, unless otherwise authorized by this VWP general permit.

F. Stormwater management facilities.

1. Stormwater management facilities shall be installed in accordance with best management practices and watershed protection techniques (e.g., vegetated buffers, siting considerations to minimize adverse effects to aquatic resources, bioengineering methods incorporated into the facility design to benefit water quality and minimize adverse effects to aquatic resources) that provide for long-term aquatic resources protection and enhancement, to the maximum extent practicable.

2. Compensation for unavoidable impacts shall not be allowed within maintenance areas of stormwater management facilities.

3. Maintenance activities within stormwater management facilities shall not require additional permit coverage or compensation, provided that the maintenance activities do not exceed the original contours of the facility, as approved and constructed, and are accomplished in designated maintenance areas as indicated in the facility maintenance or design plan or when unavailable, an alternative plan approved by the Department of Environmental Quality.

Part II.

Construction and Compensation Requirements, Monitoring, and Reporting.

A. Minimum compensation requirements.

1. The permittee shall provide any required compensation for impacts in accordance with the conditions in this VWP general permit, the coverage letter, and the chapter promulgating the general permit.

2. Compensation options that may be considered under this VWP general permit include the purchase of mitigation bank credits or the purchase of in-lieu fee program credits with a primary service area that covers the impact site in accordance with § 62.1-44.15:23 of the Code of Virginia, 9VAC25-660-70, and the associated provisions of 9VAC25-210-116.

3. The final compensation plan shall be submitted to and approved by the department prior to a construction activity in permitted impacts areas. The department shall review and provide written comments on the final plan within 30 days of receipt or it shall be deemed approved. The final plan as approved by the department shall be an enforceable requirement of any coverage under this VWP general permit. Deviations from the approved final plan shall be submitted and approved in advance by the department.

B. Impact site construction monitoring.

1. Construction activities authorized by this permit that are within impact areas shall be monitored and documented. The monitoring shall consist of:

a. Preconstruction photographs taken at each impact area prior to initiation of activities within impact areas. Photographs remain on the project site and shall depict the impact area and the nonimpacted surface waters immediately adjacent to and downgradient of each impact area. Each photograph shall be labeled to include the following information: permit number, impact area number, date and time of the photograph, name of the person taking the photograph, photograph orientation, and photograph subject description.

b. Site inspections shall be conducted by the permittee or the permittee's qualified designee once every calendar month during activities within impact areas. Monthly inspections shall be conducted in the following areas: all authorized permanent and temporary impact areas; all avoided surface waters, including wetlands, stream channels, and open water; surface water areas within 50 feet of any land disturbing activity and within the project or right-of-way limits; and all on-site permanent preservation areas required under this permit. Observations shall be recorded on the inspection form provided by the Department of Environmental Quality. The form shall be completed in its entirety for each monthly inspection and shall be kept on site and made available for review by the Department of Environmental Quality staff upon request during normal business hours. Inspections are not required during periods of no activity within impact areas.

2. Monitoring of water quality parameters shall be conducted during permanent relocation of perennial streams through new channels in the manner noted in this subdivision. The permittee shall report violations of water quality standards to the Department of Environmental Quality in accordance with the procedures in 9VAC25-660-100 Part II C. Corrective measures and additional monitoring may be required if water quality standards are not met. Reporting shall not be required if water quality standards are not violated.

a. A sampling station shall be located upstream and immediately downstream of the relocated channel.

b. Temperature, pH, and dissolved oxygen (D.O.) measurements shall be taken every 30 minutes for at least two hours at each station prior to opening the new channels and immediately before opening new channels.

c. Temperature, pH, and D.O. readings shall be taken after opening the channels and every 30 minutes for at least three hours at each station.

C. Reporting.

1. Written communications required by this VWP general permit shall be submitted to the appropriate Department of Environmental Quality office. The VWP general permit tracking number shall be included on all correspondence.

2. The Department of Environmental Quality shall be notified in writing prior to the start of construction activities at the first authorized impact area.

3. A construction status update form provided by the Department of Environmental Quality shall be completed and submitted to the Department of Environmental Quality twice per year for the duration of coverage under a VWP general permit. Forms completed in June shall be submitted by or on July 10, and forms completed in December shall be submitted by or on January 10. The form shall include reference to the VWP permit tracking number and one of the following statements for each authorized surface water impact location:

a. Construction activities have not yet started;

b. Construction activities have started;

c. Construction activities have started but are currently inactive; or

d. Construction activities are complete.

4. The Department of Environmental Quality shall be notified in writing within 30 days following the completion of all activities in all authorized impact areas.

5. The permittee shall notify the Department of Environmental Quality in writing when unusual or potentially complex conditions are encountered that require debris removal or involve a potentially toxic substance. Measures to remove the obstruction, material, or toxic substance or to change the location of a structure are prohibited until approved by the Department of Environmental Quality.

6. The permittee shall report fish kills or spills of oil or fuel immediately upon discovery. If spills or fish kills occur between the hours of 8:15 a.m. to 5 p.m., Monday through Friday, the appropriate Department of Environmental Quality regional office shall be notified; otherwise, the Department of Emergency Management shall be notified at 1-800-468-8892.

7. Violations of state water quality standards shall be reported to the appropriate Department of Environmental Quality office no later than the end of the business day following discovery.

8. The permittee shall notify the Department of Environmental Quality no later than the end of the third business day following the discovery of additional impacts to surface waters, including wetlands, stream channels, and open water that are not authorized by the Department of Environmental Quality or to any required preservation areas. The notification shall include photographs, estimated acreage or linear footage of impacts, and a description of the impacts.

9. Submittals required by this VWP general permit shall contain the following signed certification statement:

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

Part III.

Conditions Applicable to All VWP General Permits.

A. Duty to comply. The permittee shall comply with all conditions, limitations, and other requirements of the VWP general permit; any requirements in coverage granted under this VWP general permit; the Clean Water Act, as amended; and the State Water Control Law and regulations adopted pursuant to it. Any VWP general permit violation or noncompliance is a violation of the Clean Water Act and State Water Control Law and is grounds for (i) enforcement action, (ii) VWP general permit coverage termination for cause, (iii) VWP general permit coverage revocation, (iv) denial of application for coverage, or (v) denial of an application for a modification to VWP general permit coverage. Nothing in this VWP general permit shall be construed to relieve the permittee of the duty to comply with all applicable federal and state statutes, regulations, and toxic standards and prohibitions.

B. Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent impacts in violation of the VWP general permit that may have a reasonable likelihood of adversely affecting human health or the environment.

C. Reopener. This VWP general permit may be reopened to modify its conditions when the circumstances on which the previous VWP general permit was based have materially and substantially changed, or special studies conducted by the department or the permittee show material and substantial change since the time the VWP general permit was issued and thereby constitute cause for revoking and reissuing the VWP general permit.

D. Compliance with state and federal law. Compliance with this VWP general permit constitutes compliance with the VWP permit requirements of the State Water Control Law. Nothing in this VWP general permit shall be construed to preclude the institution of any legal action under or relieve the permittee from any responsibilities, liabilities, or other penalties established pursuant to any other state law or regulation or under the authority preserved by § 510 of the Clean Water Act.

E. Property rights. Coverage under this VWP general permit does not convey property rights in either real or personal property or any exclusive privileges, nor does it authorize injury to private property, any invasion of personal property rights, or any infringement of federal, state, or local laws or regulations.

F. Severability. The provisions of this VWP general permit are severable.

G. Inspection and entry. Upon presentation of credentials, the permittee shall allow the department or any duly authorized agent of the department, at reasonable times and under reasonable circumstances, to enter upon the permittee's property, public or private, and have access to inspect and copy any records that must be kept as part of the VWP general permit conditions; to inspect any facilities, operations, or practices (including monitoring and control equipment) regulated or required under the VWP general permit; and to sample or monitor any substance, parameter, or activity for the purpose of ensuring compliance with the conditions of the VWP general permit or as otherwise authorized by law. For the purpose of this section, the time for inspection shall be deemed reasonable during regular business hours. Nothing contained herein shall make an inspection time unreasonable during an emergency.

H. Transferability of VWP general permit coverage. VWP general permit coverage may be transferred to another

permittee when all of the criteria listed in this subsection are met. On the date of the VWP general permit coverage transfer, the transferred VWP general permit coverage shall be as fully effective as if it had been granted directly to the new permittee.

1. The current permittee notifies the department of the proposed transfer of the general permit coverage and provides a written agreement between the current and new permittees containing a specific date of transfer of VWP general permit responsibility, coverage, and liability to the new permittee, or that the current permittee will retain such responsibility, coverage, or liability, including liability for compliance with the requirements of enforcement activities related to the authorized activity.

2. The department does not within 15 days notify the current and new permittees of the board's intent to modify or revoke and reissue the VWP general permit.

I. Notice of planned change. VWP general permit coverage may be modified subsequent to issuance in accordance with 9VAC25-660-80.

J. VWP general permit coverage termination for cause. VWP general permit coverage is subject to termination for cause by the department after public notice and opportunity for a hearing in accordance with 9VAC25-210-180. Reasons for termination for cause are as follows:

1. Noncompliance by the permittee with any provision of this chapter, any condition of the VWP general permit, or any requirement in general permit coverage;

2. The permittee's failure in the application or during the process of granting VWP general permit coverage to disclose fully all relevant facts or the permittee's misrepresentation of any relevant facts at any time;

3. The permittee's violation of a special or judicial order;

4. A determination by the department that the authorized activity endangers human health or the environment and can be regulated to acceptable levels by a modification to the VWP general permit coverage or a termination;

5. A change in any condition that requires either a temporary or permanent reduction or elimination of any activity controlled by the VWP general permit; or

6. A determination that the authorized activity has ceased and that the compensation for unavoidable adverse impacts has been successfully completed.

K. The department may terminate VWP general permit coverage without cause when the permittee is no longer a legal entity due to death or dissolution or when a company is no longer authorized to conduct business in the Commonwealth. The termination shall be effective 30 days after notice of the proposed termination is sent to the last known address of the permittee or registered agent, unless the permittee objects within that time. If the permittee does object during that period, the department shall follow the applicable procedures for termination under 9VAC25-210-180 and § 62.1-44.15:25 of the Code of Virginia.

L. VWP general permit coverage termination by consent. The permittee shall submit a request for termination by consent within 30 days of completing or canceling all authorized activities requiring notification under 9VAC25-660-50 A and all compensatory mitigation requirements. When submitted for project completion, the request for termination by consent shall constitute a notice of project completion in accordance with 9VAC25-210-130 F. The director may accept this termination of coverage on behalf of the department. The permittee shall submit the following information:

1. Name, mailing address, and telephone number;

2. Name and location of the activity;

3. The VWP general permit tracking number; and

4. One of the following certifications:

a. For project completion:

"I certify under penalty of law that all activities and any required compensatory mitigation authorized by the VWP general permit and general permit coverage have been completed. I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit and general permit coverage, and that performing activities in surface waters is unlawful where the activity is not authorized by the VWP permit or coverage, unless otherwise excluded from obtaining coverage. I also understand that the submittal of this notice does not release me from liability for any violations of the VWP general permit or coverage."

b. For project cancellation:

"I certify under penalty of law that the activities and any required compensatory mitigation authorized by the VWP general permit and general permit coverage will not occur. I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit and general permit coverage, and that performing activities in surface waters is unlawful where the activity is not authorized by the VWP permit or coverage, unless otherwise excluded from obtaining coverage. I also understand that the submittal of this notice does not release me from liability for any violations of the VWP general permit or coverage, nor does it allow me to resume the authorized activities without reapplication and coverage."

c. For events beyond permittee control, the permittee shall provide a detailed explanation of the events, to be approved by the Department of Environmental Quality, and the following certification statement:

"I certify under penalty of law that the activities or the required compensatory mitigation authorized by the VWP general permit and general permit coverage have changed as the result of events beyond my control (see attached). I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit and general permit coverage, and that performing activities in surface waters is unlawful where the activity is not authorized by the VWP permit or coverage, unless otherwise excluded from obtaining coverage. I also understand that the submittal of this notice does not release me from liability for any violations of the VWP general permit or coverage, nor does it allow me to resume the authorized activities without reapplication and coverage."

M. Civil and criminal liability. Nothing in this VWP general permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance.

N. Oil and hazardous substance liability. Nothing in this VWP general permit shall be construed to preclude the institution of legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under § 311 of the Clean Water Act or §§ 62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law.

O. Duty to cease or confine activity. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the activity for which VWP general permit coverage has been granted in order to maintain compliance with the conditions of the VWP general permit or coverage.

P. Duty to provide information.

1. The permittee shall furnish to the department information that the department may request to determine whether cause exists for modifying, revoking, or terminating VWP permit coverage or to determine compliance with the VWP general permit or general permit coverage. The permittee shall also furnish to the department, upon request, copies of records required to be kept by the permittee.

2. Plans, maps, conceptual reports, and other relevant information shall be submitted as required by the department prior to commencing construction.

Q. Monitoring and records requirements.

1. Monitoring of parameters, other than pollutants, shall be conducted according to approved analytical methods as specified in the VWP general permit. Analysis of pollutants will be conducted according to 40 CFR Part 136 as published in the July 1, ~~2023~~ 2024, update, Guidelines Establishing Test Procedures for the Analysis of Pollutants.

2. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

3. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart or electronic recordings for continuous monitoring instrumentation, copies of all reports required by the VWP general permit, and records of all data used to complete the application for coverage under the VWP general permit, for a period of at least three years from the date of general permit expiration. This period may be extended by request of the department at any time.

4. Records of monitoring information shall include, as appropriate:

a. The date, exact place, and time of sampling or measurements;

b. The name of the individuals who performed the sampling or measurements;

c. The date and time the analyses were performed;

d. The name of the individuals who performed the analyses;

e. The analytical techniques or methods supporting the information such as observations, readings, calculations, and bench data used;

f. The results of such analyses; and

g. Chain of custody documentation.

R. Unauthorized discharge of pollutants. Except in compliance with this VWP general permit, it shall be unlawful for the permittee to:

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances;

2. Excavate in a wetland;

3. Otherwise alter the physical, chemical, or biological properties of state waters and make them detrimental to the public health, to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, for recreation, or for other uses; or

4. On and after October 1, 2001, conduct the following activities in a wetland:

a. New activities to cause draining that significantly alter or degrade existing wetland acreage or functions;

b. Filling or dumping;

c. Permanent flooding or impounding; or

d. New activities that cause significant alteration or degradation of existing wetland acreage or functions.

S. Duty to reapply. Any permittee desiring to continue a previously authorized activity after the expiration date of the VWP general permit shall comply with the provisions in 9VAC25-660-27.

**9VAC25-670-100. VWP general permit.**

VWP GENERAL PERMIT NO. WP2 FOR FACILITIES AND ACTIVITIES OF UTILITIES AND PUBLIC SERVICE COMPANIES REGULATED BY THE FEDERAL ENERGY REGULATORY COMMISSION OR THE STATE CORPORATION COMMISSION AND OTHER UTILITY LINE ACTIVITIES UNDER THE VIRGINIA WATER PROTECTION PERMIT AND THE VIRGINIA STATE WATER CONTROL LAW

Effective date: August 2, 2016
Expiration date: August 1, 2026

In compliance with § 401 of the Clean Water Act, as amended (33 USC § 1341) and the State Water Control Law and regulations adopted pursuant thereto, the board has determined that there is a reasonable assurance that this VWP general permit, if complied with, will protect instream beneficial uses, will not violate applicable water quality standards, and will not cause or contribute to a significant impairment of surface waters or fish and wildlife resources. In issuing this VWP general permit, the board has not taken into consideration the structural stability of any proposed activities.

The permanent or temporary impact of up to one acre of nontidal wetlands or open water and up to 1,500 linear feet of nontidal stream bed shall be subject to the provisions of the VWP general permit set forth herein; any requirements in coverage granted under this VWP general permit; the Clean Water Act, as amended; and the State Water Control Law and regulations adopted pursuant to it.

Part I.

Special Conditions.

A. Authorized activities.

1. The activities authorized by this chapter shall not cause more than the permanent or temporary impacts of up to one acre of nontidal wetlands or open water and up to 1,500 linear feet of nontidal stream bed. Additional permit requirements as stipulated by the department in the coverage letter, if any, shall be enforceable conditions of this permit.

2. Any changes to the authorized permanent impacts to surface waters shall require a notice of planned change in accordance with 9VAC25-670-80. An application or request for modification to coverage or another VWP permit application may be required.

3. Any changes to the authorized temporary impacts to surface waters shall require written notification to and approval from the Department of Environmental Quality in accordance with 9VAC25-670-80 prior to initiating the impacts and restoration to preexisting conditions in accordance with the conditions of this permit.

4. Modification to compensation requirements may be approved at the request of the permittee when a decrease in the amount of authorized surface waters impacts occurs, provided that the adjusted compensation meets the initial compensation goals.

B. Overall conditions.

1. The activities authorized by this VWP general permit shall be executed in a manner so as to minimize adverse impacts on instream beneficial uses as defined in § 62.1-10 (b) of the Code of Virginia.

2. No activity may substantially disrupt the movement of aquatic life indigenous to the water body, including those species that normally migrate through the area, unless the primary purpose of the activity is to impound water. Pipes and culverts placed in streams must be installed to maintain low flow conditions and shall be countersunk at both inlet and outlet ends of the pipe or culvert, unless otherwise specifically approved by the Department of Environmental Quality on a case-by-case basis, and as follows: The requirement to countersink does not apply to extensions or maintenance of existing pipes and culverts that are not countersunk, floodplain pipes and culverts being placed above ordinary high water, pipes and culverts being placed on bedrock, or pipes and culverts required to be placed on slopes 5.0% or greater. Bedrock encountered during construction must be identified and approved in advance of a design change where the countersunk condition cannot be met. Pipes and culverts 24 inches or less in diameter shall be countersunk three inches below the natural stream bed elevations, and pipes and culverts greater than 24 inches shall be countersunk at least six inches below the natural stream bed elevations. Hydraulic capacity shall be determined based on the reduced capacity due to the countersunk position. In all stream crossings appropriate measures shall be implemented to minimize any disruption of aquatic life movement.

3. Wet or uncured concrete shall be prohibited from entry into flowing surface waters, unless the area is contained within a cofferdam and the work is performed in the dry or unless otherwise approved by the Department of Environmental Quality. Excess or waste concrete shall not be disposed of in flowing surface waters or washed into flowing surface waters.

4. All fill material shall be clean and free of contaminants in toxic concentrations or amounts in accordance with all applicable laws and regulations.

5. Erosion and sedimentation controls shall be designed in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992. These controls shall be placed prior to clearing and grading and maintained in good working order to minimize impacts to state waters. These controls shall remain in place until the area is stabilized and shall then be removed.

6. Exposed slopes and streambanks shall be stabilized immediately upon completion of work in each permitted

area. All denuded areas shall be properly stabilized in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.

7. All construction, construction access (e.g., cofferdams, sheetpiling, and causeways) and demolition activities associated with the project shall be accomplished in such a manner that minimizes construction or waste materials from entering surface waters to the maximum extent practicable, unless authorized by this VWP general permit.

8. No machinery may enter flowing waters, unless authorized by this VWP general permit or approved prior to entry by the Department of Environmental Quality.

9. Heavy equipment in temporarily impacted wetland areas shall be placed on mats, geotextile fabric, or other suitable material, to minimize soil disturbance to the maximum extent practicable. Equipment and materials shall be removed immediately upon completion of work.

10. All nonimpacted surface waters and compensatory mitigation areas within 50 feet of authorized activities and within the project or right-of-way limits shall be clearly flagged or marked for the life of the construction activity at that location to preclude any unauthorized disturbances to these surface waters and compensatory mitigation areas during construction. The permittee shall notify contractors that no activities are to occur in these marked surface waters.

11. Temporary disturbances to surface waters during construction shall be avoided and minimized to the maximum extent practicable. All temporarily disturbed wetland areas shall be restored to preexisting conditions within 30 days of completing work at each respective temporary impact area, which shall include reestablishing preconstruction elevations and contours with topsoil from the impact area where practicable and planting or seeding with appropriate wetland vegetation according to cover type (i.e., emergent, scrub-shrub, or forested). The permittee shall take all appropriate measures to promote and maintain revegetation of temporarily disturbed wetland areas with wetland vegetation through the second year post-disturbance. All temporarily impacted streams and streambanks shall be restored to their preconstruction elevations and contours with topsoil from the impact area where practicable within 30 days following the construction at that stream segment. Streambanks shall be seeded or planted with the same vegetation cover type originally present, including any necessary, supplemental erosion control grasses. Invasive species identified on the Department of Conservation and Recreation's Virginia Invasive Plant Species List shall not be used to the maximum extent practicable or without prior approval from the Department of Environmental Quality.

12. Materials (including fill, construction debris, and excavated and woody materials) temporarily stockpiled in wetlands shall be placed on mats or geotextile fabric, immediately stabilized to prevent entry into state waters, managed such that leachate does not enter state waters, and completely removed within 30 days following completion of that construction activity. Disturbed areas shall be returned to preconstruction elevations and contours with topsoil from the impact areas where practicable; restored within 30 days following removal of the stockpile; and restored with the same vegetation cover type originally present, including any necessary, supplemental erosion control grasses. Invasive species identified on the Department of Conservation and Recreation's Virginia Invasive Plant Species List shall not be used to the maximum extent practicable or without prior approval from the Department of Environmental Quality.

13. Continuous flow of perennial springs shall be maintained by the installation of spring boxes, french drains, or other similar structures.

14. The permittee shall employ measures to prevent spills of fuels or lubricants into state waters.

15. The permittee shall conduct his activities in accordance with the time-of-year restrictions recommended by the Virginia Department of Wildlife Resources, the Virginia Marine Resources Commission, or other interested and affected agencies, as contained, when applicable, in a Department of Environmental Quality VWP general permit coverage letter, and shall ensure that all contractors are aware of the time-of-year restrictions imposed.

16. Water quality standards shall not be violated as a result of the construction activities.

17. If stream channelization or relocation is required, all work in surface waters shall be done in the dry, unless otherwise authorized by the Department of Environmental Quality, and all flows shall be diverted around the channelization or relocation area until the new channel is stabilized. This work shall be accomplished by leaving a plug at the inlet and outlet ends of the new channel during excavation. Once the new channel has been stabilized, flow shall be routed into the new channel by first removing the downstream plug and then the upstream plug. The rerouted steam flow must be fully established before construction activities in the old stream channel can begin.

C. Road crossings.

1. Access roads and associated bridges, pipes, and culverts shall be constructed to minimize the adverse effects on surface waters to the maximum extent practicable. Access roads constructed above preconstruction elevations and contours in surface waters must be bridged, piped, or culverted to maintain surface flows.

2. Installation of road crossings shall occur in the dry via the implementation of cofferdams, sheetpiling, stream diversions, or similar structures.

D. Utility lines.

1. All utility line work in surface waters shall be performed in a manner that minimizes disturbance, and the area must be returned to its preconstruction elevations and contours with topsoil from the impact area where practicable and restored within 30 days of completing work in the area, unless otherwise authorized by the Department of Environmental Quality. Restoration shall be the seeding or planting of the same vegetation cover type originally present, including any necessary, supplemental erosion control grasses. Invasive species identified on the Department of Conservation and Recreation's Virginia Invasive Plant Species List shall not be used to the maximum extent practicable or without prior approval from the Department of Environmental Quality.

2. Material resulting from trench excavation may be temporarily sidecast into wetlands, not to exceed 90 days, provided the material is not placed in a manner such that it is dispersed by currents or other forces.

3. The trench for a utility line cannot be constructed in a manner that drains wetlands (e.g., backfilling with extensive gravel layers creating a trench drain effect.). For example, utility lines may be backfilled with clay blocks to ensure that the trench does not drain surface waters through which the utility line is installed.

E. Stream modification and stream bank protection.

1. Riprap bank stabilization shall be of an appropriate size and design in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.

2. Riprap apron for all outfalls shall be designed in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.

3. For stream bank protection activities, the structure and backfill shall be placed as close to the stream bank as practicable. No material shall be placed in excess of the minimum necessary for erosion protection.

4. All stream bank protection structures shall be located to eliminate or minimize impacts to vegetated wetlands to the maximum extent practicable.

5. Asphalt and materials containing asphalt or other toxic substances shall not be used in the construction of submerged sills or breakwaters.

6. Redistribution of existing stream substrate for the purpose of erosion control is prohibited.

7. No material removed from the stream bottom shall be disposed of in surface waters, unless otherwise authorized by this VWP general permit.

Part II.

Construction and Compensation Requirements, Monitoring, and Reporting.

A. Minimum compensation requirements.

1. The permittee shall provide any required compensation for impacts in accordance with the conditions in this VWP general permit, the coverage letter, and the chapter promulgating the general permit. For all compensation that requires a protective mechanism, including preservation of surface waters or buffers, the permittee shall record the approved protective mechanism in the chain of title to the property, or an equivalent instrument for government-owned lands, and proof of recordation shall be submitted to the Department of Environmental Quality prior to commencing impacts in surface waters.

2. Compensation options that may be considered under this VWP general permit shall meet the criteria in § 62.1-44.15:23 of the Code of Virginia, 9VAC25-210-116, and 9VAC25-670-70.

3. The permittee-responsible compensation site or sites depicted in the conceptual compensation plan submitted with the application shall constitute the compensation site. A site change may require a modification to coverage.

4. For compensation involving the purchase of mitigation bank credits or the purchase of in-lieu fee program credits, the permittee shall not initiate work in permitted impact areas until documentation of the mitigation bank credit purchase or of the in-lieu fee program credit purchase has been submitted to and received by the Department of Environmental Quality.

5. The final compensation plan shall be submitted to and approved by the department prior to a construction activity in permitted impact areas. The department shall review and provide written comments on the final plan within 30 days of receipt or it shall be deemed approved. The final plan as approved by the department shall be an enforceable requirement of any coverage under this VWP general permit. Deviations from the approved final plan shall be submitted and approved in advance by the department.

a. The final permittee-responsible wetlands compensation plan shall include:

(1) The complete information on all components of the conceptual compensation plan.

(2) A summary of the type and acreage of existing wetland impacts anticipated during the construction of the compensation site and the proposed compensation for these impacts; a site access plan; a monitoring plan, including proposed success criteria, monitoring goals, and the location of photo-monitoring stations, monitoring wells, vegetation sampling points, and reference wetlands or streams, if available; an abatement and control plan for

undesirable plant species; an erosion and sedimentation control plan; a construction schedule; and the final protective mechanism for the protection of the compensation site or sites, including all surface waters and buffer areas within its boundaries.

(3) The approved protective mechanism. The protective mechanism shall be recorded in the chain of title to the property, or an equivalent instrument for government-owned lands, and proof of recordation shall be submitted to the Department of Environmental Quality prior to commencing impacts in surface waters.

b. The final permittee-responsible stream compensation plan shall include:

(1) The complete information on all components of the conceptual compensation plan.

(2) An evaluation, discussion, and plan drawing or drawings of existing conditions on the proposed compensation stream, including the identification of functional and physical deficiencies for which the measures are proposed, and summary of geomorphologic measurements (e.g., stream width, entrenchment ratio, width-depth ratio, sinuosity, slope, substrate, etc.); a site access plan; a monitoring plan, including a monitoring and reporting schedule, monitoring design and methodologies for success, proposed success criteria, location of photo-monitoring stations, vegetation sampling points, survey points, bank pins, scour chains, and reference streams; an abatement and control plan for undesirable plant species; an erosion and sedimentation control plan, if appropriate; a construction schedule; a plan-view drawing depicting the pattern and all compensation measures being employed; a profile drawing; cross-sectional drawing or drawings of the proposed compensation stream; and the final protective mechanism for the protection of the compensation site or sites, including all surface waters and buffer areas within its boundaries.

(3) The approved protective mechanism. The protective mechanism shall be recorded in the chain of title to the property, or an equivalent instrument for government-owned lands, and proof of recordation shall be submitted to the Department of Environmental Quality prior to commencing impacts in surface waters.

6. The following criteria shall apply to permittee-responsible wetland or stream compensation:

a. The vegetation used shall be native species common to the area, shall be suitable for growth in local wetland or riparian conditions, and shall be from areas within the same or adjacent U.S. Department of Agriculture Plant Hardiness Zone or Natural Resources Conservation Service Land Resource Region as that of the project site. Planting of woody plants shall occur when vegetation is normally dormant, unless otherwise approved in the final wetlands or stream compensation plan or plans.

b. All work in permitted impact areas shall cease if compensation site construction has not commenced within 180 days of commencement of project construction, unless otherwise authorized by the department.

c. The Department of Environmental Quality shall be notified in writing prior to the initiation of construction activities at the compensation site.

d. Point sources of stormwater runoff shall be prohibited from entering a wetland compensation site prior to treatment by appropriate best management practices. Appropriate best management practices may include sediment traps, grassed waterways, vegetated filter strips, debris screens, oil and grease separators, or forebays.

e. The success of the compensation shall be based on meeting the success criteria established in the approved final compensation plan.

f. If the wetland or stream compensation area fails to meet the specified success criteria in a particular monitoring year, other than the final monitoring year, the reasons for this failure shall be determined and a corrective action plan shall be submitted to the Department of Environmental Quality for approval with or before that year's monitoring report. The corrective action plan shall contain at a minimum the proposed actions, a schedule for those actions, and a monitoring plan, and shall be implemented by the permittee in accordance with the approved schedule. Should significant changes be necessary to ensure success, the required monitoring cycle shall begin again, with monitoring year one being the year that the changes are complete, as confirmed by the Department of Environmental Quality. If the wetland or stream compensation area fails to meet the specified success criteria by the final monitoring year or if the wetland or stream compensation area has not met the stated restoration goals, reasons for this failure shall be determined and a corrective action plan, including proposed actions, a schedule, and a monitoring plan, shall be submitted with the final year monitoring report for Department of Environmental Quality approval. Corrective action shall be implemented by the permittee in accordance with the approved schedule. Annual monitoring shall be required to continue until two sequential, annual reports indicate that all criteria have been successfully satisfied and the site has met the overall restoration goals (e.g., that corrective actions were successful).

g. The surveyed wetland boundary for the compensation site shall be based on the results of the hydrology, soils, and vegetation monitoring data and shall be shown on the site plan. Calculation of total wetland acreage shall be based on that boundary at the end of the monitoring cycle. Data shall be submitted by December 31 of the final monitoring year.

h. Herbicides or algicides shall not be used in or immediately adjacent to the compensation site or sites without prior authorization by the department. All vegetation removal shall be done by manual means, unless authorized by the Department of Environmental Quality in advance.

B. Impact site construction monitoring.

1. Construction activities authorized by this permit that are within impact areas shall be monitored and documented. The monitoring shall consist of:

a. Preconstruction photographs taken at each impact area prior to initiation of activities within impact areas. Photographs shall remain on the project site and depict the impact area and the nonimpacted surface waters immediately adjacent to and downgradient of each impact area. Each photograph shall be labeled to include the following information: permit number, impact area number, date and time of the photograph, name of the person taking the photograph, photograph orientation, and photograph subject description.

b. Site inspections shall be conducted by the permittee or the permittee's qualified designee once every calendar month during activities within impact areas. Monthly inspections shall be conducted in the following areas: all authorized permanent and temporary impact areas; all avoided surface waters, including wetlands, stream channels, and open water; surface water areas within 50 feet of any land disturbing activity and within the project or right-of-way limits; and all on-site permanent preservation areas required under this permit. Observations shall be recorded on the inspection form provided by the Department of Environmental Quality. The form shall be completed in its entirety for each monthly inspection and shall be kept on site and made available for review by the Department of Environmental Quality staff upon request during normal business hours. Inspections are not required during periods of no activity within impact areas.

2. Monitoring of water quality parameters shall be conducted during permanent relocation of perennial streams through new channels in the manner noted in this subdivision. The permittee shall report violations of water quality standards to the Department of Environmental Quality in accordance with the procedures in 9VAC25-670-100 Part II E. Corrective measures and additional monitoring may be required if water quality standards are not met. Reporting shall not be required if water quality standards are not violated.

a. A sampling station shall be located upstream and immediately downstream of the relocated channel.

b. Temperature, pH, and dissolved oxygen (D.O.) measurements shall be taken every 30 minutes for at least two hours at each station prior to opening the new channels and immediately before opening new channels.

c. Temperature, pH, and D.O. readings shall be taken after opening the channels and every 30 minutes for at least three hours at each station.

C. Permittee-responsible wetland compensation site monitoring.

1. An as-built ground survey, or an aerial survey provided by a firm specializing in aerial surveys, shall be conducted for the entire compensation site or sites, including invert elevations for all water elevation control structures and spot elevations throughout the site or sites. Aerial surveys shall include the variation from actual ground conditions, such as +/- 0.2 feet. Either type of survey shall be certified by a licensed surveyor or by a registered professional engineer to conform to the design plans. The survey shall be submitted within 60 days of completing compensation site construction. Changes or deviations in the as-built survey or aerial survey shall be shown on the survey and explained in writing.

2. Photographs shall be taken at the compensation site or sites from the permanent markers identified in the final compensation plan, and established to ensure that the same locations and view directions at the site or sites are monitored in each monitoring period. These photographs shall be taken after the initial planting and at a time specified in the final compensation plan during every monitoring year.

3. Compensation site monitoring shall begin on the first day of the first complete growing season (monitoring year one) after wetland compensation site construction activities, including planting, have been completed. Monitoring shall be required for monitoring years one, two, three, and five, unless otherwise approved by the Department of Environmental Quality. In all cases, if all success criteria have not been met in the fifth monitoring year, then monitoring shall be required for each consecutive year until two annual sequential reports indicate that all criteria have been successfully satisfied.

4. The establishment of wetland hydrology shall be measured during the growing season, with the location and number of monitoring wells, and frequency of monitoring for each site, set forth in the final monitoring plan. Hydrology monitoring well data shall be accompanied by precipitation data, including rainfall amounts, either from on site, or from the closest weather station. Once the wetland hydrology success criteria have been satisfied for a particular monitoring year, weekly monitoring may be discontinued for the remainder of that monitoring year following Department of Environmental Quality approval. After a period of three monitoring years, the permittee may request that hydrology monitoring be discontinued, providing that adequate hydrology has been established and maintained. Hydrology monitoring shall not be discontinued

without written approval from the Department of Environmental Quality.

5. The presence of hydric soils or soils under hydric conditions shall be evaluated in accordance with the final compensation plan.

6. The establishment of wetland vegetation shall be in accordance with the final compensation plan. Monitoring shall take place in August, September, or October during the growing season of each monitoring year, unless authorized in the monitoring plan.

7. The presence of undesirable plant species shall be documented.

8. All wetland compensation monitoring reports shall be submitted in accordance with 9VAC25-670-100 Part II E 6.

D. Permittee-responsible stream compensation and monitoring.

1. Riparian buffer restoration activities shall be detailed in the final compensation plan and shall include, as appropriate, the planting of a variety of native species currently growing in the site area, including appropriate seed mixtures and woody species that are bare root, balled, or burlapped. A minimum buffer width of 50 feet, measured from the top of the stream bank at bankfull elevation landward on both sides of the stream, shall be required where practical.

2. The installation of root wads, vanes, and other instream structures, shaping of the stream banks, and channel relocation shall be completed in the dry whenever practicable.

3. Livestock access to the stream and designated riparian buffer shall be limited to the greatest extent practicable.

4. Stream channel restoration activities shall be conducted in the dry or during low flow conditions. When site conditions prohibit access from the streambank or upon prior authorization from the Department of Environmental Quality, heavy equipment may be authorized for use within the stream channel.

5. Photographs shall be taken at the compensation site from the vicinity of the permanent photo-monitoring stations identified in the final compensation plan. The photograph orientation shall remain constant during all monitoring events. At a minimum, photographs shall be taken from the center of the stream, facing downstream, with a sufficient number of photographs to view the entire length of the restoration site. Photographs shall document the completed restoration conditions. Photographs shall be taken prior to site activities, during instream and riparian compensation construction activities, within one week of completion of activities, and during at least one day of each monitoring year to depict restored conditions.

6. An as-built ground survey, or an aerial survey provided by a firm specializing in aerial surveys, shall be conducted for the entire compensation site or sites. Aerial surveys shall include the variation from actual ground conditions, such as +/- 0.2 feet. The survey shall be certified by the licensed surveyor or by a registered, professional engineer to conform to the design plans. The survey shall be submitted within 60 days of completing compensation site construction. Changes or deviations from the final compensation plans in the as-built survey or aerial survey shall be shown on the survey and explained in writing.

7. Compensation site monitoring shall begin on day one of the first complete growing season (monitoring year one) after stream compensation site construction activities, including planting, have been completed. Monitoring shall be required for monitoring years one and two, unless otherwise approved by the Department of Environmental Quality. In all cases, if all success criteria have not been met in the final monitoring year, then monitoring shall be required for each consecutive year until two annual sequential reports indicate that all criteria have been successfully satisfied.

8. All stream compensation site monitoring reports shall be submitted in accordance with 9VAC25-670-100 Part II E 6.

E. Reporting.

1. Written communications required by this VWP general permit shall be submitted to the appropriate Department of Environmental Quality office. The VWP general permit tracking number shall be included on all correspondence.

2. The Department of Environmental Quality shall be notified in writing prior to the start of construction activities at the first permitted impact area.

3. A construction status update form provided by the Department of Environmental Quality shall be completed and submitted to the Department of Environmental Quality twice per year for the duration of coverage under a VWP general permit. Forms completed in June shall be submitted by or on July 10, and forms completed in December shall be submitted by or on January 10. The form shall include reference to the VWP permit tracking number and one of the following statements for each authorized surface water impact location:

a. Construction activities have not yet started;

b. Construction activities have started;

c. Construction activities have started but are currently inactive; or

d. Construction activities are complete.

4. The Department of Environmental Quality shall be notified in writing within 30 days following the completion of all activities in all authorized impact areas.

5. The Department of Environmental Quality shall be notified in writing prior to the initiation of activities at the permittee-responsible compensation site. The notification shall include a projected schedule of activities and construction completion.

6. All permittee-responsible compensation site monitoring reports shall be submitted annually by December 31, with the exception of the last year, in which case the report shall be submitted at least 60 days prior to the expiration of the general permit, unless otherwise approved by the Department of Environmental Quality.

a. All wetland compensation site monitoring reports shall include, as applicable, the following:

(1) General description of the site, including a site location map identifying photo-monitoring stations, vegetative and soil monitoring stations, monitoring wells, and wetland zones.

(2) Summary of activities completed during the monitoring year, including alterations or maintenance conducted at the site.

(3) Description of monitoring methods.

(4) Analysis of all hydrology information, including monitoring well data, precipitation data, and gauging data from streams or other open water areas, as set forth in the final compensation plan.

(5) Evaluation of hydric soils or soils under hydric conditions, as appropriate.

(6) Analysis of all vegetative community information, including woody and herbaceous species, both planted and volunteers, as set forth in the final compensation plan.

(7) Photographs labeled with the permit number, the name of the compensation site, the photo-monitoring station number, the photograph orientation, the date and time of the photograph, the name of the person taking the photograph, and a brief description of the photograph subject. This information shall be provided as a separate attachment to each photograph, if necessary. Photographs taken after the initial planting shall be included in the first monitoring report after planting is complete.

(8) Discussion of wildlife or signs of wildlife observed at the compensation site.

(9) Comparison of site conditions from the previous monitoring year and reference site.

(10) Discussion of corrective measures or maintenance activities to control undesirable species, to repair damaged water control devices, or to replace damaged planted vegetation.

(11) Corrective action plan that includes proposed actions, a schedule, and monitoring plan.

b. All stream compensation site monitoring reports shall include, as applicable, the following:

(1) General description of the site, including a site location map identifying photo-monitoring stations and monitoring stations.

(2) Summary of activities completed during the monitoring year, including alterations or maintenance conducted at the site.

(3) Description of monitoring methods.

(4) Evaluation and discussion of the monitoring results in relation to the success criteria and overall goals of compensation.

(5) Photographs shall be labeled with the permit number, the name of the compensation site, the photo-monitoring station number, the photograph orientation, the date and time of the photograph, the name of the person taking the photograph, and a brief description of the photograph subject. Photographs taken prior to compensation site construction activities, during instream and riparian restoration activities, and within one week of completion of activities shall be included in the first monitoring report.

(6) Discussion of alterations, maintenance, or major storm events resulting in significant change in stream profile or cross section, and corrective actions conducted at the stream compensation site.

(7) Documentation of undesirable plant species and summary of abatement and control measures.

(8) Summary of wildlife or signs of wildlife observed at the compensation site.

(9) Comparison of site conditions from the previous monitoring year and reference site, and as-built survey, if applicable.

(10) Corrective action plan that includes proposed actions, a schedule and monitoring plan.

(11) Additional submittals that were approved by the Department of Environmental Quality in the final compensation plan.

7. The permittee shall notify the Department of Environmental Quality in writing when unusual or potentially complex conditions are encountered that require debris removal or involve potentially toxic substance. Measures to remove the obstruction, material, or toxic substance or to change the location of a structure are prohibited until approved by the Department of Environmental Quality.

8. The permittee shall report fish kills or spills of oil or fuel immediately upon discovery. If spills or fish kills occur between the hours of 8:15 a.m. to 5 p.m., Monday through Friday, the appropriate Department of Environmental Quality regional office shall be notified; otherwise, the Department of Emergency Management shall be notified at 1-800-468-8892.

9. Violations of state water quality standards shall be reported to the appropriate Department of Environmental Quality office no later than the end of the business day following discovery.

10. The permittee shall notify the Department of Environmental Quality no later than the end of the third business day following the discovery of additional impacts to surface waters, including wetlands, stream channels, and open water that are not authorized by the Department of Environmental Quality or to any required preservation areas. The notification shall include photographs, estimated acreage or linear footage of impacts, and a description of the impacts.

11. Submittals required by this VWP general permit shall contain the following signed certification statement:

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

Part III.

Conditions Applicable to All VWP General Permits.

A. Duty to comply. The permittee shall comply with all conditions, limitations, and other requirements of the VWP general permit; any requirements in coverage granted under this VWP general permit; the Clean Water Act, as amended; and the State Water Control Law and regulations adopted pursuant to it. Any VWP general permit violation or noncompliance is a violation of the Clean Water Act and State Water Control Law and is grounds for (i) enforcement action, (ii) VWP general permit coverage termination for cause, (iii) VWP general permit coverage revocation, (iv) denial of application for coverage, or (v) denial of an application for a modification to VWP general permit coverage. Nothing in this VWP general permit shall be construed to relieve the permittee of the duty to comply with all applicable federal and state statutes, regulations, and toxic standards and prohibitions.

B. Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent impacts in violation of the VWP general permit that may have a reasonable likelihood of adversely affecting human health or the environment.

C. Reopener. This VWP general permit may be reopened to modify its conditions when the circumstances on which the previous VWP general permit was based have materially and substantially changed, or special studies conducted by the department or the permittee show material and substantial change since the time the VWP general permit was issued and thereby constitute cause for revoking and reissuing the VWP general permit.

D. Compliance with state and federal law. Compliance with this VWP general permit constitutes compliance with the VWP permit requirements of the State Water Control Law. Nothing in this VWP general permit shall be construed to preclude the institution of any legal action under or relieve the permittee from any responsibilities, liabilities, or other penalties established pursuant to any other state law or regulation or under the authority preserved by § 510 of the Clean Water Act.

E. Property rights. The issuance of this VWP general permit does not convey property rights in either real or personal property or any exclusive privileges, nor does it authorize injury to private property, any invasion of personal property rights, or any infringement of federal, state, or local laws or regulations.

F. Severability. The provisions of this VWP general permit are severable.

G. Inspection and entry. Upon presentation of credentials, the permittee shall allow the department or any duly authorized agent of the department, at reasonable times and under reasonable circumstances, to enter upon the permittee's property, public or private, and have access to inspect and copy any records that must be kept as part of the VWP general permit conditions; to inspect any facilities, operations, or practices (including monitoring and control equipment) regulated or required under the VWP general permit; and to sample or monitor any substance, parameter, or activity for the purpose of ensuring compliance with the conditions of the VWP general permit or as otherwise authorized by law. For the purpose of this section, the time for inspection shall be deemed reasonable during regular business hours. Nothing contained herein shall make an inspection time unreasonable during an emergency.

H. Transferability of VWP general permit coverage. VWP general permit coverage may be transferred to another permittee when all of the criteria listed in this subsection are met. On the date of the VWP general permit coverage transfer, the transferred VWP general permit coverage shall be as fully effective as if it had been granted directly to the new permittee.

1. The current permittee notifies the department of the proposed transfer of the general permit coverage and provides a written agreement between the current and new permittees containing a specific date of transfer of VWP general permit responsibility, coverage, and liability to the new permittee, or that the current permittee will retain such responsibility, coverage, or liability, including liability for compliance with the requirements of enforcement activities related to the authorized activity.

2. The department does not within the 15 days notify the current and new permittees of the board's intent to modify or revoke and reissue the VWP general permit.

I. Notice of planned change. VWP general permit coverage may be modified subsequent to issuance in accordance with 9VAC25-670-80.

J. VWP general permit coverage termination for cause. VWP general permit coverage is subject to termination for cause by the department after public notice and opportunity for a hearing in accordance with 9VAC25-210-180. Reasons for termination for cause are as follows:

1. Noncompliance by the permittee with any provision of this chapter, any condition of the VWP general permit, or any requirement in general permit coverage;

2. The permittee's failure in the application or during the process of granting VWP general permit coverage to disclose fully all relevant facts or the permittee's misrepresentation of any relevant facts at any time;

3. The permittee's violation of a special or judicial order;

4. A determination by the department that the authorized activity endangers human health or the environment and can be regulated to acceptable levels by a modification to the VWP general permit coverage or a termination;

5. A change in any condition that requires either a temporary or permanent reduction or elimination of any activity controlled by the VWP general permit; or

6. A determination that the authorized activity has ceased and that the compensation for unavoidable adverse impacts has been successfully completed.

K. The department may terminate VWP general permit coverage without cause when the permittee is no longer a legal entity due to death or dissolution or when a company is no longer authorized to conduct business in the Commonwealth. The termination shall be effective 30 days after notice of the proposed termination is sent to the last known address of the permittee or registered agent, unless the permittee objects within that time. If the permittee does object during that period, the department shall follow the applicable procedures for termination under 9VAC25-210-180 and § 62.1-44.15:25 of the Code of Virginia.

L. VWP general permit coverage termination by consent. The permittee shall submit a request for termination by consent within 30 days of completing or canceling all authorized activities requiring notification under 9VAC25-670-50 A and all compensatory mitigation requirements. When submitted for project completion, the request for termination by consent shall constitute a notice of project completion in accordance with 9VAC25-210-130 F. The director may accept this termination of coverage on behalf of the department. The permittee shall submit the following information:

1. Name, mailing address, and telephone number;

2. Name and location of the activity;

3. The VWP general permit tracking number; and

4. One of the following certifications:

a. For project completion:

"I certify under penalty of law that all activities and any required compensatory mitigation authorized by the VWP general permit and general permit coverage have been completed. I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit and general permit coverage, and that performing activities in surface waters is unlawful where the activity is not authorized by the VWP permit or coverage, unless otherwise excluded from obtaining coverage. I also understand that the submittal of this notice does not release me from liability for any violations of the VWP general permit or coverage."

b. For project cancellation:

"I certify under penalty of law that the activities and any required compensatory mitigation authorized by the VWP general permit and general permit coverage will not occur. I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit and general permit coverage, and that performing activities in surface waters is unlawful where the activity is not authorized by the VWP permit or coverage, unless otherwise excluded from obtaining coverage. I also understand that the submittal of this notice does not release me from liability for any violations of the VWP general permit or coverage, nor does it allow me to resume the authorized activities without reapplication and coverage."

c. For events beyond permittee control, the permittee shall provide a detailed explanation of the events, to be approved by the Department of Environmental Quality, and the following certification statement:

"I certify under penalty of law that the activities or the required compensatory mitigation authorized by the VWP general permit and general permit coverage have changed as the result of events beyond my control (see attached). I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit and general permit coverage, and that performing activities in surface waters is unlawful where the activity is not authorized by the VWP permit or coverage, unless otherwise excluded from obtaining coverage. I also understand that the submittal of this notice does not release me from liability for any violations of the VWP general permit or coverage, nor does it allow me to resume

the authorized activities without reapplication and coverage."

M. Civil and criminal liability. Nothing in this VWP general permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance.

N. Oil and hazardous substance liability. Nothing in this VWP general permit shall be construed to preclude the institution of legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under § 311 of the Clean Water Act or §§ 62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law.

O. Duty to cease or confine activity. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the activity for which VWP general permit coverage has been granted in order to maintain compliance with the conditions of the VWP general permit or coverage.

P. Duty to provide information.

1. The permittee shall furnish to the department any information that the department may request to determine whether cause exists for modifying, revoking, or terminating VWP permit coverage or to determine compliance with the VWP general permit or general permit coverage. The permittee shall also furnish to the department, upon request, copies of records required to be kept by the permittee.

2. Plans, maps, conceptual reports, and other relevant information shall be submitted as required by the department prior to commencing construction.

Q. Monitoring and records requirements.

1. Monitoring of parameters, other than pollutants, shall be conducted according to approved analytical methods as specified in the VWP general permit. Analysis of pollutants will be conducted according to 40 CFR Part 136 as published in the July 1, ~~2023~~ 2024, update, Guidelines Establishing Test Procedures for the Analysis of Pollutants.

2. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

3. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart or electronic recordings for continuous monitoring instrumentation, copies of all reports required by the VWP general permit, and records of all data used to complete the application for coverage under the VWP general permit, for a period of at least three years from the date of general permit expiration. This period may be extended by request of the department at any time.

4. Records of monitoring information shall include, as appropriate:

a. The date, exact place, and time of sampling or measurements;

b. The name of the individuals who performed the sampling or measurements;

c. The date and time the analyses were performed;

d. The name of the individuals who performed the analyses;

e. The analytical techniques or methods supporting the information such as observations, readings, calculations, and bench data used;

f. The results of such analyses; and

g. Chain of custody documentation.

R. Unauthorized discharge of pollutants. Except in compliance with this VWP general permit, it shall be unlawful for the permittee to:

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances;

2. Excavate in a wetland;

3. Otherwise alter the physical, chemical, or biological properties of state waters and make them detrimental to the public health, to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, for recreation, or for other uses; or

4. On and after October 1, 2001, conduct the following activities in a wetland:

a. New activities to cause draining that significantly alters or degrades existing wetland acreage or functions;

b. Filling or dumping;

c. Permanent flooding or impounding; or

d. New activities that cause significant alteration or degradation of existing wetland acreage or functions.

S. Duty to reapply. Any permittee desiring to continue a previously authorized activity after the expiration date of the VWP general permit shall comply with the provisions in 9VAC25-670-27.

**9VAC25-680-100. VWP general permit.**

VWP GENERAL PERMIT NO. WP3 FOR LINEAR TRANSPORTATION PROJECTS UNDER THE VIRGINIA WATER PROTECTION PERMIT AND THE VIRGINIA STATE WATER CONTROL LAW

Effective date: August 2, 2016
Expiration date: August 1, 2026

In compliance with § 401 of the Clean Water Act, as amended (33 USC § 1341) and the State Water Control Law and regulations adopted pursuant thereto, the board has determined that there is a reasonable assurance that this VWP general permit, if complied with, will protect instream beneficial uses, will not violate applicable water quality standards, and will not

cause or contribute to a significant impairment of state waters or fish and wildlife resources. In issuing this VWP general permit, the board has not taken into consideration the structural stability of any proposed activities.

The permanent or temporary impact of up to two acres of nontidal wetlands or open water and up to 1,500 linear feet of nontidal stream bed shall be subject to the provisions of the VWP general permit set forth herein; any requirements in coverage granted under this VWP general permit; the Clean Water Act, as amended; and the State Water Control Law and regulations adopted pursuant to it.

Part I.

Special Conditions.

A. Authorized activities.

1. The activities authorized by this chapter shall not cause more than the permanent or temporary impacts of up to two acres of nontidal wetlands or open water and up to 1,500 linear feet of nontidal stream bed. Additional permit requirements as stipulated by the department in the coverage letter, if any, shall be enforceable conditions of this permit.

2. Any changes to the authorized permanent impacts to surface waters shall require a notice of planned change in accordance with 9VAC25-680-80. An application or request for modification to coverage or another VWP permit application may be required.

3. Any changes to the authorized temporary impacts to surface waters shall require written notification to and approval from the Department of Environmental Quality in accordance with 9VAC25-680-80 prior to initiating the impacts and restoration to preexisting conditions in accordance with the conditions of this permit.

4. Modification to compensation requirements may be approved at the request of the permittee when a decrease in the amount of authorized surface waters impacts occurs, provided that the adjusted compensation meets the initial compensation goals.

B. Overall conditions.

1. The activities authorized by this VWP general permit shall be executed in a manner so as to minimize adverse impacts on instream beneficial uses as defined in § 62.1-10 (b) of the Code of Virginia.

2. No activity may substantially disrupt the movement of aquatic life indigenous to the water body, including those species that normally migrate through the area, unless the primary purpose of the activity is to impound water. Pipes and culverts placed in streams must be installed to maintain low flow conditions and shall be countersunk at both inlet and outlet ends of the pipe or culvert, unless specifically approved by the Department of Environmental Quality on a case-by-case basis and as follows: The requirement to countersink does not apply to extensions or maintenance of existing pipes and culverts that are not countersunk, floodplain pipe and culverts being placed above ordinary high water, pipes and culverts being placed on bedrock, or pipes or culverts required to be placed on slopes 5.0% or greater. Bedrock encountered during construction must be identified and approved in advance of a design change where the countersunk condition cannot be met. Pipes and culverts 24 inches or less in diameter shall be countersunk three inches below the natural stream bed elevations, and pipes and culverts greater than 24 inches shall be countersunk at least six inches below the natural stream bed elevations. Hydraulic capacity shall be determined based on the reduced capacity due to the countersunk position. In all stream crossings appropriate measures shall be implemented to minimize any disruption of aquatic life movement.

3. Wet or uncured concrete shall be prohibited from entry into flowing surface waters, unless the area is contained within a cofferdam and the work is performed in the dry or unless otherwise approved by the Department of Environmental Quality. Excess or waste concrete shall not be disposed of in flowing surface waters or washed into flowing surface waters.

4. All fill material shall be clean and free of contaminants in toxic concentrations or amounts in accordance with all applicable laws and regulations.

5. Erosion and sedimentation controls shall be designed in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992. These controls shall be placed prior to clearing and grading and maintained in good working order to minimize impacts to state waters. These controls shall remain in place until the area is stabilized and shall then be removed.

6. Exposed slopes and streambanks shall be stabilized immediately upon completion of work in each permitted impact area. All denuded areas shall be properly stabilized in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.

7. All construction, construction access (e.g., cofferdams, sheetpiling, and causeways) and demolition activities associated with the project shall be accomplished in a manner that minimizes construction or waste materials from entering surface waters to the maximum extent practicable, unless authorized by this VWP general permit.

8. No machinery may enter flowing waters, unless authorized by this VWP general permit or approved prior to entry by the Department of Environmental Quality.

9. Heavy equipment in temporarily impacted wetland areas shall be placed on mats, geotextile fabric, or other suitable material, to minimize soil disturbance to the maximum extent practicable. Equipment and materials shall be removed immediately upon completion of work.

10. All nonimpacted surface waters and compensatory mitigation areas within 50 feet of authorized activities and within the project or right-of-way limits shall be clearly flagged or marked for the life of the construction activity at that location to preclude unauthorized disturbances to these surface waters and compensatory mitigation areas during construction. The permittee shall notify contractors that no activities are to occur in these marked surface waters.

11. Temporary disturbances to surface waters during construction shall be avoided and minimized to the maximum extent practicable. All temporarily disturbed wetland areas shall be restored to preexisting conditions within 30 days of completing work at each respective temporary impact area, which shall include reestablishing preconstruction elevations and contours with topsoil from the impact area where practicable and planting or seeding with appropriate wetland vegetation according to cover type (i.e., emergent, scrub-shrub, or forested). The permittee shall take all appropriate measures to promote and maintain revegetation of temporarily disturbed wetland areas with wetland vegetation through the second year post-disturbance. All temporarily impacted streams and streambanks shall be restored to their preconstruction elevations and contours with topsoil from the impact area where practicable within 30 days following the construction at that stream segment. Streambanks shall be seeded or planted with the same vegetation cover type originally present, including any necessary, supplemental erosion control grasses. Invasive species identified on the Department of Conservation and Recreation's Virginia Invasive Plant Species List shall not be used to the maximum extent practicable or without prior approval from the Department of Environmental Quality.

12. Materials (including fill, construction debris, and excavated and woody materials) temporarily stockpiled in wetlands shall be placed on mats or geotextile fabric, immediately stabilized to prevent entry into state waters, managed such that leachate does not enter state waters, and completely removed within 30 days following completion of that construction activity. Disturbed areas shall be returned to preconstruction elevations and contours with topsoil from the impact area where practicable; restored within 30 days following removal of the stockpile; and restored with the same vegetation cover type originally present, including any necessary supplemental erosion control grasses. Invasive species identified on the Department of Conservation and Recreation's Virginia Invasive Plant Species List shall not be used to the maximum extent practicable or without prior approval from the Department of Environmental Quality.

13. Continuous flow of perennial springs shall be maintained by the installation of spring boxes, french drains, or other similar structures.

14. The permittee shall employ measures to prevent spills of fuels or lubricants into state waters.

15. The permittee shall conduct his activities in accordance with the time-of-year restrictions recommended by the Virginia Department of Wildlife Resources, the Virginia Marine Resources Commission, or other interested and affected agencies, as contained, when applicable, in Department of Environmental Quality VWP general permit coverage, and shall ensure that all contractors are aware of the time-of-year restrictions imposed.

16. Water quality standards shall not be violated as a result of the construction activities.

17. If stream channelization or relocation is required, all work in surface waters shall be done in the dry, unless otherwise authorized by the Department of Environmental Quality, and all flows shall be diverted around the channelization or relocation area until the new channel is stabilized. This work shall be accomplished by leaving a plug at the inlet and outlet ends of the new channel during excavation. Once the new channel has been stabilized, flow shall be routed into the new channel by first removing the downstream plug and then the upstream plug. The rerouted stream flow must be fully established before construction activities in the old stream channel can begin.

C. Road crossings.

1. Access roads and associated bridges, pipes, and culverts shall be constructed to minimize the adverse effects on surface waters to the maximum extent practicable. Access roads constructed above preconstruction elevations and contours in surface waters must be bridged, piped, or culverted to maintain surface flows.

2. Installation of road crossings shall occur in the dry via the implementation of cofferdams, sheetpiling, stream diversions, or similar structures.

D. Utility lines.

1. All utility line work in surface waters shall be performed in a manner that minimizes disturbance, and the area must be returned to its preconstruction elevations and contours with topsoil from the impact area where practicable and restored within 30 days of completing work in the area, unless otherwise authorized by the Department of Environmental Quality. Restoration shall be the seeding or planting of the same vegetation cover type originally present, including any necessary supplemental erosion control grasses. Invasive species identified on the Department of Conservation and Recreation's Virginia Invasive Plant Species List shall not be used to the maximum extent practicable or without prior approval from the Department of Environmental Quality.

2. Material resulting from trench excavation may be temporarily sidecast into wetlands not to exceed a total of 90

days, provided the material is not placed in a manner such that it is dispersed by currents or other forces.

3. The trench for a utility line cannot be constructed in a manner that drains wetlands (e.g., backfilling with extensive gravel layers creating a french drain effect). For example, utility lines may be backfilled with clay blocks to ensure that the trench does not drain surface waters through which the utility line is installed.

E. Stream modification and stream bank protection.

1. Riprap bank stabilization shall be of an appropriate size and design in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.

2. Riprap aprons for all outfalls shall be designed in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.

3. For bank protection activities, the structure and backfill shall be placed as close to the stream bank as practicable. No material shall be placed in excess of the minimum necessary for erosion protection.

4. All stream bank protection structures shall be located to eliminate or minimize impacts to vegetated wetlands to the maximum extent practicable.

5. Asphalt and materials containing asphalt or other toxic substances shall not be used in the construction of submerged sills or breakwaters.

6. Redistribution of existing stream substrate for the purpose of erosion control is prohibited.

7. No material removed from the stream bottom shall be disposed of in surface waters, unless otherwise authorized by this VWP general permit.

F. Dredging.

1. Dredging depths shall be determined and authorized according to the proposed use and controlling depths outside the area to be dredged.

2. Dredging shall be accomplished in a manner that minimizes disturbance of the bottom and minimizes turbidity levels in the water column.

3. If evidence of impaired water quality, such as a fish kill, is observed during the dredging, dredging operations shall cease, and the Department of Environmental Quality shall be notified immediately.

4. Barges used for the transportation of dredge material shall be filled in such a manner to prevent the overflow of dredged materials.

5. Double handling of dredged material in state waters shall not be permitted.

6. For navigation channels the following shall apply:

a. A buffer of four times the depth of the dredge cut shall be maintained between the bottom edge of the design channel and the channelward limit of wetlands, or a buffer of 15 feet shall be maintained from the dredged cut and the channelward edge of wetlands, whichever is greater. This landward limit of buffer shall be flagged and inspected prior to construction.

b. Side slope cuts of the dredging area shall not exceed a two-horizontal-to-one-vertical slope to prevent slumping of material into the dredged area.

7. A dredged material management plan for the designated upland disposal site shall be submitted and approved 30 days prior to initial dredging activity.

8. Pipeline outfalls and spillways shall be located at opposite ends of the dewatering area to allow for maximum retention and settling time. Filter fabric shall be used to line the dewatering area and to cover the outfall pipe to further reduce sedimentation to state waters.

9. The dredge material dewatering area shall be of adequate size to contain the dredge material and to allow for adequate dewatering and settling out of sediment prior to discharge back into state waters.

10. The dredge material dewatering area shall utilize an earthen berm or straw bales covered with filter fabric along the edge of the area to contain the dredged material, filter bags, or other similar filtering practices, any of which shall be properly stabilized prior to placing the dredged material within the containment area.

11. Overtopping of the dredge material containment berms with dredge materials shall be strictly prohibited.

G. Stormwater management facilities.

1. Stormwater management facilities shall be installed in accordance with best management practices and watershed protection techniques (e.g., vegetated buffers, siting considerations to minimize adverse effects to aquatic resources, bioengineering methods incorporated into the facility design to benefit water quality and minimize adverse effects to aquatic resources) that provide for long-term aquatic resources protection and enhancement, to the maximum extent practicable.

2. Compensation for unavoidable impacts shall not be allowed within maintenance areas of stormwater management facilities.

3. Maintenance activities within stormwater management facilities shall not require additional permit coverage or compensation, provided that the maintenance activities do not exceed the original contours of the facility, as approved and constructed, and is accomplished in designated maintenance areas as indicated in the facility maintenance or design plan or when unavailable, an alternative plan approved by the Department of Environmental Quality.

Part II.

Construction and Compensation Requirements, Monitoring and Reporting.

A. Minimum compensation requirements.

1. The permittee shall provide any required compensation for impacts in accordance with the conditions in this VWP general permit, the coverage letter, and the chapter promulgating the general permit. For all compensation that requires a protective mechanism, including preservation of surface waters or buffers, the permittee shall record the approved protective mechanism in the chain of title to the property, or an equivalent instrument for government-owned lands, and proof of recordation shall be submitted to the Department of Environmental Quality prior to commencing impacts in surface waters.

2. Compensation options that may be considered under this VWP general permit shall meet the criteria in § 62.1-44.15:23 of the Code of Virginia, 9VAC25-210-116, and 9VAC25-680-70.

3. The permittee-responsible compensation site or sites depicted in the conceptual compensation plan submitted with the application shall constitute the compensation site. A site change may require a modification to coverage.

4. For compensation involving the purchase of mitigation bank credits or the purchase of in-lieu fee program credits, the permittee shall not initiate work in permitted impact areas until documentation of the mitigation bank credit purchase or of the in-lieu fee program credit purchase has been submitted to and received by the Department of Environmental Quality.

5. The final compensatory mitigation plan shall be submitted to and approved by the department prior to a construction activity in permitted impact areas. The department shall review and provide written comments on the final plan within 30 days of receipt or it shall be deemed approved. The final plan as approved by the department shall be an enforceable requirement of any coverage under this VWP general permit. Deviations from the approved final plan shall be submitted and approved in advance by the department.

a. The final permittee-responsible wetlands compensation plan shall include:

(1) The complete information on all components of the conceptual compensation plan.

(2) A summary of the type and acreage of existing wetland impacts anticipated during the construction of the compensation site and the proposed compensation for these impacts; a site access plan; a monitoring plan, including proposed success criteria, monitoring goals, and the location of photo-monitoring stations, monitoring wells, vegetation sampling points, and reference wetlands or streams, if available; an abatement and control plan for undesirable plant species; an erosion and sedimentation control plan; a construction schedule; and the final protective mechanism for the protection of the compensation site or sites, including all surface waters and buffer areas within its boundaries.

(3) The approved protective mechanism. The protective mechanism shall be recorded in the chain of title to the property, or an equivalent instrument for government-owned lands, and proof of recordation shall be submitted to the Department of Environmental Quality prior to commencing impacts in surface waters.

b. The final permittee-responsible stream compensation plan shall include:

(1) The complete information on all components of the conceptual compensation plan.

(2) An evaluation, discussion, and plan drawing or drawings of existing conditions on the proposed compensation stream, including the identification of functional and physical deficiencies for which the measures are proposed, and summary of geomorphologic measurements (e.g., stream width, entrenchment ratio, width-depth ratio, sinuosity, slope, substrate, etc.); a site access plan; a monitoring plan, including a monitoring and reporting schedule, monitoring design and methodologies for success, proposed success criteria, location of photo-monitoring stations, vegetation sampling points, survey points, bank pins, scour chains, and reference streams; an abatement and control plan for undesirable plant species; an erosion and sedimentation control plan, if appropriate; a construction schedule; a plan-view drawing depicting the pattern and all compensation measures being employed; a profile drawing; cross-sectional drawing or drawings of the proposed compensation stream; and the final protective mechanism for the protection of the compensation site or sites, including all surface waters and buffer areas within its boundaries.

(3) The approved protective mechanism. The protective mechanism shall be recorded in the chain of title to the property, or an equivalent instrument for government-owned lands, and proof of recordation shall be submitted to the Department of Environmental Quality prior to commencing impacts in surface waters.

6. The following criteria shall apply to permittee-responsible wetland or stream compensation:

a. The vegetation used shall be native species common to the area, shall be suitable for growth in local wetland or riparian conditions, and shall be from areas within the same or adjacent U.S. Department of Agriculture Plant Hardiness Zone or Natural Resources Conservation Service Land Resource Region as that of the project site. Planting of woody plants shall occur when vegetation is normally dormant, unless otherwise approved in the final wetlands or stream compensation plan or plans.

b. All work in permitted impact areas shall cease if compensation site construction has not commenced within 180 days of commencement of project construction, unless otherwise authorized by the department.

c. The Department of Environmental Quality shall be notified in writing prior to the initiation of construction activities at the compensation site.

d. Point sources of stormwater runoff shall be prohibited from entering a wetland compensation site prior to treatment by appropriate best management practices. Appropriate best management practices may include sediment traps, grassed waterways, vegetated filter strips, debris screens, oil and grease separators, or forebays.

e. The success of the compensation shall be based on meeting the success criteria established in the approved final compensation plan.

f. If the wetland or stream compensation area fails to meet the specified success criteria in a particular monitoring year, other than the final monitoring year, the reasons for this failure shall be determined and a corrective action plan shall be submitted to the Department of Environmental Quality for approval with or before that year's monitoring report. The corrective action plan shall contain at minimum the proposed actions, a schedule for those actions, and a monitoring plan, and shall be implemented by the permittee in accordance with the approved schedule. Should significant changes be necessary to ensure success, the required monitoring cycle shall begin again, with monitoring year one being the year that the changes are complete as confirmed by the Department of Environmental Quality. If the wetland or stream compensation area fails to meet the specified success criteria by the final monitoring year or if the wetland or stream compensation area has not met the stated restoration goals, reasons for this failure shall be determined and a corrective action plan, including proposed actions, a schedule, and a monitoring plan, shall be submitted with the final year monitoring report for the Department of Environmental Quality approval. Corrective action shall be implemented by the permittee in accordance with the approved schedule. Annual monitoring shall be required to continue until two sequential, annual reports indicate that all criteria have been successfully satisfied and the site has met the overall restoration goals (e.g., that corrective actions were successful).

g. The surveyed wetland boundary for the compensation site shall be based on the results of the hydrology, soils, and vegetation monitoring data and shall be shown on the site plan. Calculation of total wetland acreage shall be based on that boundary at the end of the monitoring cycle. Data shall be submitted by December 31 of the final monitoring year.

h. Herbicides or algicides shall not be used in or immediately adjacent to the compensation site or sites without prior authorization by the department. All vegetation removal shall be done by manual means only, unless authorized by the Department of Environmental Quality in advance.

B. Impact site construction monitoring.

1. Construction activities authorized by this permit that are within impact areas shall be monitored and documented. The monitoring shall consist of:

a. Preconstruction photographs taken at each impact area prior to initiation of activities within impact areas. Photographs shall remain on the project site and depict the impact area and the nonimpacted surface waters immediately adjacent to and downgradient of each impact area. Each photograph shall be labeled to include the following information: permit number, impact area number, date and time of the photograph, name of the person taking the photograph, photograph orientation, and photograph subject description.

b. Site inspections shall be conducted by the permittee or the permittee's qualified designee once every calendar month during activities within impact areas. Monthly inspections shall be conducted in the following areas: all authorized permanent and temporary impact areas; all avoided surface waters, including wetlands, stream channels, and open water; surface water areas within 50 feet of any land disturbing activity and within the project or right-of-way limits; and all on-site permanent preservation areas required under this permit. Observations shall be recorded on the inspection form provided by the Department of Environmental Quality. The form shall be completed in its entirety for each monthly inspection and shall be kept on site and made available for review by the Department of Environmental Quality staff upon request during normal business hours. Inspections are not required during periods of no activity within impact areas.

2. Monitoring of water quality parameters shall be conducted during permanent relocation of perennial streams through new channels in the manner noted in this subdivision. The permittee shall report violations of water quality standards to the Department of Environmental Quality in accordance with the procedures in 9VAC25-680-100 Part II E. Corrective measures and additional monitoring may be required if water quality standards are not met. Reporting shall not be required if water quality standards are not violated.

a. A sampling station shall be located upstream and immediately downstream of the relocated channel.

b. Temperature, pH, and dissolved oxygen (D.O.) measurements shall be taken every 30 minutes for at least

two hours at each station prior to opening the new channels and immediately before opening new channels.

c. Temperature, pH, and D.O. readings shall be taken after opening the channels and every 30 minutes for at least three hours at each station.

C. Permittee-responsible wetland compensation site monitoring.

1. An as-built ground survey, or an aerial survey provided by a firm specializing in aerial surveys, shall be conducted for the entire compensation site or sites, including invert elevations for all water elevation control structures and spot elevations throughout the site or sites. Aerial surveys shall include the variation from actual ground conditions, such as +/- 0.2 feet. Either type of survey shall be certified by a licensed surveyor or by a registered professional engineer to conform to the design plans. The survey shall be submitted within 60 days of completing compensation site construction. Changes or deviations in the as-built survey or aerial survey shall be shown on the survey and explained in writing.

2. Photographs shall be taken at the compensation site or sites from the permanent markers identified in the final compensation plan, and established to ensure that the same locations and view directions at the site or sites are monitored in each monitoring period. These photographs shall be taken after the initial planting and at a time specified in the final compensation plan during every monitoring year.

3. Compensation site monitoring shall begin on the first day of the first complete growing season (monitoring year one) after wetland compensation site construction activities, including planting, have been completed. Monitoring shall be required for monitoring years one, two, three, and five, unless otherwise approved by the Department of Environmental Quality. In all cases, if all success criteria have not been met in the final monitoring year, then monitoring shall be required for each consecutive year until two annual sequential reports indicate that all criteria have been successfully satisfied.

4. The establishment of wetland hydrology shall be measured weekly during the growing season, with the location and number of monitoring wells, and frequency of monitoring for each site, set forth in the final monitoring plan. Hydrology monitoring well data shall be accompanied by precipitation data, including rainfall amounts, either from on site or from the closest weather station. Once the wetland hydrology success criteria have been satisfied for a particular monitoring year, monitoring may be discontinued for the remainder of that monitoring year following Department of Environmental Quality approval. After a period of three monitoring years, the permittee may request that hydrology monitoring be discontinued, providing that adequate hydrology has been established and maintained. Hydrology monitoring shall not be discontinued without written approval from the Department of Environmental Quality.

5. The presence of hydric soils or soils under hydric conditions shall be evaluated in accordance with the final compensation plan.

6. The establishment of wetland vegetation shall be in accordance with the final compensation plan. Monitoring shall take place in August, September, or October during the growing season of each monitoring year, unless otherwise authorized in the monitoring plan.

7. The presence of undesirable plant species shall be documented.

8. All wetland compensation monitoring reports shall be submitted in accordance with 9VAC25-680-100 Part II E 6.

D. Permittee-responsible stream compensation and monitoring.

1. Riparian buffer restoration activities shall be detailed in the final compensation plan and shall include, as appropriate, the planting of a variety of native species currently growing in the site area, including appropriate seed mixtures and woody species that are bare root, balled, or burlapped. A minimum buffer width of 50 feet, measured from the top of the stream bank at bankfull elevation landward on both sides of the stream, shall be required where practical.

2. The installation of root wads, vanes, and other instream structures, shaping of the stream banks and channel relocation shall be completed in the dry whenever practicable.

3. Livestock access to the stream and designated riparian buffer shall be limited to the greatest extent practicable.

4. Stream channel restoration activities shall be conducted in the dry or during low flow conditions. When site conditions prohibit access from the streambank or upon prior authorization from the Department of Environmental Quality, heavy equipment may be authorized for use within the stream channel.

5. Photographs shall be taken at the compensation site from the vicinity of the permanent photo-monitoring stations identified in the final compensation plan. The photograph orientation shall remain constant during all monitoring events. At a minimum, photographs shall be taken from the center of the stream, facing downstream, with a sufficient number of photographs to view the entire length of the restoration site. Photographs shall document the completed restoration conditions. Photographs shall be taken prior to site activities, during instream and riparian compensation construction activities, within one week of completion of activities, and during at least one day of each monitoring year to depict restored conditions.

6. An as-built ground survey, or an aerial survey provided by a firm specializing in aerial surveys, shall be conducted for the entire compensation site or sites. Aerial surveys shall include the variation from actual ground conditions, such as +/- 0.2 feet. The survey shall be certified by the licensed surveyor or by a registered, professional engineer to conform to the design plans. The survey shall be submitted within 60 days of completing compensation site construction. Changes or deviations from the final compensation plans in the as-built survey or aerial survey shall be shown on the survey and explained in writing.

7. Compensation site monitoring shall begin on day one of the first complete growing season (monitoring year one) after stream compensation site constructions activities, including planting, have been completed. Monitoring shall be required for monitoring years one and two, unless otherwise approved by the Department of Environmental Quality. In all cases, if all success criteria have not been met in the final monitoring year, then monitoring shall be required for each consecutive year until two annual sequential reports indicate that all criteria have been successfully satisfied.

8. All stream compensation site monitoring reports shall be submitted in accordance with 9VAC25-680-100 Part II E 6.

E. Reporting.

1. Written communications required by this VWP general permit shall be submitted to the appropriate Department of Environmental Quality office. The VWP general permit tracking number shall be included on all correspondence.

2. The Department of Environmental Quality shall be notified in writing prior to the start of construction activities at the first permitted impact area.

3. A construction status update form provided by the Department of Environmental Quality shall be completed and submitted to the Department of Environmental Quality twice per year for the duration of coverage under a VWP general permit. Forms completed in June shall be submitted by or on July 10, and forms completed in December shall be submitted by or on January 10. The form shall include reference to the VWP permit tracking number and one of the following statements for each authorized surface water impact location:

a. Construction activities have not yet started;

b. Construction activities have started;

c. Construction activities have started but are currently inactive; or

d. Construction activities are complete.

4. The Department of Environmental Quality shall be notified in writing within 30 days following the completion of all activities in all authorized impact areas.

5. The Department of Environmental Quality shall be notified in writing prior to the initiation of activities at the permittee-responsible compensation site. The notification shall include a projected schedule of activities and construction completion.

6. All permittee-responsible compensation site monitoring reports shall be submitted annually by December 31, with the exception of the last year, in which case the report shall be submitted at least 60 days prior to the expiration of the general permit, unless otherwise approved by the Department of Environmental Quality.

a. All wetland compensation site monitoring reports shall include, as applicable, the following:

(1) General description of the site including a site location map identifying photo-monitoring stations, vegetative and soil monitoring stations, monitoring wells, and wetland zones.

(2) Summary of activities completed during the monitoring year, including alterations or maintenance conducted at the site.

(3) Description of monitoring methods.

(4) Analysis of all hydrology information, including monitoring well data, precipitation data, and gauging data from streams or other open water areas, as set forth in the final compensation plan.

(5) Evaluation of hydric soils or soils under hydric conditions, as appropriate.

(6) Analysis of all vegetative community information, including woody and herbaceous species, both planted and volunteers, as set forth in the final compensation plan.

(7) Photographs labeled with the permit number, the name of the compensation site, the photo-monitoring station number, the photograph orientation, the date and time of the photograph, the name of the person taking the photograph, and a brief description of the photograph subject. This information shall be provided as a separate attachment to each photograph, if necessary. Photographs taken after the initial planting shall be included in the first monitoring report after planting is complete.

(8) Discussion of wildlife or signs of wildlife observed at the compensation site.

(9) Comparison of site conditions from the previous monitoring year and reference site.

(10) Discussion of corrective measures or maintenance activities to control undesirable species, to repair damaged water control devices, or to replace damaged planted vegetation.

(11) Corrective action plan that includes proposed actions, a schedule, and monitoring plan.

b. All stream compensation site monitoring reports shall include, as applicable, the following:

(1) General description of the site including a site location map identifying photo-monitoring stations and monitoring stations.

(2) Summary of activities completed during the monitoring year, including alterations or maintenance conducted at the site.

(3) Description of monitoring methods.

(4) Evaluation and discussion of the monitoring results in relation to the success criteria and overall goals of compensation.

(5) Photographs shall be labeled with the permit number, the name of the compensation site, the photo-monitoring station number, the photograph orientation, the date and time of the photograph, the name of the person taking the photograph, and a brief description of the photograph subject. Photographs taken prior to compensation site construction activities, during instream and riparian restoration activities, and within one week of completion of activities shall be included in the first monitoring report.

(6) Discussion of alterations, maintenance, or major storm events resulting in significant change in stream profile or cross section, and corrective actions conducted at the stream compensation site.

(7) Documentation of undesirable plant species and summary of abatement and control measures.

(8) Summary of wildlife or signs of wildlife observed at the compensation site.

(9) Comparison of site conditions from the previous monitoring year and reference site, and as-built survey, if applicable.

(10) Corrective action plan that includes proposed actions, a schedule and monitoring plan.

(11) Additional submittals that were approved by the Department of Environmental Quality in the final compensation plan.

7. The permittee shall notify the Department of Environmental Quality in writing when unusual or potentially complex conditions are encountered that require debris removal or involve potentially toxic substance. Measures to remove the obstruction, material, or toxic substance or to change the location of a structure are prohibited until approved by the Department of Environmental Quality.

8. The permittee shall report fish kills or spills of oil or fuel immediately upon discovery. If spills or fish kills occur between the hours of 8:15 a.m. to 5 p.m., Monday through Friday, the appropriate Department of Environmental Quality regional office shall be notified; otherwise, the Department of Emergency Management shall be notified at 1-800-468-8892.

9. Violations of state water quality standards shall be reported to the appropriate Department of Environmental Quality office no later than the end of the business day following discovery.

10. The permittee shall notify the Department of Environmental Quality no later than the end of the third business day following the discovery of additional impacts to surface waters including wetlands, stream channels, and open water that are not authorized by the Department of Environmental Quality or to any required preservation areas. The notification shall include photographs, estimated acreage or linear footage of impacts, and a description of the impacts.

11. Submittals required by this VWP general permit shall contain the following signed certification statement:

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

Part III.

Conditions Applicable to All VWP General Permits.

A. Duty to comply. The permittee shall comply with all conditions, limitations, and other requirements of the VWP general permit; any requirements in coverage granted under this VWP general permit; the Clean Water Act, as amended; and the State Water Control Law and regulations adopted pursuant to it. Any VWP general permit violation or noncompliance is a violation of the Clean Water Act and State Water Control Law and is grounds for (i) enforcement action, (ii) VWP general permit coverage termination for cause, (iii) VWP general permit coverage revocation, (iv) denial of application for coverage, or (v) denial of an application for a modification to VWP general permit coverage. Nothing in this VWP general permit shall be construed to relieve the permittee of the duty to comply with all applicable federal and state statutes, regulations, and toxic standards and prohibitions.

B. Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent impacts in violation of the VWP general permit that may have a reasonable likelihood of adversely affecting human health or the environment.

C. Reopener. This VWP general permit may be reopened to modify its conditions when the circumstances on which the previous VWP general permit was based have materially and substantially changed, or special studies conducted by the department or the permittee show material and substantial

change since the time the VWP general permit was issued and thereby constitute cause for revoking and reissuing the VWP general permit.

D. Compliance with state and federal law. Compliance with this VWP general permit constitutes compliance with the VWP permit requirements of the State Water Control Law. Nothing in this VWP general permit shall be construed to preclude the institution of any legal action under or relieve the permittee from any responsibilities, liabilities, or other penalties established pursuant to any other state law or regulation or under the authority preserved by § 510 of the Clean Water Act.

E. Property rights. The issuance of this VWP general permit does not convey property rights in either real or personal property or any exclusive privileges, nor does it authorize injury to private property, any invasion of personal property rights, or any infringement of federal, state, or local laws or regulations.

F. Severability. The provisions of this VWP general permit are severable.

G. Inspection and entry. Upon presentation of credentials, the permittee shall allow the department or any duly authorized agent of the department, at reasonable times and under reasonable circumstances, to enter upon the permittee's property, public or private, and have access to inspect and copy any records that must be kept as part of the VWP general permit conditions; to inspect any facilities, operations, or practices (including monitoring and control equipment) regulated or required under the VWP general permit; and to sample or monitor any substance, parameter, or activity for the purpose of ensuring compliance with the conditions of the VWP general permit or as otherwise authorized by law. For the purpose of this section, the time for inspection shall be deemed reasonable during regular business hours. Nothing contained herein shall make an inspection time unreasonable during an emergency.

H. Transferability of VWP general permit coverage. VWP general permit coverage may be transferred to another permittee when all of the criteria listed in this subsection are met. On the date of the VWP general permit coverage transfer, the transferred VWP general permit coverage shall be as fully effective as if it had been granted directly to the new permittee.

1. The current permittee notifies the department of the proposed transfer of the general permit coverage and provides a written agreement between the current and new permittees containing a specific date of transfer of VWP general permit responsibility, coverage, and liability to the new permittee, or that the current permittee will retain such responsibility, coverage, or liability, including liability for compliance with the requirements of enforcement activities related to the authorized activity.

2. The department does not within 15 days notify the current and new permittees of the board's intent to modify or revoke and reissue the VWP general permit.

I. Notice of planned change. VWP general permit coverage may be modified subsequent to issuance in accordance with 9VAC25-680-80.

J. VWP general permit coverage termination for cause. VWP general permit coverage is subject to termination for cause by the department after public notice and opportunity for a hearing in accordance with 9VAC25-210-180. Reasons for termination for cause are as follows:

1. Noncompliance by the permittee with any provision of this chapter, any condition of the VWP general permit, or any requirement in general permit coverage;

2. The permittee's failure in the application or during the process of granting VWP general permit coverage to disclose fully all relevant facts or the permittee's misrepresentation of any relevant facts at any time;

3. The permittee's violation of a special or judicial order;

4. A determination by the department that the authorized activity endangers human health or the environment and can be regulated to acceptable levels by a modification to VWP general permit coverage or a termination;

5. A change in any condition that requires either a temporary or permanent reduction or elimination of any activity controlled by the VWP general permit; or

6. A determination that the authorized activity has ceased and that the compensation for unavoidable adverse impacts has been successfully completed.

K. The department may terminate VWP general permit coverage without cause when the permittee is no longer a legal entity due to death or dissolution or when a company is no longer authorized to conduct business in the Commonwealth. The termination shall be effective 30 days after notice of the proposed termination is sent to the last known address of the permittee or registered agent, unless the permittee objects within that time. If the permittee does object during that period, the department shall follow the applicable procedures for termination under 9VAC25-210-180 and § 62.1-44.15:25 of the Code of Virginia.

L. VWP general permit coverage termination by consent. The permittee shall submit a request for termination by consent within 30 days of completing or canceling all authorized activities requiring notification under 9VAC25-680-50 A and all compensatory mitigation requirements. When submitted for project completion, the request for termination by consent shall constitute a notice of project completion in accordance with 9VAC25-210-130 F. The director may accept this termination of coverage on behalf of the department. The permittee shall submit the following information:

1. Name, mailing address, and telephone number;

2. Name and location of the activity;

3. The VWP general permit tracking number; and

4. One of the following certifications:

a. For project completion:

"I certify under penalty of law that all activities and any required compensatory mitigation authorized by the VWP general permit and general permit coverage have been completed. I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit and general permit coverage, and that performing activities in surface waters is unlawful where the activity is not authorized by the VWP permit or coverage, unless otherwise excluded from obtaining coverage. I also understand that the submittal of this notice does not release me from liability for any violations of the VWP general permit coverage."

b. For project cancellation:

"I certify under penalty of law that the activities and any required compensatory mitigation authorized by the VWP general permit and general permit coverage will not occur. I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit and general permit coverage, and that performing activities in surface waters is unlawful where the activity is not authorized by the VWP permit or coverage, unless otherwise excluded from obtaining coverage. I also understand that the submittal of this notice does not release me from liability for any violations of the VWP general permit or coverage, nor does it allow me to resume the authorized activities without reapplication and coverage."

c. For events beyond permittee control, the permittee shall provide a detailed explanation of the events, to be approved by the Department of Environmental Quality, and the following certification statement:

"I certify under penalty of law that the activities or the required compensatory mitigation authorized by the VWP general permit and general permit coverage have changed as the result of events beyond my control (see attached). I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit and general permit coverage, and that performing activities in surface waters is unlawful where the activity is not authorized by the VWP permit or coverage, unless otherwise excluded from obtaining coverage. I also understand that the submittal of this notice does not release me from liability for any violations of the VWP general permit authorization or coverage, nor does it allow me to resume the authorized activities without reapplication and coverage."

M. Civil and criminal liability. Nothing in this VWP general permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance.

N. Oil and hazardous substance liability. Nothing in this VWP general permit shall be construed to preclude the institution of legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under § 311 of the Clean Water Act or §§ 62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law.

O. Duty to cease or confine activity. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the activity for which VWP general permit coverage has been granted in order to maintain compliance with the conditions of the VWP general permit or coverage.

P. Duty to provide information.

1. The permittee shall furnish to the department any information that the department may request to determine whether cause exists for modifying, revoking, or terminating VWP permit coverage or to determine compliance with the VWP general permit or general permit coverage. The permittee shall also furnish to the department, upon request, copies of records required to be kept by the permittee.

2. Plans, maps, conceptual reports, and other relevant information shall be submitted as required by the department prior to commencing construction.

Q. Monitoring and records requirements.

1. Monitoring of parameters, other than pollutants, shall be conducted according to approved analytical methods as specified in the VWP general permit. Analysis of pollutants will be conducted according to 40 CFR Part 136 as published in the July 1, ~~2023~~ 2024, update, Guidelines Establishing Test Procedures for the Analysis of Pollutants.

2. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

3. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart or electronic recordings for continuous monitoring instrumentation, copies of all reports required by the VWP general permit, and records of all data used to complete the application for coverage under the VWP general permit, for a period of at least three years from the date of general permit expiration. This period may be extended by request of the department at any time.

4. Records of monitoring information shall include, as appropriate:

a. The date, exact place, and time of sampling or measurements;

b. The name of the individuals who performed the sampling or measurements;

c. The date and time the analyses were performed;

d. The name of the individuals who performed the analyses;

e. The analytical techniques or methods supporting the information such as observations, readings, calculations, and bench data used;

f. The results of such analyses; and

g. Chain of custody documentation.

R. Unauthorized discharge of pollutants. Except in compliance with this VWP general permit, it shall be unlawful for the permittee to:

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances;

2. Excavate in a wetland;

3. Otherwise alter the physical, chemical, or biological properties of state waters and make them detrimental to the public health, to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, for recreation, or for other uses; or

4. On and after August 1, 2001, for linear transportation projects of the Virginia Department of Transportation, or on and after October 1, 2001, for all other projects, conduct the following activities in a wetland:

a. New activities to cause draining that significantly alters or degrades existing wetland acreage or functions;

b. Filling or dumping;

c. Permanent flooding or impounding; or

d. New activities that cause significant alteration or degradation of existing wetland acreage or functions.

S. Duty to reapply. Any permittee desiring to continue a previously authorized activity after the expiration date of the VWP general permit shall comply with the provisions in 9VAC25-680-27.

**9VAC25-690-100. VWP general permit.**

VWP GENERAL PERMIT NO. WP4 FOR IMPACTS FROM DEVELOPMENT AND CERTAIN MINING ACTIVITIES UNDER THE VIRGINIA WATER PROTECTION PERMIT AND THE VIRGINIA STATE WATER CONTROL LAW

Effective date: August 2, 2016
Expiration date: August 1, 2026

In compliance with § 401 of the Clean Water Act, as amended (33 USC § 1341) and the State Water Control Law and regulations adopted pursuant thereto, the board has determined that there is a reasonable assurance that this VWP general permit, if complied with, will protect instream beneficial uses, will not violate applicable water quality standards, and will not cause or contribute to a significant impairment of state waters or fish and wildlife resources. In issuing this VWP general permit, the board has not taken into consideration the structural stability of any proposed activities.

The permanent or temporary impact of up to two acres of nontidal wetlands or open water and up to 1,500 linear feet of nontidal stream bed shall be subject to the provisions of the VWP general permit set forth herein; any requirements in coverage granted under this general permit; the Clean Water Act, as amended; and the State Water Control Law and regulations adopted pursuant to it.

Part I.

Special Conditions.

A. Authorized activities.

1. The activities authorized by this chapter shall not cause more than the permanent or temporary impacts of up to two acres of nontidal wetlands or open water and up to 1,500 linear feet of nontidal stream bed. Additional permit requirements as stipulated by the department in the coverage letter, if any, shall be enforceable conditions of this permit.

2. Any changes to the authorized permanent impacts to surface waters shall require a notice of planned change in accordance with 9VAC25-690-80. An application or request for modification to coverage or another VWP permit application may be required.

3. Any changes to the authorized temporary impacts to surface waters shall require written notification to and approval from the Department of Environmental Quality in accordance with 9VAC25-690-80 prior to initiating the impacts and restoration to preexisting conditions in accordance with the conditions of this permit.

4. Modification to compensation requirements may be approved at the request of the permittee when a decrease in the amount of authorized surface waters impacts occurs, provided that the adjusted compensation meets the initial compensation goals.

B. Overall conditions.

1. The activities authorized by this VWP general permit shall be executed in a manner so as to minimize adverse impacts on instream beneficial uses as defined in § 62.1-10 (b) of the Code of Virginia.

2. No activity may substantially disrupt the movement of aquatic life indigenous to the water body, including those species that normally migrate through the area, unless the primary purpose of the activity is to impound water. Pipes and culverts placed in streams must be installed to maintain low flow conditions and shall be countersunk at both inlet

and outlet ends of the pipe or culvert, unless otherwise specifically approved by the Department of Environmental Quality on a case-by-case basis, and as follows: The requirement to countersink does not apply to extensions or maintenance of existing pipes and culverts that are not countersunk, floodplain pipes and culverts being placed above ordinary high water, pipes and culverts being placed on bedrock, or pipes and culverts required to be placed on slopes 5.0% or greater. Bedrock encountered during construction must be identified and approved in advance of a design change where the countersunk condition cannot be met. Pipes and culverts 24 inches or less in diameter shall be countersunk three inches below the natural stream bed elevations, and pipes and culverts greater than 24 inches shall be countersunk at least six inches below the natural stream bed elevations. Hydraulic capacity shall be determined based on the reduced capacity due to the countersunk position. In all stream crossings appropriate measures shall be implemented to minimize any disruption of aquatic life movement.

3. Wet or uncured concrete shall be prohibited from entry into flowing surface waters, unless the area is contained within a cofferdam and the work is performed in the dry or unless otherwise approved by the Department of Environmental Quality. Excess or waste concrete shall not be disposed of in flowing surface waters or washed into flowing surface waters.

4. All fill material shall be clean and free of contaminants in toxic concentrations or amounts in accordance with all applicable laws and regulations.

5. Erosion and sedimentation controls shall be designed in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992, or for mining activities covered by this general permit, the standards issued by the Virginia Department of Energy that are effective as those in the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992. These controls shall be placed prior to clearing and grading and maintained in good working order to minimize impacts to state waters. These controls shall remain in place until the area is stabilized and shall then be removed.

6. Exposed slopes and streambanks shall be stabilized immediately upon completion of work in each permitted impact area. All denuded areas shall be properly stabilized in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.

7. All construction, construction access (e.g., cofferdams, sheetpiling, and causeways) and demolition activities associated with the project shall be accomplished in a manner that minimizes construction or waste materials from entering surface waters to the maximum extent practicable, unless authorized by this VWP general permit.

8. No machinery may enter flowing waters, unless authorized by this VWP general permit or approved prior to entry by the Department of Environmental Quality.

9. Heavy equipment in temporarily-impacted wetland areas shall be placed on mats, geotextile fabric, or other suitable material to minimize soil disturbance to the maximum extent practicable. Equipment and materials shall be removed immediately upon completion of work.

10. All nonimpacted surface waters and compensatory mitigation areas within 50 feet of authorized activities and within the project or right-of-way limits shall be clearly flagged or marked for the life of the construction activity at that location to preclude unauthorized disturbances to these surface waters and compensatory mitigation areas during construction. The permittee shall notify contractors that no activities are to occur in these marked surface waters.

11. Temporary disturbances to surface waters during construction shall be avoided and minimized to the maximum extent practicable. All temporarily disturbed wetland areas shall be restored to preexisting conditions within 30 days of completing work at each respective temporary impact area, which shall include reestablishing preconstruction elevations and contours with topsoil from the impact area where practicable and planting or seeding with appropriate wetland vegetation according to cover type (i.e., emergent, scrub-shrub, or forested). The permittee shall take all appropriate measures to promote and maintain revegetation of temporarily disturbed wetland areas with wetland vegetation through the second year post-disturbance. All temporarily impacted streams and streambanks shall be restored to their preconstruction elevations and contours with topsoil from the impact area where practicable within 30 days following the construction at that stream segment. Streambanks shall be seeded or planted with the same vegetation cover type originally present, including any necessary supplemental erosion control grasses. Invasive species identified on the Department of Conservation and Recreation's Virginia Invasive Plant Species List shall not be used to the maximum extent practicable or without prior approval from the Department of Environmental Quality.

12. Materials (including fill, construction debris, and excavated and woody materials) temporarily stockpiled in wetlands shall be placed on mats or geotextile fabric, immediately stabilized to prevent entry into state waters, managed such that leachate does not enter state waters, and completely removed within 30 days following completion of that construction activity. Disturbed areas shall be returned to preconstruction elevations and contours with topsoil from the impact area where practicable; restored within 30 days following removal of the stockpile; and restored with the same vegetation cover type originally present, including any necessary supplemental erosion control grasses. Invasive

species identified on the Department of Conservation and Recreation's Virginia Invasive Plant Species List shall not be used to the maximum extent practicable or without prior approval from the Department of Environmental Quality.

13. Continuous flow of perennial springs shall be maintained by the installation of spring boxes, french drains, or other similar structures.

14. The permittee shall employ measures to prevent spills of fuels or lubricants into state waters.

15. The permittee shall conduct activities in accordance with the time-of-year restrictions recommended by the Virginia Department of Wildlife Resources, the Virginia Marine Resources Commission, or other interested and affected agencies, as contained, when applicable, in Department of Environmental Quality VWP general permit coverage, and shall ensure that all contractors are aware of the time-of-year restrictions imposed.

16. Water quality standards shall not be violated as a result of the construction activities.

17. If stream channelization or relocation is required, all work in surface waters shall be done in the dry, unless otherwise authorized by the Department of Environmental Quality, and all flows shall be diverted around the channelization or relocation area until the new channel is stabilized. This work shall be accomplished by leaving a plug at the inlet and outlet ends of the new channel during excavation. Once the new channel has been stabilized, flow shall be routed into the new channel by first removing the downstream plug and then the upstream plug. The rerouted stream flow must be fully established before construction activities in the old stream channel can begin.

C. Road crossings.

1. Access roads and associated bridges, pipes, and culverts shall be constructed to minimize the adverse effects on surface waters to the maximum extent practicable. Access roads constructed above preconstruction elevations and contours in surface waters must be bridged, piped, or culverted to maintain surface flows.

2. Installation of road crossings shall occur in the dry via the implementation of cofferdams, sheetpiling, stream diversions, or similar structures.

D. Utility lines.

1. All utility line work in surface waters shall be performed in a manner that minimizes disturbance, and the area must be returned to its preconstruction elevations and contours with topsoil from the impact area where practicable and restored within 30 days of completing work in the area, unless otherwise authorized the Department of Environmental Quality. Restoration shall be the seeding of planting of the same vegetation cover type originally present, including any necessary supplemental erosion control grasses. Invasive specifies identified on the Department of Conservation and Recreation's Virginia Invasive Plant Species List shall not be used to the maximum extent practicable or without prior approval from the Department of Environmental Quality.

2. Material resulting from trench excavation may be temporarily sidecast into wetlands not to exceed a total of 90 days, provided the material is not placed in a manner such that it is dispersed by currents or other forces.

3. The trench for a utility line cannot be constructed in a manner that drains wetlands (e.g., backfilling with extensive gravel layers creating a french drain effect.). For example, utility lines may be backfilled with clay blocks to ensure that the trench does not drain surface waters through which the utility line is installed.

E. Stream modification and stream bank protection.

1. Riprap bank stabilization shall be of an appropriate size and design in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.

2. Riprap apron for all outfalls shall be designed in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.

3. For stream bank protection activities, the structure and backfill shall be placed as close to the stream bank as practicable. No material shall be placed in excess of the minimum necessary for erosion protection.

4. All stream bank protection structures shall be located to eliminate or minimize impacts to vegetated wetlands to the maximum extent practicable.

5. Asphalt and materials containing asphalt or other toxic substances shall not be used in the construction of submerged sills or breakwaters.

6. Redistribution of existing stream substrate for the purpose of erosion control is prohibited.

7. No material removed from the stream bottom shall be disposed of in surface waters, unless otherwise authorized by this VWP general permit.

F. Dredging.

1. Dredging depths shall be determined and authorized according to the proposed use and controlling depths outside the area to be dredged.

2. Dredging shall be accomplished in a manner that minimizes disturbance of the bottom and minimizes turbidity levels in the water column.

3. If evidence of impaired water quality, such as a fish kill, is observed during the dredging, dredging operations shall

cease, and the Department of Environmental Quality shall be notified immediately.

4. Barges used for the transportation of dredge material shall be filled in such a manner to prevent the overflow of dredged materials.

5. Double handling of dredged material in state waters shall not be permitted.

6. For navigation channels the following shall apply:

a. A buffer of four times the depth of the dredge cut shall be maintained between the bottom edge of the design channel and the channelward limit of wetlands, or a buffer of 15 feet shall be maintained from the dredged cut and the channelward edge of wetlands, whichever is greater. This landward limit of buffer shall be flagged and inspected prior to construction.

b. Side slope cuts of the dredging area shall not exceed a two-horizontal-to-one-vertical slope to prevent slumping of material into the dredged area.

7. A dredged material management plan for the designated upland disposal site shall be submitted and approved 30 days prior to initial dredging activity.

8. Pipeline outfalls and spillways shall be located at opposite ends of the dewatering area to allow for maximum retention and settling time. Filter fabric shall be used to line the dewatering area and to cover the outfall pipe to further reduce sedimentation to state waters.

9. The dredge material dewatering area shall be of adequate size to contain the dredge material and to allow for adequate dewatering and settling out of sediment prior to discharge back into state waters.

10. The dredge material dewatering area shall utilize an earthen berm or straw bales covered with filter fabric along the edge of the area to contain the dredged material, filter bags, or other similar filtering practices, any of which shall be properly stabilized prior to placing the dredged material within the containment area.

11. Overtopping of the dredge material containment berms with dredge materials shall be strictly prohibited.

G. Stormwater management facilities.

1. Stormwater management facilities shall be installed in accordance with best management practices and watershed protection techniques (e.g., vegetated buffers, siting considerations to minimize adverse effects to aquatic resources, bioengineering methods incorporated into the facility design to benefit water quality and minimize adverse effects to aquatic resources) that provide for long-term aquatic resources protection and enhancement, to the maximum extent practicable.

2. Compensation for unavoidable impacts shall not be allowed within maintenance areas of stormwater management facilities.

3. Maintenance activities within stormwater management facilities shall not require additional permit coverage or compensation provided that the maintenance activities do not exceed the original contours of the facility, as approved and constructed, and is accomplished in designated maintenance areas as indicated in the facility maintenance or design plan or when unavailable, an alternative plan approved by the Department of Environmental Quality.

Part II.

Construction and Compensation Requirements, Monitoring, and Reporting.

A. Minimum compensation requirements.

1. The permittee shall provide any required compensation for impacts in accordance with the conditions in this VWP general permit, the coverage letter, and the chapter promulgating the general permit. For all compensation that requires a protective mechanism, including preservation of surface waters or buffers, the permittee shall record the approved protective mechanism in the chain of title to the property, or an equivalent instrument for government-owned lands, and proof of recordation shall be submitted to the Department of Environmental Quality prior to commencing impacts in surface waters.

2. Compensation options that may be considered under this VWP general permit shall meet the criteria in § 62.1-44.15:23 of the Code of Virginia, 9VAC25-210-116, and 9VAC25-690-70.

3. The permittee-responsible compensation site or sites depicted in the conceptual compensation plan submitted with the application shall constitute the compensation site. A site change may require a modification to coverage.

4. For compensation involving the purchase of mitigation bank credits or the purchase of in-lieu fee program credits, the permittee shall not initiate work in permitted impact areas until documentation of the mitigation bank credit purchase or of the in-lieu fee program credit purchase has been submitted to and received by the Department of Environmental Quality.

5. The final compensation plan shall be submitted to and approved by the department prior to a construction activity in permitted impact areas. The department shall review and provide written comments on the final plan within 30 days of receipt or it shall be deemed approved. The final plan as approved by the department shall be an enforceable requirement of any coverage under this VWP general permit. Deviations from the approved final plan shall be submitted and approved in advance by the department.

a. The final permittee-responsible wetlands compensation plan shall include:

(1) The complete information on all components of the conceptual compensation plan.

(2) A summary of the type and acreage of existing wetland impacts anticipated during the construction of the compensation site and the proposed compensation for these impacts; a site access plan; a monitoring plan, including proposed success criteria, monitoring goals, and the location of photo-monitoring stations, monitoring wells, vegetation sampling points, and reference wetlands or streams, if available; an abatement and control plan for undesirable plant species; an erosion and sedimentation control plan; a construction schedule; and the final protective mechanism for the compensation site or sites, including all surface waters and buffer areas within its boundaries.

(3) The approved protective mechanism. The protective mechanism shall be recorded in the chain of title to the property, or an equivalent instrument for government-owned lands, and proof of recordation shall be submitted to the Department of Environmental Quality prior to commencing impacts in surface waters.

b. The final permittee-responsible stream compensation plan shall include:

(1) The complete information on all components of the conceptual compensation plan.

(2) An evaluation, discussion, and plan drawing or drawings of existing conditions on the proposed compensation stream, including the identification of functional and physical deficiencies for which the measures are proposed, and summary of geomorphologic measurements (e.g., stream width, entrenchment ratio, width-depth ratio, sinuosity, slope, substrate, etc.); a site access plan; a monitoring plan, including a monitoring and reporting schedule, monitoring design and methodologies for success, proposed success criteria, location of photo-monitoring stations, vegetation sampling points, survey points, bank pins, scour chains, and reference streams; an abatement and control plan for undesirable plant species; an erosion and sedimentation control plan, if appropriate; a construction schedule; a plan-view drawing depicting the pattern and all compensation measures being employed; a profile drawing; cross-sectional drawing or drawings of the proposed compensation stream; and the final protective mechanism for the protection of the compensation site or sites, including all surface waters and buffer areas within its boundaries.

(3) The approved protective mechanism. The protective mechanism shall be recorded in the chain of title to the property, or an equivalent instrument for government-owned lands, and proof of recordation shall be submitted to the Department of Environmental Quality prior to commencing impacts in surface waters.

6. The following criteria shall apply to permittee-responsible wetland or stream compensation:

a. The vegetation used shall be native species common to the area, shall be suitable for growth in local wetland or riparian conditions, and shall be from areas within the same or adjacent U.S. Department of Agriculture Plant Hardiness Zone or Natural Resources Conservation Service Land Resource Region as that of the project site. Planting of woody plants shall occur when vegetation is normally dormant, unless otherwise approved in the final wetlands or stream compensation plan or plans.

b. All work in permitted impact areas shall cease if compensation site construction has not commenced within 180 days of commencement of project construction, unless otherwise authorized by the department.

c. The Department of Environmental Quality shall be notified in writing prior to the initiation of construction activities at the compensation site.

d. Point sources of stormwater runoff shall be prohibited from entering a wetland compensation site prior to treatment by appropriate best management practices. Appropriate best management practices may include sediment traps, grassed waterways, vegetated filter strips, debris screens, oil and grease separators, or forebays.

e. The success of the compensation shall be based on meeting the success criteria established in the approved final compensation plan.

f. If the wetland or stream compensation area fails to meet the specified success criteria in a particular monitoring year, other than the final monitoring year, the reasons for this failure shall be determined, and a corrective action plan shall be submitted to the Department of Environmental Quality for approval with or before that year's monitoring report. The corrective action plan shall contain at minimum the proposed actions, a schedule for those actions, and a monitoring plan, and shall be implemented by the permittee in accordance with the approved schedule. Should significant changes be necessary to ensure success, the required monitoring cycle shall begin again, with monitoring year one being the year that the changes are complete, as confirmed by the Department of Environmental Quality. If the wetland or stream compensation area fails to meet the specified success criteria by the final monitoring year or if the wetland or stream compensation area has not met the stated restoration goals, reasons for this failure shall be determined and a corrective action plan, including proposed actions, a schedule, and a monitoring plan, shall be submitted with the final year monitoring report for Department of Environmental Quality approval. Corrective action shall be implemented by the permittee in accordance with the approved schedule. Annual monitoring shall be required to continue until two sequential, annual reports indicate that all criteria have

been successfully satisfied and the site has met the overall restoration goals (e.g., that corrective actions were successful).

g. The surveyed wetland boundary for the wetlands compensation site shall be based on the results of the hydrology, soils, and vegetation monitoring data and shall be shown on the site plan. Calculation of total wetland acreage shall be based on that boundary at the end of the monitoring cycle. Data shall be submitted by December 31 of the final monitoring year.

h. Herbicides or algicides shall not be used in or immediately adjacent to the wetlands or stream compensation site or sites without prior authorization by the department. All vegetation removal shall be done by manual means, unless authorized by the Department of Environmental Quality in advance.

B. Impact site construction monitoring.

1. Construction activities authorized by this permit that are within impact areas shall be monitored and documented. The monitoring shall consist of:

a. Preconstruction photographs taken at each impact area prior to initiation of activities within impact areas. Photographs shall remain on the project site and depict the impact area and the nonimpacted surface waters immediately adjacent to and downgradient of each impact area. Each photograph shall be labeled to include the following information: permit number, impact area number, date and time of the photograph, name of the person taking the photograph, photograph orientation, and photograph subject description.

b. Site inspections shall be conducted by the permittee or the permittee's qualified designee once every calendar month during activities within impact areas. Monthly inspections shall be conducted in the following areas: all authorized permanent and temporary impact areas; all avoided surface waters, including wetlands, stream channels, and open water; surface water areas within 50 feet of any land disturbing activity and within the project or right-of-way limits; and all on-site permanent preservation areas required under this permit. Observations shall be recorded on the inspection form provided by the Department of Environmental Quality. The form shall be completed in its entirety for each monthly inspection and shall be kept on site and made available for review by the Department of Environmental Quality staff upon request during normal business hours. Inspections are not required during periods of no activity within impact areas.

2. Monitoring of water quality parameters shall be conducted during permanent relocation of perennial streams through new channels in the manner noted in this subdivision. The permittee shall report violations of water quality standards to the Department of Environmental Quality in accordance with the procedures in 9VAC25-690-100 Part II E. Corrective measures and additional monitoring may be required if water quality standards are not met. Reporting shall not be required if water quality standards are not violated.

a. A sampling station shall be located upstream and immediately downstream of the relocated channel.

b. Temperature, pH, and dissolved oxygen (D.O.) measurements shall be taken every 30 minutes for at least two hours at each station prior to opening the new channels and immediately before opening new channels.

c. Temperature, pH, and D.O. readings shall be taken after opening the channels and every 30 minutes for at least three hours at each station.

C. Permittee-responsible wetland compensation site monitoring.

1. An as-built ground survey, or an aerial survey provided by a firm specializing in aerial surveys, shall be conducted for the entire compensation site or sites, including invert elevations for all water elevation control structures and spot elevations throughout the site or sites. Aerial surveys shall include the variation from actual ground conditions, such as +/- 0.2 feet. Either type of survey shall be certified by a licensed surveyor or by a registered professional engineer to conform to the design plans. The survey shall be submitted within 60 days of completing compensation site construction. Changes or deviations in the as-built survey or aerial survey shall be shown on the survey and explained in writing.

2. Photographs shall be taken at the compensation site or sites from the permanent markers identified in the final compensation plan, and established to ensure that the same locations and view directions at the site or sites are monitored in each monitoring period. These photographs shall be taken after the initial planting and at a time specified in the final compensation plan during every monitoring year.

3. Compensation site monitoring shall begin on day one of the first complete growing season (monitoring year one) after wetland compensation site construction activities, including planting, have been completed. Monitoring shall be required for monitoring years one, two, three, and five, unless otherwise approved by the Department of Environmental Quality. In all cases, if all success criteria have not been met in the final monitoring year, then monitoring shall be required for each consecutive year until two annual sequential reports indicate that all criteria have been successfully satisfied.

4. The establishment of wetland hydrology shall be measured during the growing season, with the location and number of monitoring wells, and frequency of monitoring for each site, set forth in the final monitoring plan. Hydrology monitoring well data shall be accompanied by

precipitation data, including rainfall amounts either from on site or from the closest weather station. Once the wetland hydrology success criteria have been satisfied for a particular monitoring year, monitoring may be discontinued for the remainder of that monitoring year following Department of Environmental Quality approval. After a period of three monitoring years, the permittee may request that hydrology monitoring be discontinued, providing that adequate hydrology has been established and maintained. Hydrology monitoring shall not be discontinued without written approval from the Department of Environmental Quality.

5. The presence of hydric soils or soils under hydric conditions shall be evaluated in accordance with the final compensation plan.

6. The establishment of wetland vegetation shall be in accordance with the final compensation plan. Monitoring shall take place in August, September, or October during the growing season of each monitoring year, unless otherwise authorized in the monitoring plan.

7. The presence of undesirable plant species shall be documented.

8. All wetland compensation monitoring reports shall be submitted in accordance with 9VAC25-690-100 Part II E 6.

D. Permittee-responsible stream compensation and monitoring.

1. Riparian buffer restoration activities shall be detailed in the final compensation plan and shall include, as appropriate, the planting of a variety of native species currently growing in the site area, including appropriate seed mixtures and woody species that are bare root, balled, or burlapped. A minimum buffer width of 50 feet, measured from the top of the stream bank at bankfull elevation landward on both sides of the stream, shall be required where practical.

2. The installation of root wads, vanes, and other instream structures, shaping of the stream banks, and channel relocation shall be completed in the dry whenever practicable.

3. Livestock access to the stream and designated riparian buffer shall be limited to the greatest extent practicable.

4. Stream channel restoration activities shall be conducted in the dry or during low flow conditions. When site conditions prohibit access from the streambank or upon prior authorization from the Department of Environmental Quality, heavy equipment may be authorized for use within the stream channel.

5. Photographs shall be taken at the compensation site from the vicinity of the permanent photo-monitoring stations identified in the final compensation plan. The photograph orientation shall remain constant during all monitoring events. At a minimum, photographs shall be taken from the center of the stream, facing downstream, with a sufficient number of photographs to view the entire length of the restoration site. Photographs shall document the completed restoration conditions. Photographs shall be taken prior to site activities, during instream and riparian compensation construction activities, within one week of completion of activities, and during at least one day of each monitoring year to depict restored conditions.

6. An as-built ground survey, or an aerial survey provided by a firm specializing in aerial surveys, shall be conducted for the entire compensation site or sites. Aerial surveys shall include the variation from actual ground conditions, such as +/- 0.2 feet. The survey shall be certified by the licensed surveyor or by a registered, professional engineer to conform to the design plans. The survey shall be submitted within 60 days of completing compensation site construction. Changes or deviations from the final compensation plans in the as-built survey or aerial survey shall be shown on the survey and explained in writing.

7. Compensation site monitoring shall begin on day one of the first complete growing season (monitoring year one) after stream compensation site construction activities, including planting, have been completed. Monitoring shall be required for monitoring years one and two, unless otherwise approved by the Department of Environmental Quality. In all cases, if all success criteria have not been met in the final monitoring year, then monitoring shall be required for each consecutive year until two annual sequential reports indicate that all criteria have been successfully satisfied.

8. All stream compensation site monitoring reports shall be submitted by in accordance with 9VAC25-690-100 Part II E 6.

E. Reporting.

1. Written communications required by this VWP general permit shall be submitted to the appropriate Department of Environmental Quality office. The VWP general permit tracking number shall be included on all correspondence.

2. The Department of Environmental Quality shall be notified in writing prior to the start of construction activities at the first permitted impact area.

3. A construction status update form provided by the Department of Environmental Quality shall be completed and submitted to the Department of Environmental Quality twice per year for the duration of coverage under a VWP general permit. Forms completed in June shall be submitted by or on July 10, and forms completed in December shall be submitted by or on January 10. The form shall include reference to the VWP permit tracking number and one of the

following statements for each authorized surface water impact location:

a. Construction activities have not yet started;

b. Construction activities have started;

c. Construction activities have started but are currently inactive; or

d. Construction activities are complete.

4. The Department of Environmental Quality shall be notified in writing within 30 days following the completion of all activities in all authorized impact areas.

5. The Department of Environmental Quality shall be notified in writing prior to the initiation of activities at the permittee-responsible compensation site. The notification shall include a projected schedule of activities and construction completion.

6. All permittee-responsible compensation site monitoring reports shall be submitted annually by December 31, with the exception of the last year, in which case the report shall be submitted at least 60 days prior to the expiration of the general permit, unless otherwise approved by the Department of Environmental Quality.

a. All wetland compensation site monitoring reports shall include, as applicable, the following:

(1) General description of the site, including a site location map identifying photo-monitoring stations, vegetative and soil monitoring stations, monitoring wells, and wetland zones.

(2) Summary of activities completed during the monitoring year, including alterations or maintenance conducted at the site.

(3) Description of monitoring methods.

(4) Analysis of all hydrology information, including monitoring well data, precipitation data, and gauging data from streams or other open water areas, as set forth in the final compensation plan.

(5) Evaluation of hydric soils or soils under hydric conditions, as appropriate.

(6) Analysis of all vegetative community information, including woody and herbaceous species, both planted and volunteers, as set forth in the final compensation plan.

(7) Photographs labeled with the permit number, the name of the compensation site, the photo-monitoring station number, the photograph orientation, the date and time of the photograph, the name of the person taking the photograph, and a brief description of the photograph subject. This information shall be provided as a separate attachment to each photograph, if necessary. Photographs taken after the initial planting shall be included in the first monitoring report after planting is complete.

(8) Discussion of wildlife or signs of wildlife observed at the compensation site.

(9) Comparison of site conditions from the previous monitoring year and reference site.

(10) Discussion of corrective measures or maintenance activities to control undesirable species, to repair damaged water control devices, or to replace damaged planted vegetation.

(11) Corrective action plan that includes proposed actions, a schedule, and monitoring plan.

b. All stream compensation site monitoring reports shall include, as applicable, the following:

(1) General description of the site, including a site location map identifying photo-monitoring stations and monitoring stations.

(2) Summary of activities completed during the monitoring year, including alterations or maintenance conducted at the site.

(3) Description of monitoring methods.

(4) Evaluation and discussion of the monitoring results in relation to the success criteria and overall goals of compensation.

(5) Photographs shall be labeled with the permit number, the name of the compensation site, the photo-monitoring station number, the photograph orientation, the date and time of the photograph, the name of the person taking the photograph, and a brief description of the photograph subject. Photographs taken prior to compensation site construction activities, during instream and riparian restoration activities, and within one week of completion of activities shall be included in the first monitoring report.

(6) Discussion of alterations, maintenance, or major storm events resulting in significant change in stream profile or cross section, and corrective actions conducted at the stream compensation site.

(7) Documentation of undesirable plant species and summary of abatement and control measures.

(8) Summary of wildlife or signs of wildlife observed at the compensation site.

(9) Comparison of site conditions from the previous monitoring year and reference site, and as-built survey, if applicable.

(10) Corrective action plan that includes proposed actions, a schedule and monitoring plan.

(11) Additional submittals that were approved by the Department of Environmental Quality in the final compensation plan.

7. The permittee shall notify the Department of Environmental Quality in writing when unusual or potentially complex conditions are encountered that require debris removal or involve potentially toxic substance. Measures to remove the obstruction, material, or toxic substance or to change the location of a structure are

prohibited until approved by the Department of Environmental Quality.

8. The permittee shall report fish kills or spills of oil or fuel immediately upon discovery. If spills or fish kills occur between the hours of 8:15 a.m. to 5 p.m., Monday through Friday, the appropriate Department of Environmental Quality regional office shall be notified; otherwise, the Department of Emergency Management shall be notified at 1-800-468-8892.

9. Violations of state water quality standards shall be reported to the appropriate Department of Environmental Quality office no later than the end of the business day following discovery.

10. The permittee shall notify the Department of Environmental Quality no later than the end of the third business day following the discovery of additional impacts to surface waters, including wetlands, stream channels, and open water that are not authorized by the Department of Environmental Quality or to any required preservation areas. The notification shall include photographs, estimated acreage or linear footage of impacts, and a description of the impacts.

11. Submittals required by this VWP general permit shall contain the following signed certification statement:

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

Part III.

Conditions Applicable to All VWP General Permits.

A. Duty to comply. The permittee shall comply with all conditions, limitations, and other requirements of the VWP general permit; any requirements in coverage granted under this VWP general permit; the Clean Water Act, as amended; and the State Water Control Law and regulations adopted pursuant to it. Any VWP general permit violation or noncompliance is a violation of the Clean Water Act and State Water Control Law and is grounds for (i) enforcement action, (ii) VWP general permit coverage termination for cause, (iii) VWP general permit coverage revocation, (iv) denial of application for coverage, or (v) denial of an application for a modification to VWP general permit coverage. Nothing in this VWP general permit shall be construed to relieve the permittee of the duty to comply with all applicable federal and state statutes, regulations, and toxic standards and prohibitions.

B. Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent impacts in violation of the VWP general permit that may have a reasonable likelihood of adversely affecting human health or the environment.

C. Reopener. This VWP general permit may be reopened to modify its conditions when the circumstances on which the previous VWP general permit was based have materially and substantially changed, or special studies conducted by the department or the permittee show material and substantial change since the time the VWP general permit was issued and thereby constitute cause for revoking and reissuing the VWP general permit.

D. Compliance with state and federal law. Compliance with this VWP general permit constitutes compliance with the VWP permit requirements of the State Water Control Law. Nothing in this VWP general permit shall be construed to preclude the institution of any legal action under or relieve the permittee from any responsibilities, liabilities, or other penalties established pursuant to any other state law or regulation or under the authority preserved by § 510 of the Clean Water Act.

E. Property rights. The issuance of this VWP general permit does not convey property rights in either real or personal property or any exclusive privileges, nor does it authorize injury to private property, any invasion of personal property rights, or any infringement of federal, state, or local laws or regulations.

F. Severability. The provisions of this VWP general permit are severable.

G. Inspection and entry. Upon presentation of credential, the permittee shall allow the department or any duly authorized agent of the department, at reasonable times and under reasonable circumstances, to enter upon the permittee's property, public or private, and have access to inspect and copy any records that must be kept as part of the VWP general permit conditions; to inspect any facilities, operations, or practices (including monitoring and control equipment) regulated or required under the VWP general permit; and to sample or monitor any substance, parameter, or activity for the purpose of ensuring compliance with the conditions of the VWP general permit or as otherwise authorized by law. For the purpose of this section, the time for inspection shall be deemed reasonable during regular business hours. Nothing contained herein shall make an inspection time unreasonable during an emergency.

H. Transferability of VWP general permit coverage. VWP general permit coverage may be transferred to another permittee when all of the criteria listed in this subsection are met. On the date of the VWP general permit coverage transfer, the transferred VWP general permit coverage shall be as fully effective as if it had been granted directly to the new permittee.

1. The current permittee notifies the department of the proposed transfer of the general permit coverage and

provides a written agreement between the current and new permittees containing a specific date of transfer of VWP general permit responsibility, coverage, and liability to the new permittee, or that the current permittee will retain such responsibility, coverage, or liability, including liability for compliance with the requirements of enforcement activities related to the authorized activity.

2. The department does not within 15 days notify the current and new permittees of the board's intent to modify or revoke and reissue the VWP general permit.

I. Notice of planned change. VWP general permit coverage may be modified subsequent to issuance in accordance with 9VAC25-690-80.

J. VWP general permit coverage termination for cause. VWP general permit coverage is subject to termination for cause by the department after public notice and opportunity for a hearing in accordance with 9VAC25-210-180. Reasons for termination for cause are as follows:

1. Noncompliance by the permittee with any provision of this chapter, any condition of the VWP general permit, or any requirement in general permit coverage;

2. The permittee's failure in the application or during the process of granting VWP general permit coverage to disclose fully all relevant facts or the permittee's misrepresentation of any relevant facts at any time;

3. The permittee's violation of a special or judicial order;

4. A determination by the department that the authorized activity endangers human health or the environment and can be regulated to acceptable levels by a modification to VWP general permit coverage or a termination;

5. A change in any condition that requires either a temporary or permanent reduction or elimination of any activity controlled by the VWP general permit; or

6. A determination that the authorized activity has ceased and that the compensation for unavoidable adverse impacts has been successfully completed.

K. The department may terminate VWP general permit coverage without cause when the permittee is no longer a legal entity due to death or dissolution or when a company is no longer authorized to conduct business in the Commonwealth. The termination shall be effective 30 days after notice of the proposed termination is sent to the last known address of the permittee or registered agent, unless the permittee objects within that time. If the permittee does object during that period, the department shall follow the applicable procedures for termination under 9VAC25-210-180 and § 62.1-44.15:25 of the Code of Virginia.

L. VWP general permit coverage termination by consent. The permittee shall submit a request for termination by consent within 30 days of completing or canceling all authorized activities requiring notification under 9VAC25-690-50 A and all compensatory mitigation requirements. When submitted for project completion, the request for termination by consent shall constitute a notice of project completion in accordance with 9VAC25-210-130 F. The director may accept this termination of coverage on behalf of the department. The permittee shall submit the following information:

1. Name, mailing address, and telephone number;

2. Name and location of the activity;

3. The VWP general permit tracking number; and

4. One of the following certifications:

a. For project completion:

"I certify under penalty of law that all activities and any required compensatory mitigation authorized by the VWP general permit and general permit coverage have been completed. I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit and general permit coverage, and that performing activities in surface waters is unlawful where the activity is not authorized by the VWP permit or coverage, unless otherwise excluded from obtaining coverage. I also understand that the submittal of this notice does not release me from liability for any violations of the VWP general permit or coverage."

b. For project cancellation:

"I certify under penalty of law that the activities and any required compensatory mitigation authorized by the VWP general permit and general permit coverage will not occur. I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit and general permit coverage, and that performing activities in surface waters is unlawful where the activity is not authorized by the VWP permit or coverage, unless otherwise excluded from obtaining coverage. I also understand that the submittal of this notice does not release me from liability for any violations of the VWP general permit or coverage, nor does it allow me to resume the authorized activities without reapplication and coverage."

c. For events beyond permittee control, the permittee shall provide a detailed explanation of the events, to be approved by the Department of Environmental Quality, and the following certification statement:

"I certify under penalty of law that the activities or the required compensatory mitigation authorized by the VWP general permit and general permit coverage have changed as the result of events beyond my control (see attached). I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit and

general permit coverage, and that performing activities in surface waters is unlawful where the activity is not authorized by the VWP permit or coverage, unless otherwise excluded from obtaining coverage. I also understand that the submittal of this notice does not release me from liability for any violations of the VWP general permit or coverage, nor does it allow me to resume the authorized activities without reapplication and coverage."

M. Civil and criminal liability. Nothing in this VWP general permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance.

N. Oil and hazardous substance liability. Nothing in this VWP general permit shall be construed to preclude the institution of legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under § 311 of the Clean Water Act or §§ 62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law.

O. Duty to cease or confine activity. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the activity for which VWP general permit coverage has been granted in order to maintain compliance with the conditions of the VWP general permit or coverage.

P. Duty to provide information.

1. The permittee shall furnish to the department any information that the department may request to determine whether cause exists for modifying, revoking, or terminating VWP permit coverage or to determine compliance with the VWP general permit or general permit coverage. The permittee shall also furnish to the department, upon request, copies of records required to be kept by the permittee.

2. Plans, maps, conceptual reports, and other relevant information shall be submitted as required by the department prior to commencing construction.

Q. Monitoring and records requirements.

1. Monitoring of parameters, other than pollutants, shall be conducted according to approved analytical methods as specified in the VWP general permit. Analysis of pollutants will be conducted according to 40 CFR Part 136 as published in the July 1, ~~2023~~ 2024, update, Guidelines Establishing Test Procedures for the Analysis of Pollutants.

2. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

3. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart or electronic recordings for continuous monitoring instrumentation, copies of all reports required by the VWP general permit, and records of all data used to complete the application for coverage under the VWP general permit, for a period of at least three years from the date of general permit expiration. This period may be extended by request of the department at any time.

4. Records of monitoring information shall include, as appropriate:

a. The date, exact place, and time of sampling or measurements;

b. The name of the individuals who performed the sampling or measurements;

c. The date and time the analyses were performed;

d. The name of the individuals who performed the analyses;

e. The analytical techniques or methods supporting the information such as observations, readings, calculations, and bench data used;

f. The results of such analyses; and

g. Chain of custody documentation.

R. Unauthorized discharge of pollutants. Except in compliance with this VWP general permit, it shall be unlawful for the permittee to:

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances;

2. Excavate in a wetland;

3. Otherwise alter the physical, chemical, or biological properties of state waters and make them detrimental to the public health, to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, for recreation, or for other uses; or

4. On and after October 1, 2001, conduct the following activities in a wetland:

a. New activities to cause draining that significantly alters or degrades existing wetland acreage or functions;

b. Filling or dumping;

c. Permanent flooding or impounding; or

d. New activities that cause significant alteration or degradation of existing wetland acreage or functions.

S. Duty to reapply. Any permittee desiring to continue a previously authorized activity after the expiration date of the VWP general permit shall comply with the provisions in 9VAC25-690-27.

**9VAC25-790-210. Nonconventional methods, processes or equipment.**

A. Policy. The policy of the department is to encourage the development of any new or nonconventional methods, processes, and equipment that appear to have application for the treatment or conveyance of sewage. Sewage treatment methods, processes, and equipment may be subject to a special

permit application procedure if (i) they are not covered by the Manual of Practice (Part III (9VAC25-790-310 et seq.) of this chapter) and (ii) they are in principle, or application, deemed to be nonconventional.

B. Provisional CTO. The performance reliability of nonconventional processes and equipment shall have been thoroughly demonstrated through an approved testing program for similar installations (loadings of 75% or more of design level) before they may be considered for conventional approval and use. Where the department approves such a testing program, a provisional CTO will be issued for treatment works in which new or nonconventional processes and equipment are to be evaluated. The provisional CTO will specify conditions related to the testing requirements and agreements necessary for issuance of a final CTO. The owner of the facility shall submit the required test results to the department according to an approved schedule for approval prior to issuance of a final CTO. It is the owner's responsibility to operate in compliance with requirements imposed by permits issued for the sewerage system or treatment works.

C. Assurance resources. As a prerequisite to the issuance of a provisional CTO, the owner must furnish assurance of financial ability or resources available to modify, convert, or replace, the new or nonconventional processes or equipment in the event the performance reliability cannot be established over the period of time specified by the provisional CTO. These assurances may be in the form of funds placed in escrow, letters of credit, performance bonds, etc., which would revert to the facility owner if performance reliability cannot be established.

D. Performance reliability testing. All procedures used in testing of the performance reliability shall be conducted under the supervision of a licensed professional engineer who shall attest to the accuracy of sampling and testing procedures. The required samples shall be tested through a qualified laboratory. The testing program shall provide as a minimum the following:

1. Samples shall be collected at designated locations at a stated frequency and analyzed in accordance with provisions of the provisional CTO. The minimum testing period shall be 12 months under the comparable environmental and operational conditions for which the process and equipment will receive conventional approvals for any additional installations.

2. All analyses shall be made in accordance with the 19th Edition of Standard Methods for the Examination of Water and Wastewater (1995) and 40 CFR Part 136 as published in the 40 CFR July 1, ~~2023~~ 2024, update, or other approved analytical methods.

E. CTC. After the area engineer evaluates the plans and testing data, the director can issue a CTC if the performance data verifies that the method, process, or equipment can perform reliably in accordance with the design specifications and the operation standards of Part II, and that the method, process, or equipment may be installed as conventional for similar site specific operation.

F. Provisional CTO. Upon completion of construction or modification, a provisional CTO for a definite period of time will be issued for the operation of the nonconventional methods, processes, and equipment. Not more than one provisional CTO will be granted for a similar installation during the evaluation period. The provisional CTO shall require that:

1. The evaluation period shall be a minimum of 12 months and no longer than 18 months,

2. The holder of a provisional CTO must submit reports on operation during the evaluation period. The reports shall be prepared by either a licensed professional engineer experienced in the field of environmental engineering, the owner's operating or engineering staff, or a qualified testing firm.

G. Final CTO. The director will issue a final CTO upon lapse of the provisional CTO, if, on the basis of testing during that period, the new or nonconventional method, process, or equipment demonstrates reliable performance in accordance with permit requirements and the operation standards of Part II. If the standards are not met, then the owner shall provide for modification of the sewerage systems or treatment works, in a manner that will enable those standards to be met in accordance with this chapter.

**9VAC25-800-15. Applicability of incorporated references based on the dates that they became effective.**

Except as noted, when a regulation of the U.S. Environmental Protection Agency set forth in Title 40 of the Code of Federal Regulations (CFR) is referenced and incorporated in this chapter, that regulation shall be as it exists and has been published as of the July 1, 2022, ~~CFR~~ update; however, references to 40 CFR Part 136 are incorporated as published in the July 1, 2024, update.

**9VAC25-820-15. Applicability of incorporated references based on the dates that they became effective.**

Except as noted, when a regulation of the U.S. Environmental Protection Agency set forth in Title 40 of the Code of Federal Regulations (CFR) is referenced or adopted in this chapter and incorporated by reference, that regulation shall be as it exists and has been published as of July 1, 2014; however, references to 40 CFR Part 136 are incorporated as published in the July 1, 2024, update.

**9VAC25-860-15. Applicability of incorporated references based on the dates that they became effective.**

Except as noted, when a regulation of the U.S. Environmental Protection Agency set forth in Title 40 of the Code of Federal Regulations (CFR) is referenced and incorporated in this chapter, that regulation shall be as it exists and has been published as of July 1, 2022; however, references to 40 CFR

Part 136 are incorporated as published in the July 1, 2024, update.

**9VAC25-875-30. Applicability of incorporated by references based on the dates that they became effective.**

Except as noted, when a regulation of the United States set forth in the Code of Federal Regulations (CFR) is referenced and incorporated in this chapter, that regulation shall be as it exists and has been published in the July 1, 2022, update; however, references to 40 CFR Part 136 are incorporated as published in the July 1, 2024, update.

**9VAC25-880-15. Applicability of incorporated references based on the dates that they became effective.**

Except as noted, when a regulation of the United States set forth in the Code of Federal Regulations (CFR) is referenced and incorporated in this chapter, that regulation shall be as it exists and has been published in the July 1, 2022, update; however, references to 40 CFR Part 136 are incorporated as published in the July 1, 2024, update.

**9VAC25-890-15. Applicability of incorporated references based on the dates that they became effective.**

Except as noted, when a regulation of the U.S. Environmental Protection Agency set forth in Title 40 of the Code of Federal Regulations (CFR) is referenced and incorporated in this chapter, that regulation shall be as it exists and has been published in the July 1, 2022, update; however, references to 40 CFR Part 136 are incorporated as published in the July 1, 2024, update.

VA.R. Doc. No. R25-7895; Filed October 30, 2024, 8:54 a.m.

## Final Regulation

REGISTRAR'S NOTICE: The following regulatory action is exempt from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 4 c of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations, provided such regulations do not differ materially from those required by federal law or regulation. The State Water Control Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **9VAC25-875. Virginia Erosion and Stormwater Management Regulation (amending 9VAC25-875-970, 9VAC25-875-980).**

Statutory Authority: § 62.1-44.15:28 of the Code of Virginia.

Effective Date: December 18, 2024.

Agency Contact: Rebeccah W. Rochet, Deputy Director, Division of Water Permitting, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 801-2950, or email rebeccah.rochet@deq.virginia.gov.

Summary:

*Amendments to 40 CFR Part 122, effective July 12, 2023, replace the term "urbanized area" with "urban area with a population of 50,000 or more people as determined by the latest Decennial Census by the Bureau of the Census" due to changes made by the U.S. Census Bureau. The amendments conform Virginia Erosion and Stormwater Management Regulation (9VAC25-875) with the federal regulation.*

**9VAC25-875-970. Small municipal separate storm sewer systems.**

A. Objectives of the stormwater regulations for small MS4s.

1. Subsections A through G of this section are written in a "readable regulation" format that includes both rule requirements and guidance. The recommended guidance is distinguished from the regulatory requirements by putting the guidance in a separate subdivision headed by the word "Note."

2. Under the statutory mandate in § 402(p)(6) of the Clean Water Act, the purpose of this portion of the stormwater program is to designate additional sources that need to be regulated to protect water quality and to establish a comprehensive stormwater program to regulate these sources.

3. Stormwater runoff continues to harm the nation's waters. Runoff from lands modified by human activities can harm surface water resources in several ways, including by changing natural hydrologic patterns and by elevating pollutant concentrations and loadings. Stormwater runoff may contain or mobilize high levels of contaminants, such as sediment, suspended solids, nutrients, heavy metals, pathogens, toxins, oxygen-demanding substances, and floatables.

4. The department strongly encourages partnerships and the watershed approach as the management framework for efficiently, effectively, and consistently protecting and restoring aquatic ecosystems and protecting public health.

B. As an operator of a small MS4, am I regulated under the state's stormwater program?

1. Unless you qualify for a waiver under subdivision 3 of this subsection, you are regulated if you operate a small MS4, including systems operated by federal, state, tribal, and local governments, including the Virginia Department of Transportation; and

a. Your small MS4 is located in an ~~urbanized~~ urban area with a population of 50,000 or more people as determined by the latest decennial census by the Bureau of the Census (if your small MS4 is not located entirely within an ~~urbanized~~ urban area with a population of 50,000 or more people, only the portion that is within the ~~urbanized~~ urban area is regulated); or

b. You are designated by the department, including where the designation is pursuant to subdivisions C 3 a and b of this section or is based upon a petition under 9VAC25-875-950 D.

2. You may be the subject of a petition to the department to require a permit for your discharge of stormwater. If the department determines that you need a permit, you are required to comply with subsections C through E of this section.

3. The department may waive the requirements otherwise applicable to you if you meet the criteria of subdivision 4 or 5 of this subsection B. If you receive a waiver under this section, you may subsequently be required to seek coverage under a permit in accordance with subdivision C 1 of this section if circumstances change. (See also subdivision E 2 of this section).

4. The department may waive permit coverage if your MS4 serves a population of less than 1,000 within the ~~urbanized~~ urban area identified in subdivision B 1 a of this section and you meet the following criteria:

a. Your system is not contributing substantially to the pollutant loadings of a physically interconnected MS4 that is regulated by the department; and

b. If you discharge any pollutants that have been identified as a cause of impairment of any water body to which you discharge, stormwater controls are not needed based on wasteload allocations that are part of an approved "total maximum daily load" (TMDL) that addresses the pollutants of concern.

5. The department may waive permit coverage if your MS4 serves a population under 10,000 and you meet the following criteria:

a. The department has evaluated all surface waters, including small streams, tributaries, lakes, and ponds, that receive a discharge from your MS4;

b. For all such waters, the department has determined that stormwater controls are not needed based on wasteload allocations that are part of an approved TMDL that addresses the pollutants of concern or, if a TMDL has not been developed or approved, an equivalent analysis that determines sources and allocations for the pollutants of concern;

c. For the purpose of subdivision 5 of this subsection, the pollutants of concern include biochemical oxygen demand (BOD), sediment or a parameter that addresses sediment (such as total suspended solids, turbidity or siltation), pathogens, oil and grease, and any pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from your MS4; and

d. The department has determined that future discharges from your MS4 do not have the potential to result in exceedances of water quality standards, including impairment of designated uses or other significant water quality impacts, including habitat and biological impacts.

C. If I am an operator of a regulated small MS4, how do I apply for a permit and when do I have to apply?

1. If you operate a regulated small MS4 under subsection B of this section, you must seek coverage under a permit issued by the department.

2. You must seek authorization to discharge under a general or individual permit, as follows:

a. If the department has issued a general permit applicable to your discharge and you are seeking coverage under the general permit, you must submit a registration statement that includes the information on your best management practices and measurable goals required by subdivision D 4 of this section. You may file your own registration statement, or you and other municipalities or governmental entities may jointly submit a registration statement. If you want to share responsibilities for meeting the minimum measures with other municipalities or governmental entities, you must submit a registration statement that describes which minimum measures you will implement and identify the entities that will implement the other minimum measures within the area served by your MS4. The general permit will explain any other steps necessary to obtain permit authorization.

b. (1) If you are seeking authorization to discharge under an individual permit and wish to implement a program under subsection D of this section, you must submit an application to the department that includes the information required under 9VAC25-875-920 F and subdivision D 4 of this section, an estimate of square mileage served by your small MS4, and any additional information that the department requests. A storm sewer map that satisfies the requirement of subdivision D 2 c (1) of this section will satisfy the map requirement in 9VAC25-875-920 F 7.

(2) If you are seeking authorization to discharge under an individual permit and wish to implement a program that is different from the program under subsection D of this section, you will need to comply with the permit application requirements of 9VAC25-875-950 C. You must submit both parts of the application requirements in 9VAC25-875-950 C 1 and 2 by March 10, 2003. You do not need to submit the information required by 9VAC25-875-950 C 1 b and C 2 regarding your legal authority, unless you intend for the permit writer to take such information into account when developing your other permit conditions.

(3) If allowed by the department, you and another regulated entity may jointly apply under either subdivision 2 b (1) or (2) of this subsection to be state co-permittees under an individual permit.

c. If your small MS4 is in the same ~~urbanized~~ urban area as a medium or large MS4 with a permit and that other

MS4 is willing to have you participate in that MS4's stormwater program, you and the other MS4 may jointly seek a modification of the other MS4 permit to include you as a limited state co-permittee. As a limited state co-permittee, you will be responsible for compliance with the permit's conditions applicable to your jurisdiction. If you choose this option you will need to comply with the permit application requirements of 9VAC25-875-950, rather than the requirements of subsection D of this section. You do not need to comply with the specific application requirements of 9VAC25-875-950 C 1 c and d and 9VAC25-875-950 C 2 c (discharge characterization). You may satisfy the requirements in 9VAC25-875-950 C 1 e and 2 d (identification of a management program) by referring to the other MS4's stormwater management program.

d. NOTE: In referencing an MS4's stormwater management program, you should briefly describe how the existing plan will address discharges from your small MS4 or would need to be supplemented in order to adequately address your discharges. You should also explain your role in coordinating stormwater pollutant control activities in your MS4 and detail the resources available to you to accomplish the plan.

3. If you operate a regulated small MS4:

a. Designated under subdivision B 1 a of this section, you must apply for coverage under a permit or apply for a modification of an existing permit under subdivision 2 c of this subsection within 180 days of notice, unless the department grants a later date.

b. Designated under subdivision B 1 b of this section, you must apply for coverage under a permit or apply for a modification of an existing permit under subdivision 2 c of this subsection within 180 days of notice, unless the department grants a later date.

D. As an operator of a regulated small MS4, what will my MS4 permit require?

1. Your MS4 permit will require at a minimum that you develop, implement, and enforce a stormwater management program designed to reduce the discharge of pollutants from your MS4 to the maximum extent practicable (MEP), to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act, the Virginia Erosion and Stormwater Management Act, and the State Water Control Law. Your stormwater management program must include the minimum control measures described in subdivision 2 of this subsection unless you apply for a permit under 9VAC25-875-950 C. For purposes of this section, narrative effluent limitations requiring implementation of best management practices (BMPs) are generally the most appropriate form of effluent limitations when designed to satisfy technology requirements (including reductions of pollutants to the maximum extent practicable) and to protect water quality. Implementation of best management practices consistent with the provisions of the stormwater management program required pursuant to this section and the provisions of the permit required pursuant to subsection C of this section constitutes compliance with the standard of reducing pollutants to the maximum extent practicable. The department will specify a time period of up to five years from the date of permit issuance for you to develop and implement your program.

2. Minimum control measures.

a. Public education and outreach on stormwater impacts.

(1) You must implement a public education program to distribute educational materials to the community or conduct equivalent outreach activities about the impacts of stormwater discharges on water bodies and the steps that the public can take to reduce pollutants in stormwater runoff.

(2) NOTE: You may use stormwater educational materials provided by the state, your tribe, EPA, environmental, public interest or trade organizations, or other MS4s. The public education program should inform individuals and households about the steps they can take to reduce stormwater pollution, such as ensuring proper septic system maintenance, ensuring the proper use and disposal of landscape and garden chemicals including fertilizers and pesticides, protecting and restoring riparian vegetation, and properly disposing of used motor oil or household hazardous wastes. The department recommends that the program inform individuals and groups how to become involved in local stream and beach restoration activities as well as activities that are coordinated by youth service and conservation corps or other citizen groups. The department recommends that the public education program be tailored, using a mix of locally appropriate strategies, to target specific audiences and communities. Examples of strategies include: distributing brochures or fact sheets, sponsoring speaking engagements before community groups, providing public service announcements, implementing educational programs targeted at school-age children, and conducting community-based projects such as storm drain stenciling, and watershed and beach cleanups. In addition, the department recommends that some of the materials or outreach programs be directed toward targeted groups of commercial, industrial, and institutional entities likely to have significant stormwater impacts. For example, providing information to restaurants on the impact of grease clogging storm drains and to garages on the impact of oil discharges. You are encouraged to tailor your outreach program to address the viewpoints and concerns of all communities, particularly minority and disadvantaged communities, as well as any special concerns relating to children.

b. Public involvement/participation.

(1) You must, at a minimum, comply with state, tribal, and local public notice requirements when implementing a public involvement/participation program.

(2) The department recommends that the public be included in developing, implementing, and reviewing your stormwater management program and that the public participation process should make efforts to reach out and engage all economic and ethnic groups. Opportunities for members of the public to participate in program development and implementation include serving as citizen representatives on a local stormwater management panel, attending public hearings, working as citizen volunteers to educate other individuals about the program, assisting in program coordination with other pre-existing programs, or participating in volunteer monitoring efforts. (Citizens should obtain approval where necessary for lawful access to monitoring sites.)

c. Illicit discharge detection and elimination.

(1) You must develop, implement, and enforce a program to detect and eliminate illicit discharges (as defined in 9VAC25-875-850) into your small MS4.

(2) You must:

(a) Develop, if not already completed, a storm sewer system map, showing the location of all outfalls and the names and location of all surface waters that receive discharges from those outfalls;

(b) To the extent allowable under state, tribal, or local law effectively prohibit, through ordinance or other regulatory mechanism, nonstormwater discharges into your storm sewer system and implement appropriate enforcement procedures and actions;

(c) Develop and implement a plan to detect and address nonstormwater discharges, including illegal dumping, to your system; and

(d) Inform public employees, businesses, and the general public of hazards associated with illegal discharges and improper disposal of waste.

(3) You need to address the following categories of nonstormwater discharges or flows (i.e., illicit discharges) only if you identify them as significant contributors of pollutants to your small MS4: water line flushing, landscape irrigation, diverted stream flows, rising groundwaters, uncontaminated groundwater infiltration (as defined in 40 CFR 35.2005(20)), uncontaminated pumped groundwater, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, and street wash water. (Discharges or flows from fire-fighting activities are excluded from the effective prohibition against nonstormwater and need only be addressed where they are identified as significant sources of pollutants to surface waters.)

(4) NOTE: The department recommends that the plan to detect and address illicit discharges include the following four components: (i) procedures for locating priority areas likely to have illicit discharges, (ii) procedures for tracing the source of an illicit discharge, (iii) procedures for removing the source of the discharge, and (iv) procedures for program evaluation and assessment. The department recommends visually screening outfalls during dry weather and conducting field tests of selected pollutants as part of the procedures for locating priority areas. Illicit discharge education actions may include storm drain stenciling; a program to promote, publicize, and facilitate public reporting of illicit connections or discharges; and distribution of outreach materials.

d. Construction site stormwater runoff control.

(1) You must develop, implement, and enforce a program to reduce pollutants in any stormwater runoff to your small MS4 from construction activities that result in a land disturbance of greater than or equal to one acre, or equal to or greater than 2,500 square feet in all areas of the jurisdictions designated as subject to the Chesapeake Bay Preservation Area Designation and Management Regulations adopted pursuant to the Chesapeake Bay Preservation Act. Reduction of stormwater discharges from construction activity disturbing less than one acre must be included in your program if that construction activity is part of a larger common plan of development or sale that would disturb one acre or more. If the department waives requirements for stormwater discharges associated with small construction activity in accordance with the definition in 9VAC25-875-20, you are not required to develop, implement, or enforce a program to reduce pollutant discharges from such sites.

(2) Your program must include the development and implementation of, at a minimum:

(a) An ordinance or other regulatory mechanism to require erosion and sediment controls, as well as sanctions to ensure compliance, to the extent allowable under state, tribal, or local law;

(b) Requirements for construction site operators to implement appropriate erosion and sediment control best management practices;

(c) Requirements for construction site operators to control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality;

(d) Procedures for site plan review which incorporate consideration of potential water quality impacts;

(e) Procedures for receipt and consideration of information submitted by the public; and

(f) Procedures for site inspection and enforcement of control measures.

(3) NOTE: Examples of sanctions to ensure compliance include nonmonetary penalties, fines, bonding requirements, or permit denials for noncompliance. The department recommends that procedures for site plan review include the review of individual pre-construction site plans to ensure consistency with erosion and sediment control requirements. Procedures for site inspections and enforcement of control measures could include steps to identify priority sites for inspection and enforcement based on the nature of the construction activity, topography, and the characteristics of soils and receiving water quality. You are encouraged to provide appropriate educational and training measures for construction site operators. You may wish to require a stormwater pollution prevention plan for construction sites within your jurisdiction that discharge into your system. (See 9VAC25-875-1030 L and subdivision E 2 of this section.) The department may recognize that another government entity may be responsible for implementing one or more of the minimum measures on your behalf.

e. Post-construction stormwater management in new development and redevelopment.

(1) You must develop, implement, and enforce a program to address stormwater runoff from new development and redevelopment projects that disturb greater than or equal to one acre, including projects less than one acre that are part of a larger common plan of development or sale, that discharge into your small MS4. Your program must ensure that controls are in place that would prevent or minimize water quality impacts.

(2) You must:

(a) Develop and implement strategies that include a combination of structural and nonstructural best management practices (BMPs) appropriate for your community;

(b) Use an ordinance or other regulatory mechanism to address post-construction runoff from new development and redevelopment projects to the extent allowable under state, tribal, or local law; and

(c) Ensure adequate long-term operation and maintenance of BMPs.

(3) NOTE: If water quality impacts are considered from the beginning stages of a project, new development and potentially redevelopment provide more opportunities for water quality protection. The department recommends that the BMPs chosen be appropriate for the local community, minimize water quality impacts, and attempt to maintain pre-development runoff conditions. In choosing appropriate BMPs, the department encourages you to participate in locally based watershed planning efforts that attempt to involve a diverse group of stakeholders, including interested citizens. When developing a program that is consistent with this measure's intent, the department recommends that you adopt a planning process that identifies the municipality's program goals (e.g., minimize water quality impacts resulting from post-construction runoff from new development and redevelopment), implementation strategies (e.g., adopt a combination of structural and nonstructural BMPs), operation and maintenance policies and procedures, and enforcement procedures. In developing your program, you should consider assessing existing ordinances, policies, programs, and studies that address stormwater runoff quality. In addition to assessing these existing documents and programs, you should provide opportunities to the public to participate in the development of the program. Nonstructural BMPs are preventative actions that involve management and source controls such as: (i) policies and ordinances that provide requirements and standards to direct growth to identified areas, protect sensitive areas such as wetlands and riparian areas, maintain and increase open space (including a dedicated funding source for open space acquisition), provide buffers along sensitive water bodies, minimize impervious surfaces, and minimize disturbance of soils and vegetation; (ii) policies or ordinances that encourage infill development in higher density urban areas, and areas with existing infrastructure; (iii) education programs for developers and the public about project designs that minimize water quality impacts; and (iv) measures such as minimization of percent impervious area after development and minimization of directly connected impervious areas. Structural BMPs include: storage practices such as wet ponds and extended-detention outlet structures; filtration practices such as grassed swales, sand filters, and filter strips; and infiltration practices such as infiltration basins and infiltration trenches. The department recommends that you ensure the appropriate implementation of the structural BMPs by considering some or all of the following: pre-construction review of BMP designs; inspections during construction to verify BMPs are built as designed; post-construction inspection and maintenance of BMPs; and penalty provisions for the noncompliance with design, construction, or operation and maintenance. Stormwater technologies are constantly being improved, and the department recommends that your requirements be responsive to these changes, developments, or improvements in control technologies.

f. Pollution prevention/good housekeeping for municipal operations.

(1) You must develop and implement an operation and maintenance program that includes a training component and has the ultimate goal of preventing or reducing pollutant runoff from municipal operations. Using training materials that are available from EPA, state, tribe, or other organizations, your program must include employee

training to prevent and reduce stormwater pollution from activities such as park and open space maintenance, fleet and building maintenance, new construction and land disturbances, and stormwater system maintenance.

(2) NOTE: The department recommends that, at a minimum, you consider the following in developing your program: maintenance activities, maintenance schedules, and long-term inspection procedures for structural and nonstructural stormwater controls to reduce floatables and other pollutants discharged from your separate storm sewers; controls for reducing or eliminating the discharge of pollutants from streets, roads, highways, municipal parking lots, maintenance and storage yards, fleet or maintenance shops with outdoor storage areas, salt/sand storage locations and snow disposal areas operated by you, and waste transfer stations; procedures for properly disposing of waste removed from the separate storm sewers and areas listed above (such as dredge spoil, accumulated sediments, floatables, and other debris); and ways to ensure that new flood management projects assess the impacts on water quality and examine existing projects for incorporating additional water quality protection devices or practices. Operation and maintenance should be an integral component of all stormwater management programs. This measure is intended to improve the efficiency of these programs and require new programs where necessary. Properly developed and implemented operation and maintenance programs reduce the risk of water quality problems.

3. If an existing VESMP requires you to implement one or more of the minimum control measures of subdivision 2 of this subsection, the department may include conditions in your permit that direct you to follow that VESMP's requirements rather than the requirements of subdivision 2 of this subsection. A VESMP is a local, state, or tribal municipal stormwater management program that imposes, at a minimum, the relevant requirements of subdivision 2 of this subsection.

4. a. In your permit application (either a registration statement for coverage under a general permit or an individual permit application), you must identify and submit to the department the following information:

(1) The best management practices (BMPs) that you or another entity will implement for each of the stormwater minimum control measures provided in subdivision 2 of this subsection;

(2) The measurable goals for each of the BMPs including, as appropriate, the months and years in which you will undertake required actions, including interim milestones and the frequency of the action; and

(3) The person responsible for implementing or coordinating your stormwater management program.

b. If you obtain coverage under a general permit, you are not required to meet any measurable goals identified in your registration statement in order to demonstrate compliance with the minimum control measures in subdivisions 2 c through f of this subsection unless, prior to submitting your registration statement, EPA or the department has provided or issued a menu of BMPs that addresses each such minimum measure. Even if no regulatory authority issues the menu of BMPs, however, you still must comply with other requirements of the general permit, including good faith implementation of BMPs designed to comply with the minimum measures.

c. NOTE: Either EPA or the department will provide a menu of BMPs. You may choose BMPs from the menu or select others that satisfy the minimum control measures.

5. a. You must comply with any more stringent effluent limitations in your permit, including permit requirements that modify or are in addition to the minimum control measures based on an approved total maximum daily load (TMDL) or equivalent analysis. The department may include such more stringent limitations based on a TMDL or equivalent analysis that determines such limitations are needed to protect water quality.

b. NOTE: The department strongly recommends that until the evaluation of the stormwater program in subsection G of this section, no additional requirements beyond the minimum control measures be imposed on regulated small MS4s without the agreement of the operator of the affected small MS4, except where an approved TMDL or equivalent analysis provides adequate information to develop more specific measures to protect water quality.

6. You must comply with other applicable permit requirements, standards and conditions established in the individual or general permit developed consistent with the provisions of 9VAC25-31-190 through 9VAC25-31-250, as appropriate.

7. Evaluation and assessment.

a. You must evaluate program compliance, the appropriateness of your identified best management practices, and progress towards achieving your identified measurable goals. The department may determine monitoring requirements for you in accordance with monitoring plans appropriate to your watershed. Participation in a group monitoring program is encouraged.

b. You must keep records required by the permit for at least three years. You must submit your records to the department only when specifically asked to do so. You must make your records, including a description of your stormwater management program, available to the public at reasonable times during regular business hours (see 9VAC25-875-900 for confidentiality provision). You may

assess a reasonable charge for copying. You may require a member of the public to provide advance notice.

c. Unless you are relying on another entity to satisfy your permit obligations under subdivision E 1 of this section, you must submit annual reports to the department for your first permit term. For subsequent permit terms, you must submit reports in years two and four unless the department requires more frequent reports. As of the start date in Table 1 of 9VAC25-31-1020, all reports submitted in compliance with this subsection shall be submitted electronically by the owner, operator, or the duly authorized representative of the small MS4 to the department in compliance with this section and 40 CFR Part 3 (including, in all cases, 40 CFR Part 3 Subpart D), 9VAC25-875-940, and Part XI (9VAC25-31-950 et seq.) of the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation. Part XI of 9VAC25-31 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part XI of 9VAC25-31, the owner, operator, or the duly authorized representative of the small MS4 may be required to report electronically if specified by a particular permit. Your report must include:

(1) The status of compliance with permit conditions, an assessment of the appropriateness of your identified best management practices and progress towards achieving your identified measurable goals for each of the minimum control measures;

(2) Results of information collected and analyzed, including monitoring data, if any, during the reporting period;

(3) A summary of the stormwater activities you plan to undertake during the next reporting cycle;

(4) A change in any identified best management practices or measurable goals for any of the minimum control measures; and

(5) Notice that you are relying on another governmental entity to satisfy some of your permit obligations (if applicable).

E. As an operator of a regulated small MS4, may I share the responsibility to implement the minimum control measures with other entities?

1. You may rely on another entity to satisfy your permit obligations to implement a minimum control measure if:

a. The other entity, in fact, implements the control measure;

b. The particular control measure, or component thereof, is at least as stringent as the corresponding permit requirement; and

c. The other entity agrees to implement the control measure on your behalf. In the reports you must submit under subdivision D 7 c of this section, you must also specify that you rely on another entity to satisfy some of your permit obligations. If you are relying on another governmental entity regulated under the permit program to satisfy all of your permit obligations, including your obligation to file periodic reports required by subdivision D 7 c of this section, you must note that fact in your registration statement, but you are not required to file the periodic reports. You remain responsible for compliance with your permit obligations if the other entity fails to implement the control measure (or component thereof). Therefore, the department encourages you to enter into a legally binding agreement with that entity if you want to minimize any uncertainty about compliance with your permit.

2. In some cases, the department may recognize, either in your individual permit or in a general permit, that another governmental entity is responsible under a permit for implementing one or more of the minimum control measures for your small MS4. Where the department does so, you are not required to include such minimum control measure(s) in your stormwater management program. Your permit may be reopened and modified to include the requirement to implement a minimum control measure if the entity fails to implement it.

F. As an operator of a regulated small MS4, what happens if I don't comply with the application or permit requirements in subsections C through E of this section? Permits are enforceable under the Clean Water Act and the Virginia Erosion and Stormwater Management Act. Violators may be subject to the enforcement actions and penalties described in Clean Water Act §§ 309(b), (c), and (g) and 505 or under §§ 62.1-44.15:39 through 62.1-44.15:48 of the Code of Virginia and Article 5 of the State Water Control Law. Compliance with a permit issued pursuant to § 402 of the Clean Water Act is deemed compliance, for purposes of §§ 309 and 505, with §§ 301, 302, 306, 307, and 403, except any standard imposed under § 307 for toxic pollutants injurious to human health. If you are covered as a state co-permittee under an individual permit or under a general permit by means of a joint registration statement, you remain subject to the enforcement actions and penalties for the failure to comply with the terms of the permit in your jurisdiction except as set forth in subdivision E 2 of this section.

G. Will the small MS4 stormwater program regulations at subsections B through F of this section change in the future? EPA intends to conduct an enhanced research effort and compile a comprehensive evaluation of the NPDES MS4 stormwater program. The board will reevaluate the regulations based on data from the EPA NPDES MS4 stormwater program, from research on receiving water impacts from stormwater, and the effectiveness of best management practices (BMPs), as well as other relevant information sources.

**9VAC25-875-980. General permits.**

A. The department may issue a general permit in accordance with the following:

1. The general permit shall be written to cover one or more categories or subcategories of discharges, except those covered by individual permits, within a geographic area. The area should correspond to existing geographic or political boundaries, such as:

a. Designated planning areas under §§ 208 and 303 of CWA;

b. Sewer districts or sewer authorities;

c. City, county, or state political boundaries;

d. State highway systems;

e. Standard metropolitan statistical areas as defined by the Office of Management and Budget;

f. ~~Urbanized~~ Urban areas with a population of 50,000 or more people as ~~designated~~ determined by the latest decennial census by the Bureau of the Census ~~according to criteria in 30 FR 15202 (May 1, 1974)~~; or

g. Any other appropriate division or combination of boundaries.

2. The general permit may be written to regulate one or more categories within the area described in subdivision 1 of this subsection, where the sources within a covered subcategory of discharges are stormwater point sources.

3. Where sources within a specific category of dischargers are subject to water quality-based limits imposed pursuant to 9VAC25-875-1030, the sources in that specific category or subcategory shall be subject to the same water quality-based effluent limitations.

4. The general permit must clearly identify the applicable conditions for each category or subcategory of dischargers covered by the permit.

5. The general permit may exclude specified sources or areas from coverage.

B. Administration.

1. General permits may be issued, modified, revoked and reissued, or terminated in accordance with applicable requirements of this chapter.

2. Authorization to discharge.

a. Except as provided in subdivisions 2 e and 2 f of this subsection, dischargers seeking coverage under a general permit shall submit to the department a written notice of intent to be covered by the general permit. A discharger who fails to submit a notice of intent in accordance with the terms of the permit is not authorized to discharge, under the terms of the general permit unless the general permit, in accordance with subdivision 2 e of this subsection, contains a provision that a notice of intent is not required or the department notifies a discharger (or treatment works treating domestic sewage) that it is covered by a general permit in accordance with subdivision 2 f of this subsection. A complete and timely notice of intent (NOI) to be covered in accordance with general permit requirements fulfills the requirements for permit applications for the purposes of this chapter. As of the start date in Table 1 of 9VAC25-31-1020, all notices of intent submitted in compliance with this subdivision shall be submitted electronically by the discharger (or treatment works treating domestic sewage) to the department in compliance with this subdivision 2 and 40 CFR Part 3 (including, in all cases, 40 CFR Part 3 Subpart D), 9VAC25-875-940, and Part XI (9VAC25-31-950 et seq.) of the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation. Part XI of 9VAC25-31 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part XI of 9VAC25-31, dischargers or treatment works treating domestic sewage may be required to report electronically if specified by a particular permit.

b. The contents of the notice of intent shall be specified in the general permit and shall require the submission of information necessary for adequate program implementation, including at a minimum, the legal name and address of the owner or operator, the facility name and address, type of facility or discharges, and the receiving stream, and other required data elements as identified in Appendix A to 40 CFR Part 127 as adopted by reference in 9VAC25-31-1030. All notices of intent shall be signed in accordance with 9VAC25-875-940.

c. General permits shall specify the deadlines for submitting notices of intent to be covered and the date or dates when a discharger is authorized to discharge under the permit.

d. General permits shall specify whether a discharger that has submitted a complete and timely notice of intent to be covered in accordance with the general permit and that is eligible for coverage under the permit is authorized to discharge in accordance with the permit either upon receipt of the notice of intent by the department after a waiting period specified in the general permit on a date specified in the general permit or upon receipt of notification of inclusion by the department. Coverage may be terminated or revoked in accordance with subdivision 3 of this subsection.

e. Stormwater discharges associated with small construction activity may, at the discretion of the department, be authorized to discharge under a general permit without submitting a notice of intent where the department finds that a notice of intent requirement would be inappropriate. In making such a finding, the department shall consider the (i) type of discharge, (ii) expected nature of the discharge, (iii) potential for toxic and conventional

pollutants in the discharges, (iv) expected volume of the discharges, (v) other means of identifying discharges covered by the permit, and (vi) estimated number of discharges to be covered by the permit. The department shall provide in the public notice of the general permit the reasons for not requiring a notice of intent.

f. The department may notify a discharger that it is covered by a general permit, even if the discharger has not submitted a notice of intent to be covered. A discharger so notified may request an individual permit under subdivision 3 c of this subsection.

3. Requiring an individual permit.

a. The department may require any discharger authorized by a general permit to apply for and obtain an individual permit. Any interested person may request the department to take action under this subdivision. Cases where an individual permit may be required include the following:

(1) The discharger is not in compliance with the conditions of the general permit;

(2) A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source;

(3) Effluent limitation guidelines are promulgated for point sources covered by the general permit;

(4) A water quality management plan, established by the department pursuant to 9VAC25-720, containing requirements applicable to such point sources is approved;

(5) Circumstances have changed since the time of the request to be covered so that the discharger is no longer appropriately controlled under the general permit, or either a temporary or permanent reduction or elimination of the authorized discharge is necessary;

(6) The discharge is a significant contributor of pollutants. In making this determination, the department may consider the following factors:

(a) The location of the discharge with respect to surface waters;

(b) The size of the discharge;

(c) The quantity and nature of the pollutants discharged to surface waters; and

(d) Other relevant factors;

b. Permits required on a case-by-case basis.

(1) The department may determine, on a case-by-case basis, that certain stormwater discharges, and certain other facilities covered by general permits that do not generally require an individual permit may be required to obtain an individual permit because of their contributions to water pollution.

(2) Whenever the department decides that an individual permit is required under this subsection, except as provided in subdivision 3 b (3) of this subsection, the department shall notify the discharger in writing of that decision and the reasons for it and shall send an application form with the notice. The discharger must apply for a permit within 60 days of notice, unless permission for a later date is granted by the department. The question whether the designation was proper will remain open for consideration during the public comment period for the draft permit and in any subsequent public hearing.

(3) Prior to a case-by-case determination that an individual permit is required for a stormwater discharge under this subsection, the department may require the discharger to submit a permit application or other information regarding the discharge under the State Water Control Law and § 308 of the CWA. In requiring such information, the department shall notify the discharger in writing and shall send an application form with the notice. The discharger must apply for a permit under 9VAC25-875-950 A 1 within 60 days of notice or under 9VAC25-875-950 A 8 within 180 days of notice, unless permission for a later date is granted by the department. The question whether the initial designation was proper will remain open for consideration during the public comment period for the draft permit and in any subsequent public hearing.

c. Any owner or operator authorized by a general permit may request to be excluded from the coverage of the general permit by applying for an individual permit. The owner or operator shall submit an application under 9VAC25-875-920 with reasons supporting the request. The request shall be processed under the applicable parts of this chapter. The request shall be granted by issuing of an individual permit if the reasons cited by the owner or operator are adequate to support the request.

d. When an individual permit is issued to an owner or operator otherwise subject to a general permit, the applicability of the general permit to the individual permit permittee is automatically terminated on the effective date of the individual permit.

e. A source excluded from a general permit solely because it already has an individual permit may request that the individual permit be revoked and that it be covered by the general permit. Upon revocation of the individual permit, the general permit shall apply to the source.

VA.R. Doc. No. R25-7991; Filed October 30, 2024, 8:58 a.m.

# TITLE 12. HEALTH

## STATE BOARD OF HEALTH

### Fast-Track Regulation

Title of Regulation: **12VAC5-421. Food Regulations (amending 12VAC5-421-3966, 12VAC5-421-3970).**

Statutory Authority: §§ 35.1-11 and 35.1-14 of the Code of Virginia.

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: December 18, 2024.

Effective Date: January 2, 2025.

Agency Contact: Olivia McCormick, Director, Division of Food and General Environment, Virginia Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-8146, FAX (804) 864-7475, or email olivia.mccormick@vdh.virginia.gov.

Basis: Section 35.1-11 of the Code of Virginia requires the State Board of Health to make, adopt, promulgate, and enforce regulations necessary to protect the public health and safety, including the use of precautions to prevent the transmission of communicable diseases, hygiene, sanitation, safety, and physical plant management. Section 35.1-14 of the Code of Virginia authorizes the board to promulgate regulations that governing restaurants, including repealing or amending any regulation adopted pursuant to this subsection.

Purpose: The proposed changes are intended to clear up a potential inaccuracy with a document that is currently incorporated by reference in the regulatory text but should have been removed per a past regulatory action, so benefits the public by clarifying the regulation. The availability of more options for regulatory enforcement informal conferences and administrative efficiency ensures fair and expedient application of the regulation, which benefits the public welfare.

Rationale for Using Fast-Track Rulemaking Process: These changes are not expected to be controversial because expanding the options for a presiding officer for informal conferences is expected to provide greater expediency for a regulant and generally provides benefit to the public as Health Directors may be more involved in decisions without concern for a potential need for future recusal. Additionally, removing the document incorporated by reference (DIBR) is not controversial, as without reference to it in the regulation, it currently holds no force of administrative law and is only potentially confusing to the public.

Substance: The changes (i) update the requirements for who can preside over an informal conference or proceeding, (ii) clarify the allowance for the presiding officer to release impounded food after an informal conference, and (iii) remove a DIBR that has no corresponding reference in the text of the regulation.

Issues: Both changes provide advantages to the public and the agency. The presiding officer and impoundment release changes allow greater flexibility to both the agency and the public in scheduling informal conferences, potentially reducing the regulatory burden on citizens and businesses, and the DIBR removal eliminates confusion on the part of the public and agency staff as it is currently not in effect. There are no disadvantages to the public or the Commonwealth.

Department of Planning and Budget Economic Impact Analysis:

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia and Executive Order 19. The analysis presented represents DPB's best estimate of the potential economic impacts as of the date of this analysis.[1]

Summary of the Proposed Amendments to Regulation. The State Board of Health (board) proposes to amend the existing Food Regulations to (i) allow other representatives of the Virginia Department of Health (VDH), not just the local health director, to act as presiding officer over an informal conference or proceeding; (ii) allow presiding officers, not just the local health director, to affirm a hold order on food; and (iii) remove the name of a document from 12VAC5-421 Documents Incorporated by Reference that is not otherwise referenced in the text of the regulation.

Background. The Food Regulations establish minimum sanitary standards for the operation of the Commonwealth food establishments,[2] which include traditional restaurants, mobile food units, temporary food vendors, hospital and nursing facility food service, and school food service. Under the current regulation, only the local health director may preside over informal fact-finding conferences. The board proposes to amend the regulation so that other representatives of VDH may act as presiding officers. Upon written notice to the owner, permit holder, or person in charge, VDH may place a hold order on food that (i) originated from an unapproved source; (ii) may be unsafe, adulterated, or not honestly presented; or (iii) is not otherwise in compliance with the regulation. Food that is subject to the order may not be used, sold, moved from the food establishment, or destroyed without a written release of the order from the department. Under the current regulation, VDH may direct that food under a hold order be brought into compliance with this regulation, or that the food be destroyed or denatured, if "Following an informal fact-finding conference held pursuant to the Virginia Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) the director affirms the hold order". The board proposes to change "director" to "department," so that representatives of the agency in addition to local health directors may act as the presiding officer who affirms the order. Pursuant to the Administrative Process Act (§ 2.2-4000 of the Code of Virginia), an agency may incorporate a document into the text of the regulation by, in part, including in the regulatory text the

complete name of the document. When that occurs, the text of the document becomes part of the text of the regulation. Such a document is listed in the Documents Incorporated by Reference section of a regulation.

Estimated Benefits and Costs. According to VDH, the current approach of restricting the options for a presiding officer to one individual increases the chances of delay in scheduling. Additionally, at times, it may be best for local health directors to recuse themselves from presiding due to prior involvement in the case. Thus, allowing other representatives of VDH to act as presiding officers over informal fact-finding conferences, and to also affirm hold orders, may be beneficial. Additionally, according to the agency, "VDH Procedures for Certification and Standardization of Food Inspection Staff, 2017, Virginia Department of Health, Division of Food and Environmental Services, 109 Governor Street, 5th Floor, Richmond, VA 23219," which is listed in 12VAC5-421-9999 Documents Incorporated by Reference but not otherwise referenced in the text of the regulation, should have been stricken in a prior regulatory action. The agency states that its inclusion is erroneous and misleading. Removing the name of this document from 12VAC5-421 may be beneficial in that it may reduce the possibility of confusion amongst readers of the regulation pertaining to its relevance.

Businesses and Other Entities Affected. The proposed amendments potentially affect approximately 31,000 permitted food establishments in the Commonwealth.[3] The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.[4] An adverse impact is indicated if there is any increase in net cost or reduction in net benefit for any entity, even if the benefits exceed the costs for all entities combined.[5] As described, the proposed amendments neither increase costs nor reduce benefits for any entity. Thus, an adverse impact not indicated.

Small Businesses[6] Affected.[7] The proposed amendments do not appear to adversely affect small businesses.

Localities[8] Affected.[9] The proposed amendments neither disproportionally affect any particular localities nor directly affect costs for local governments.

Projected Impact on Employment. The proposed amendments are not likely to have a substantive impact on total employment.

Effects on the Use and Value of Private Property. The proposed amendments are unlikely to have a substantive impact on the use and value of private property and real estate development costs.

[1] Section 2.2-4007.04 of the Code of Virginia requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

[2] The regulation defines food establishment as an operation that (i) stores, prepares, packages, serves, vends food directly to the consumer, or otherwise provides food for human consumption such as a market, restaurant, satellite or catered feeding location, catering operation if the operation provides food directly to a consumer or to a conveyance used to transport people, vending location, conveyance used to transport people, institution, or food bank and (ii) relinquishes possession of a food to a consumer directly, or indirectly through a delivery service such as home delivery of grocery orders or restaurant takeout orders, or delivery service that is provided by common carriers.

[3] Data source: VDH.

[4] Pursuant to § 2.2-4007.04 D: In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance. Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation.

[5] Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation. As a result, DPB has adopted a definition of adverse impact that assesses changes in net costs and benefits for each affected Virginia entity that directly results from discretionary changes to the regulation.

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

[7] If the proposed regulatory action may have an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to § 2.2-4007.1 of the Code of Virginia, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

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

[9] Section 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

Agency Response to Economic Impact Analysis: The Virginia Department of Health concurs with the Department of Planning and Budget's economic impact analysis.

Summary:

*The amendments (i) update the requirements for who can preside over an informal conference or proceeding, (ii) clarify the allowance for the presiding officer to release impounded food after an informal conference, and (iii) remove a document incorporated by reference that has no corresponding reference in the text of the regulation.*

**12VAC5-421-3966. Destroying or denaturing food.**

The department may order the permit holder to bring food under a hold order into compliance with this chapter or to destroy or denature food if:

1. Following an informal fact-finding conference held pursuant to the Virginia Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia), the ~~director~~ department affirms the hold order; or

2. The permit holder fails to file an appeal within 10 calendar days of receipt of the hold order notice.

**12VAC5-421-3970. Enforcement of regulation.**

A. The department ~~is responsible for the implementation and enforcement of~~ shall implement and enforce this chapter.

B. Pursuant to the authority granted in §§ 32.1-26 and 35.1-6 of the Code of Virginia, the commissioner may issue orders to require ~~any~~ an owner or permit holder or other person to comply with the provisions of this chapter. The order may require the following:

1. The immediate cessation and correction of the violation;

2. Appropriate remedial action to ensure that the violation does not continue or recur;

3. The submission of a plan to prevent future violations;

4. The submission of an application for a variance; and

5. Any other corrective action deemed necessary for proper compliance with ~~the regulations~~ this chapter.

C. The commissioner may act as the agent of the board to enforce all effective orders and this chapter. Should ~~any~~ an owner or permit holder fail to comply with any effective order or this chapter, the commissioner may:

1. Institute a proceeding to revoke the owner's or permit holder's permit in accordance with 12VAC5-421-3780;

2. Request the attorney for the Commonwealth to bring a criminal action;

3. Request the Attorney General to bring an action for civil penalty, injunction, or other appropriate remedy; or

4. Do any combination of the ~~above~~ requirements listed in subdivisions 1, 2, or 3 of this subsection.

D. Nothing contained in this section shall be interpreted to require the commissioner to issue an order prior to seeking enforcement of any regulations or statute through an injunction, mandamus, or criminal prosecution.

E. Proceedings before the commissioner or ~~his~~ a designee shall include any of the following ~~forms~~ types depending on the nature of the controversy and the interests of the parties involved~~.~~:

1. ~~Informal fact-finding conferences.~~ An informal fact-finding ~~conference~~ proceeding, which is ~~a meeting with a district or local health~~ an informal conference between the department ~~with the director presiding~~ and the named party held in ~~conformance~~ accordance with § 2.2-4019 of the Code of Virginia.

2. ~~Adjudicatory hearing. The~~ An adjudicatory hearing, which is a formal, public adjudicatory proceeding before a hearing officer as defined by § 2.2-4001 of the Code of Virginia~~,~~ and held in conformance with § 2.2-4020 of the Code of Virginia.

DOCUMENTS INCORPORATED BY REFERENCE (12VAC5-421)

Approved Drug Products with Therapeutic Equivalence Evaluations, 40th Edition, 2020, U.S. Department of Health and Human Services, Food and Drug Administration, Center for Drug Evaluation and Research, Office of Pharmaceutical Science, Office of General Drugs

Grade "A" Pasteurized Milk Ordinance, 2017 Revision, U.S. Department of Health and Human Services, Public Health Service, Food and Drug Administration, Milk Safety Branch (HFS-626), 5100 Paint Branch Parkway, College Park, MD 20740-3835

Interstate Certified Shellfish Shippers List (updated monthly), published by the U.S. Department of Health and Human Services, Public Health Service, Food and Drug Administration, Office of Seafood (HFS-417), 5100 Paint Branch Parkway, College Park, MD 20740-3835

National Shellfish Sanitation Program (NSSP) Guide for the Control of Molluscan Shellfish, 2013 Revision, U.S. Department of Health and Human Services, Public Health Service, Food and Drug Administration, Office of Seafood (HFS-417), 5100 Paint Branch Parkway, College Park, MD 20740-3835

NSF/ANSI 18-2012 Manual Food and Beverage Dispensing Equipment, 2012, NSF International, 789 North Dixboro Road, P.O. Box 130140, Ann Arbor, MI 48113-0140, www.nsf.org

Standards for Accreditation of Food Protection Manager Certification Programs, April 2012, Conference for Food Protection, 30 Elliott Court, Martinsville, IN 46151-1331

United States Standards, Grades, and Weight Classes for Shell Eggs, AMS-56, effective July 20, 2000, U.S. Department of Agriculture, Agricultural Marketing Service, Poultry Programs, STOP 0259, Room 3944-South, 1400 Independence Avenue, SW, Washington, DC 20250-0259

~~VDH Procedures for Certification and Standardization of Food Inspection Staff, 2017, Virginia Department of Health, Division of Food and Environmental Services, 109 Governor Street, 5th Floor, Richmond, VA 23219~~

VA.R. Doc. No. R25-7786; Filed October 18, 2024, 3:07 p.m.

### Notice of Suspension of Effective Date

Title of Regulation: **12VAC5-630. Private Well Regulations (amending 12VAC5-630-10, 12VAC5-630-20, 12VAC5-630-30, 12VAC5-630-50 through 12VAC5-630-120, 12VAC5-630-140 through 12VAC5-630-330, 12VAC5-630-350, 12VAC5-630-360, 12VAC5-630-380 through 12VAC5-630-430, 12VAC5-630-450, 12VAC5-630-460; adding 12VAC5-630-331, 12VAC5-630-431; repealing 12VAC5-630-40, 12VAC5-630-370, 12VAC5-630-440, 12VAC5-630-470, 12VAC5-630-480).**

Statutory Authority: §§ 32.1-12 and 32.1-176.4 of the Code of Virginia.

Notice is hereby given that, pursuant to § 2.2-4015 A 4 of the Code of Virginia, the State Board of Health is suspending the effective date of certain provisions of subdivision F 6 of 12VAC5-630-410 to address public comment received pursuant to Public Participation Guidelines (12VAC5-11-50). This regulation was adopted by the State Board of Health on September 22, 2022, and published in 41:4 VA.R. 531-558 October 7, 2024.

The State Board of Health received multiple public comments objecting to specific provisions in subsection F 6 of 12VAC5-630-410. As a result, the State Health Commissioner, pursuant to authority in § 32.1-20 of the Code of Virginia and on behalf of the State Board of Health, on November 1, 2024, suspended the effective date of the provisions as follows:

As published in 41:4 VA.R. 554 October 7, 2024, column 1,

in 5VAC12-630-410 F 6 a, line 3, all text after "filled"

in 5VAC12-630-410 F 6 c, line 1, the word "bored" and line 2, all text after "feet"

5VAC12-630-410 F 6 d, entirely.

The State Health Commissioner has readopted replacement text, which, once approved, will be published with an effective date.

Agency Contact: Michael Capps, Legislative and Regulatory Coordinator, Virginia Department of Health, James Madison Building, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7190, or email michael.capps@vdh.virginia.gov.

VA.R. Doc. No. R19-5654; Filed November 6, 2024, 8:00 a.m.

## DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

### Fast-Track Regulation

Titles of Regulations: **12VAC30-50. Amount, Duration, and Scope of Medical and Remedial Care Services (amending 12VAC30-50-420, 12VAC30-50-430, 12VAC30-50-491).**

**12VAC30-60. Standards Established and Methods Used to Assure High Quality Care (amending 12VAC30-60-143, 12VAC30-60-185).**

Statutory Authority: § 32.1-325 of the Code of Virginia.

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: December 18, 2024.

Effective Date: January 2, 2025.

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

Basis: Section 32.1-325 of the Code of Virginia grants the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance. Section 32.1-324 of the Code of Virginia authorizes the Director of the Department of Medical Assistance Services (DMAS) to administer and amend the Plan for Medical Assistance according to the board's requirements. The federal Mental Health Parity regulation can be found at 42 CFR 438.910(b)(1).

Purpose: This action protects the public health, welfare, and safety by ensuring compliance with federal laws and regulations and aligning with mental health case management requirements to ensure that Virginia Medicaid is able to continue to receive the federal match for the program and to ensure clarity for providers and members.

Rationale for Using Fast-Track Rulemaking Process: This action is expected to be noncontroversial because DMAS is aligning its regulations with the Medicaid Mental Health Parity Rule and clarifying existing DMAS practices. There are no reductions in services associated with this action.

Substance: The amendments remove the limit on substance use case management for individuals in institutions for mental diseases (IMDs) to comply with the Medicaid Mental Health Parity Rule. This action aligns DMAS regulations with 42 CFR 441.18(a)(8)(vii) and documents DMAS existing practices by specifying that reimbursement is allowed for mental health and substance use case management services for Medicaid-eligible individuals who are in institutions, provided that (i) the case management services do not duplicate other services provided by the institution and (ii) the case management services are provided to the individual 30 calendar days prior to discharge. For individuals 22 to 64 years of age, the amendments clarify that case management services rendered in the same month as the admission to an IMD are reimbursable as long as the case management services are rendered prior to the date of the admission or past the date of discharge from the IMD.

Other amendments include (i) clarifying individual service plan review timeframes and grace periods, (ii) clarifying that certified substance abuse counselor-supervisees can bill for substance use case management services, and (iii) documenting existing DMAS practices.

Issues: The primary advantage to the public is that removing the limit on substance use case management for individuals in IMDs ensures that individuals can receive appropriate levels and frequency of service. The primary advantage to DMAS

and the Commonwealth is that this action aligns the state regulations with 42 CFR 411.18(a)(8)(vii) and appropriately documents and clarifies current DMAS practices. There are no disadvantages to the public, the agency, the Commonwealth, or the regulated community.

Department of Planning and Budget Economic Impact Analysis:

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia and Executive Order 19. The analysis presented represents DPB's best estimate of the potential economic impacts as of the date of this analysis.[1]

Summary of the Proposed Amendments to Regulation. The director of the Department of Medical Assistance Services (DMAS), on behalf of the Board of Medical Assistance Services, proposes to align the regulatory text with the federal rules and to make several clarifying changes to reflect current reimbursement practices.

Background. On March 30, 2016, the Centers for Medicare and Medicaid Services (CMS) issued the Medicaid Mental Health Parity Rule.[2] The overall objective of the parity rule is to ensure that accessing mental health and substance use disorder services is no more difficult than accessing medical or surgical services. However, the parity rule in 42 CFR 438.910(b)(1) created a contradiction with the current language in DMAS regulations. Under the current language, substance use case management services are not reimbursable for individuals while they are residing in institutions, including institutions for mental disease (IMD).[3] Although DMAS reports that this limitation has never been enforced, it must be stricken from the regulation for consistency with the federal rule. Additionally, the proposed action clarifies that reimbursement is allowed pursuant to 42 CFR 441.18(a)(8)(vii) for substance use and mental health case management services for Medicaid-eligible individuals who are in institutions, provided two conditions are met.[4] The two conditions are that (ii) the case management services may not duplicate other services provided by the institution and (ii) the case management services must be provided to the individual 30 calendar days prior to discharge. For individuals 22 to 64 years of age, case management services that are rendered during the same month as the admission to an IMD are reimbursable as long as the case management services are rendered prior to the date of the admission or past the date of discharge from the IMD. According to DMAS, these changes clarify existing reimbursement practices. The remaining changes are also clarifications regarding the Individual Service Plan review timeframes and grace periods and billing by Certified Substance Abuse Counselor-Supervisees. These changes do not affect the services provided or eligibility.

Estimated Benefits and Costs. All of the proposed changes are consistent with reimbursement rules that have been followed in practice even before the federal parity rule became effective in 2016. Thus, no significant economic impact is expected other than improving the consistency of the regulatory text with federal rules and text accuracy and clarity.

Businesses and Other Entities Affected. The proposed action improves consistency, accuracy, and clarity of the regulatory text for the public and Medicaid recipients and providers. The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.[5] An adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined. As noted above, the proposed action is expected to have no significant economic impact other than improving the consistency of the regulatory text with federal rules and text accuracy and clarity. Thus, no adverse impact is indicated.

Small Businesses[6] Affected.[7] The proposed action would not adversely affect small businesses.

Localities[8] Affected.[9] No adverse impact on localities is indicated.

Projected Impact on Employment. The proposed action does not affect employment.

Effects on the Use and Value of Private Property. No impact on the use and value of private property or real estate development costs is expected.

---

[1] Section 2.2-4007.04 of the Code of Virginia requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

[2] https://www.govinfo.gov/content/pkg/FR-2016-03-30/pdf/2016-06876.pdf.

[3] The exception to this limitation on reimbursement is that substance use case management may be reimbursed during the month prior to discharge to allow for discharge planning. This exception is limited to two one-month periods during a 12-month period.

[4] These conditions do not apply to individuals between the ages of 22 and 64 years who are served in IMD, and individuals of any age who are inmates of public institutions.

[5] Pursuant to § 2.2-4007.04 D: In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance. Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation.

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

[7] If the proposed regulatory action may have an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping,

and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to § 2.2-4007.1 of the Code of Virginia, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

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

[9] Section 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

Agency Response to Economic Impact Analysis: The Department of Medical Assistance Services has reviewed the economic impact analysis prepared by the Department of Planning and Budget and raises no issues with this analysis.

Summary:

*The amendments (i) remove the limit for individuals in institutions for mental diseases (IMDs) to only be able to receive substance use case management at the time of discharge twice in a 12-month period to comply with the Medicaid Mental Health Parity Rule issued by the Centers for Medicare and Medicaid Services on March 20, 2016; (ii) align the regulation with 42 CFR 441.18(a)(8)(vii) and document Department of Medical Assistance Services (DMAS) practice by specifying that reimbursement is allowed, provided two conditions are met, for substance use and mental health case management services for Medicaid-eligible individuals who are in institutions, with the exception of individuals between 22 and 64 years of age who are served in IMDs and individuals of any age who are inmates of public institutions; (iii) clarify individual service plan review timeframes and grace periods, including revising the time period for grace periods from "months" to "calendar days"; (iv) clarify that certified substance abuse counselor-supervisees can bill for substance use case management services to document DMAS current practices, rather than changes in practice; and (v) consolidate 12VAC30-60-185 B and C to remove duplicative language.*

**12VAC30-50-420. Case management services for seriously mentally ill adults and emotionally disturbed children.**

A. Target ~~Group:~~ group for case management services for seriously mentally ill adults and emotionally disturbed children. The ~~Medicaid-eligible~~ Medicaid-eligible individual shall meet the ~~DBHDS~~ definition for "serious mental illness~~,~~" pursuant to 42 CFR 483.102(b)(1) or "serious emotional disturbance in children and adolescents~~.~~" pursuant to Appendix A of the Department of Behavioral Health and Developmental Services (DBHDS) Core Services Taxonomy 7.3.

1. An active client for case management shall mean an individual for whom there is a plan of care in effect ~~which~~ that requires regular direct or client-related contacts or communication or activity with the client, family, service providers, significant others, and others, including at least one face-to-face contact every 90 days. Billing can be submitted for an active client only for months in which direct or client-related contacts, activity, or communications occur. Authorization is required for Medicaid reimbursement.

2. There shall be no maximum service limits for case management services. ~~Case~~ In accordance with 42 CFR 441.18(a)(8)(vii), reimbursement is allowed for case management ~~shall not be billed for~~ services for Medicaid-eligible individuals who are in institutions ~~for mental disease~~, with the exception of individuals who are 22 years of age to 64 years of age and are served in institutions of mental diseases (IMDs) and individuals of any age who are inmates of public institutions. An IMD is a facility that is primarily engaged in the treatment of mental illness and has more than 16 beds in accordance with § 1905(i) of the Social Security Act.

3. For individuals who are 22 years of age to 64 years of age, services rendered during the same month as the admission to the IMD are reimbursable as long as the service was rendered prior to the date of the admission.

4. Case management services for individuals who are younger than 22 years of age or older than 64 years of age in an IMD may be billed 30 calendar days prior to discharge as long as the case management services do not duplicate other services provided by the institution.

B. Services for seriously mentally ill adults and emotionally disturbed children will be provided to the entire state.

C. Comparability of ~~Services:~~ case management services for seriously mentally ill adults and emotionally disturbed children. Services are not comparable in amount, duration, ~~and~~ or scope. Authority of § 1915(g)(1) of the Social Security Act is invoked to provide services without regard to the requirements of § 1902(a)(10)(B) of the Social Security Act.

D. Definition of ~~Services: Mental health~~ case management services for seriously mentally ill adults and emotionally disturbed children. Case management services assist individual children and adults~~,~~ in accessing needed medical, psychiatric, social, educational, vocational, and other supports essential to meeting basic needs. Services to be provided include:

1. Assessment and planning services, to include developing an ~~Individual Service Plan~~ individual service plan (ISP) (does not include performing medical and psychiatric assessment but does include referral for such assessment);

2. Linking the individual to services and supports specified in the ~~individualized service plan~~ ISP;

3. Assisting the individual directly for the purpose of locating, developing, or obtaining needed services and resources;

4. Coordinating services and service planning with other agencies and providers involved with the individual;

5. Enhancing community integration by contacting other entities to arrange community access and involvement, including opportunities to learn community living skills~~,~~ and use vocational, civic, and recreational services;

6. Making collateral contacts with the ~~individuals'~~ individual's significant others to promote implementation of the service plan and community adjustment;

7. Follow-up and monitoring to assess ongoing progress and to ensure services are delivered; and

8. Education and counseling ~~which~~ that guides the client and develops a supportive relationship that promotes the service plan.

E. Qualifications of ~~Providers:~~ providers of case management services for seriously mentally ill adults and emotionally disturbed children.

1. Services are not comparable in amount, duration, ~~and~~ or scope. Authority of § 1915(g)(1) of the Social Security Act is invoked to limit case management providers for individuals with ~~mental retardation~~ a developmental disability and individuals with ~~serious/chronic~~ serious or chronic mental illness to the Community Services Boards only to enable them to provide services to ~~serious/chronically mentally ill or mentally retarded~~ individuals with a developmental disability or serious or chronic mental illness without regard to the requirements of § 1902(a)(10)(B) of the Social Security Act.

2. To qualify as a provider of services through DMAS for rehabilitative mental health case management, the provider of the services must meet ~~certain~~ the following criteria~~. These criteria shall be~~:

a. The provider must have the administrative and financial management capacity to meet state and federal requirements;

b. The provider must have the ability to document and maintain individual case records in accordance with state and federal requirements;

c. The services shall be in accordance with the Virginia Comprehensive State Plan ~~for Mental Health, Mental Retardation and Substance Abuse Services~~;

d. The provider must be licensed as a provider of case management services by ~~the~~ DBHDS; ~~and~~

e. Persons providing case management services must have knowledge of:

(1) Services, systems, and programs available in the community, including primary health care, support services, eligibility criteria and intake processes, generic community resources, and mental health, ~~mental retardation~~ developmental disability, and substance abuse treatment programs;

(2) The nature of serious mental illness, ~~mental retardation~~ developmental disability, and substance abuse depending on the population served, including clinical and developmental issues;

(3) Different types of assessments, including functional assessments, and their uses in service planning;

(4) Treatment modalities and intervention techniques, such as behavior management, independent living skills training, supportive counseling, family education, crisis intervention, discharge planning, and service coordination;

(5) The service planning process and major components of a service plan;

(6) The use of medications in the care or treatment of the population served; and

(7) All applicable federal and state laws, state regulations, and local ordinances~~.~~;

f. Persons providing case management services must have skills in:

(1) Identifying and documenting an individual's needs for resources, services, and other supports;

(2) Using information from assessments, evaluations, observation, and interviews to develop ~~individual service plans~~ ISPs;

(3) Identifying services and resources within the community and established service system to meet the individual's needs~~;~~ and documenting how resources, services, and natural supports, such as family, can be utilized to achieve an individual's personal ~~habilitative/rehabilitative~~ habilitative or rehabilitative and life goals; and

(4) Coordinating the provision of services by public and private providers~~.~~; and

g. Persons providing case management services must have abilities to:

(1) Work as team members, maintaining effective ~~inter-~~ inter-agency and intra-agency working relationships;

(2) Work independently, performing position duties under general supervision; and

(3) Engage in and sustain ongoing relationships with individuals receiving services.

3. Providers may bill Medicaid for mental health case management only when the services are provided by qualified mental health case managers.

F. The state ~~assures~~ ensures that the provision of case management services will not restrict an individual's free choice of providers in violation of § 1902(a)(23) of the Social Security Act.

1. Eligible recipients will have free choice of the providers of case management services.

2. Eligible recipients will have free choice of the providers of other medical care under the plan.

G. Payment for case management services under the plan shall not duplicate payments made to public agencies or private entities under other program authorities for this same purpose.

H. Case management services may not be billed concurrently with intensive community treatment services, treatment foster care case management services, or intensive in-home services for children and adolescents.

**12VAC30-50-430. Case management services for youth at risk of serious emotional disturbance.**

A. Target group~~: Medicaid-eligible~~ for case management services for youth at risk of serious emotional disturbance. Medicaid-eligible individuals who meet the ~~DBHDS~~ definition of youth at risk of serious emotional disturbance pursuant to Appendix A of the Department of Behavioral Health and Developmental Services (DBHDS) Core Services Taxonomy 7.3.

1. An active client shall mean an individual for whom there is a plan of care in effect ~~which~~ that requires regular direct or client-related contacts or communication or activity with the client, family, service providers, significant others, and others, including at least one face-to-face contact every ~~90-days~~ 90 days. Billing can be submitted for an active client only for months in which direct or client-related contacts, activity, or communications occur. Authorization is required for Medicaid reimbursement.

2. There shall be no maximum service limits for case management services. Case management services must not be billed for individuals who are in institutions for mental ~~disease~~ diseases, except for the 30 calendar days prior to discharge as long as the case management services do not duplicate other services provided by the institution. Case management services must not be billed for individuals who are inmates of public institutions.

B. Services for youth at risk of serious emotional disturbance will be provided in the entire state.

C. Comparability of ~~services:~~ case management services for youth at risk of serious emotional disturbance. Services are not comparable in amount, duration, ~~and~~ or scope. Authority of § 1915(g)(1) of the Social Security Act is invoked to provide services without regard to the requirements of § 1902(a)(10)(B) of the Social Security Act.

D. Definition of ~~services: Mental health~~ case management services for youth at risk of serious emotional disturbance. Case management services assist youth at risk of serious emotional disturbance in accessing needed medical, psychiatric, social, educational, vocational, and other supports essential to meeting basic needs. Services to be provided include:

1. Assessment and planning services, to include developing an ~~Individual Service Plan~~ individual service plan (ISP);

2. Linking the individual directly to services and supports specified in the ~~treatment/services~~ treatment or services plan;

3. Assisting the individual directly for the purpose of locating, developing, or obtaining needed service and resources;

4. Coordinating services and service planning with other agencies and providers involved with the individual;

5. Enhancing community integration by contacting other entities to arrange community access and involvement, including opportunities to learn community living skills~~,~~ and use vocational, civic, and recreational services;

6. Making collateral contacts, which are nontherapy contacts, with an individual's significant others to promote treatment ~~and/or~~ or community adjustment;

7. Following up and monitoring to assess ongoing progress and ensuring services are delivered; and

8. ~~Education~~ Providing education and counseling ~~which~~ that guides the client and develops a supportive relationship that promotes the service plan.

E. Qualifications of providers of case management services for youth at risk of serious emotional disturbance.

1. Services are not comparable in amount, duration, ~~and~~ or scope. Authority of § 1915(g)(1) of the Social Security Act is invoked to limit case management providers~~,~~ to the community services boards only~~,~~ to enable them to provide services to ~~serious/chronically mentally ill or mentally retarded~~ individuals with a developmental disability or serious or chronic mental illness without regard to the requirements of § 1902(a)(10)(B) of the Social Security Act. To qualify as a provider of case management services to youth at risk of serious emotional disturbance, the provider of the services must meet the following criteria:

a. The provider must meet state and federal requirements regarding ~~its~~ capacity for administrative and financial management;

b. The provider must document and maintain individual case records in accordance with state and federal requirements;

c. The provider must provide services in accordance with the Virginia Comprehensive State Plan ~~for Mental Health, Mental Retardation and Substance Abuse Services~~;

d. The provider must be licensed as a provider of case management services by ~~the~~ DBHDS; ~~and~~

e. Persons providing case management services must have knowledge of:

(1) Services, systems, and programs available in the community, including primary health care, support services, eligibility criteria, and intake processes, generic community resources, and mental health, ~~mental retardation~~ developmental disability, and substance abuse treatment programs;

(2) The nature of serious mental illness, ~~mental retardation and/or~~ developmental disability, or substance abuse depending on the population served, including clinical and developmental issues;

(3) Different types of assessments, including functional assessments, and their uses in service planning;

(4) Treatment modalities and intervention techniques, such as behavior management, independent living skills training, supportive counseling, family education, crisis intervention, discharge planning, and service coordination;

(5) The service planning process and major components of a service plan;

(6) The use of medications in the care or treatment of the population served; and

(7) All applicable federal and state laws, state regulations, and local ordinances~~.~~;

f. Persons providing case management services must have skills in:

(1) Identifying and documenting an individual's need for resources, services, and other supports;

(2) Using information from assessments, evaluations, observation, and interviews to develop ~~individual service plans~~ ISPs;

(3) Identifying services and resources within the community and established service system to meet the individual's needs~~;~~ and documenting how resources, services, and natural supports, such as family, can be utilized to achieve an individual's personal ~~habilitative/rehabilitative~~ habilitative or rehabilitative and life goals; and

(4) Coordinating the provision of services by diverse public and private providers~~.~~; and

g. Persons providing case management services must have abilities to:

(1) Work as team members, maintaining effective ~~inter-~~ inter-agency and intra-agency working relationships;

(2) Work independently performing position duties under general supervision; and

(3) Engage in and sustain ongoing relationships with individuals receiving services.

F. Providers may bill Medicaid for mental health case management to youth at risk of serious emotional disturbance only when the services are provided by qualified mental health case managers.

G. The state ~~assures~~ ensures that the provision of case management services will not restrict an individual's free choice of providers in violation of § 1902(a)(23) of the Social Security Act.

1. Eligible recipients will have free choice of the providers of case management services.

2. Eligible recipients will have free choice of the providers of other medical care under the plan.

H. Payment for case management services under the plan must not duplicate payments made to public agencies or private entities under other program authorities for this same purpose.

I. Case management may not be billed concurrently with intensive community treatment services, treatment foster care case management services, or intensive in-home services for children and adolescents.

**12VAC30-50-491. Substance use case management services for individuals who have a primary diagnosis of substance use disorder.**

A. Target group~~:~~ for substance use case management services for individuals who have a primary diagnosis of substance use disorder.

1. The ~~Medicaid eligible~~ Medicaid-eligible individual shall meet the Diagnostic and Statistical Manual of Mental Disorders (DSM-5) diagnostic criteria for a substance use disorder. Tobacco-related disorders or caffeine-related disorders and nonsubstance-related disorders shall not be covered. Substance use case management shall include an active individual service plan (ISP) that requires a minimum of two substance use case management service activities each month and at least one face-to-face contact with the individual at least every 90 calendar days.

2. There shall be no maximum service limits for case management services.

3. In accordance with 42 CFR 441.18(a)(8)(vii), reimbursement is allowed for case management services for Medicaid-eligible individuals who are in institutions, with the exception of individuals who are 22 years of age to 64 years of age and served in institutions of mental diseases (IMDs) and individuals of any age who are inmates of public institutions. An IMD is a facility that is primarily engaged in the treatment of mental illness and has more than 16 beds.

4. For individuals who are 22 years of age to 64 years of age, services rendered during the same month as the admission to the IMD are reimbursable as long as the service was rendered prior to the date of the admission.

5. Case management services for individuals who are younger than 22 years of age or older than 64 years of age in

an IMD may be billed 30 calendar days prior to discharge as long as the case management services do not duplicate other services provided by the institution.

B. Services for substance use case management for individuals who have a primary diagnosis of substance use disorder will be provided to the entire state.

C. Comparability of services: for substance use case management services for individuals who have a primary diagnosis of substance use disorder. Services are not comparable in amount, duration, ~~and~~ or scope. Authority of § 1915(g)(1) of the Social Security Act is invoked to provide services without regard to the requirements of § 1902(a)(10)(B) of the Social Security Act.

D. Definition of substance use case management services: for individuals who have a primary diagnosis of substance use disorder. Substance use case management services assist individuals and ~~their~~ family members in accessing needed medical, psychiatric, psychological, social, educational, vocational, recovery, and other supports essential to meeting the individual's basic needs. Substance use case management is reimbursable on a monthly basis only when the minimum substance use case management service activities are met. ~~Substance use case management services are not reimbursable for individuals while they are residing in institutions, including institutions for mental disease, except that substance use case management may be reimbursed during the month prior to discharge to allow for discharge planning. This is limited to two one-month periods during a 12-month period. Tobacco-related disorders or caffeine-related disorders and nonsubstance-related disorders shall not be covered.~~ Substance use case management does not include maintaining service waiting lists or periodically contacting or tracking individuals to determine potential service needs. Substance use case management services are to be person centered, individualized, and culturally and linguistically appropriate to meet the individual's and family member's needs.

Substance use case management service activities to be provided shall include:

1. Assessing needs and planning services to include developing a substance use case management individual service plan (ISP). The ISP shall utilize accepted placement criteria and shall be fully completed within 30 calendar days of initiation of service;

2. Enhancing community integration through increased opportunities for community access and involvement and enhancing community living skills to promote community adjustment, including, to the maximum extent possible, the use of local community resources available to the general public;

3. Making collateral contacts with the individual's significant others with properly authorized releases to promote implementation of the individual's ISP and ~~his~~ the individual's community adjustment;

4. Linking the individual to those community supports that are most likely to promote the personal habilitative or rehabilitative, recovery, and life goals of the individual as developed in the ISP;

5. Assisting the individual directly to locate, develop, or obtain needed services, resources, and appropriate public benefits;

6. ~~Assuring~~ Ensuring the coordination of services and service planning within a provider agency, with other providers, and with other human service agencies and systems, such as local health and social services departments;

7. Monitoring service delivery through contacts with individuals receiving services and service providers and site and home visits to assess the quality of care and satisfaction of the individual;

8. Providing follow-up instruction, education, and counseling to guide the individual and develop a supportive relationship that promotes the ISP;

9. Advocating for ~~individuals~~ the individual in response to ~~their~~ the individual's changing needs~~,~~ based on changes in the ISP;

10. Planning for transitions in the individual's life;

11. Knowing and monitoring the individual's health status, any medical condition, and medications and potential side effects and assisting the individual in accessing primary care and other medical services, as needed; and

12. Understanding the capabilities of services to meet the individual's identified needs and preferences and to serve the individual without placing the individual, other participants, or staff at risk of serious harm.

E. Qualifications of providers: of substance use case management services for individuals who have a primary diagnosis of substance use disorder.

1. The provider of substance use case management services must meet the following criteria:

a. The enrolled provider must have the administrative and financial management capacity to meet state and federal requirements;

b. The enrolled provider must have the ability to document and maintain individual case records in accordance with state and federal requirements; and

c. The enrolled provider must be licensed by the Department of Behavioral Health and Developmental Services (DBHDS) as a provider of substance abuse case management services.

2. Providers may bill Medicaid for substance use case management only when the services are provided by a professional ~~or professionals~~ who ~~meet~~ meets at least one of the following criteria:

a. At least a bachelor's degree in ~~one of the following fields~~ ~~(~~social work, psychology, psychiatric rehabilitation, sociology, counseling, vocational rehabilitation, or human services counseling~~)~~ and ~~has~~ at least either (i) one year of substance ~~use-related~~ use-related direct experience providing services to individuals with a diagnosis of substance use disorder or (ii) a minimum of one year of clinical experience working with individuals with co-occurring diagnoses of substance use disorder and mental illness;

b. Licensure by the Commonwealth as a registered nurse with (i) at least one year of substance ~~use-related~~ use-related direct experience providing services to individuals with a diagnosis of substance use disorder or (ii) a minimum of one year of clinical experience working with individuals with co-occurring diagnoses of substance use disorder and mental illness; or

c. Certification as a Board of Counseling Certified Substance Abuse Counselor (CSAC), CSAC-Supervisee, or CSAC-Assistant under clinical supervision as defined in 18VAC115-30-10 ~~et seq~~.

F. The state ~~assures~~ ensures that the provision of substance use case management services will not restrict an individual's free choice of providers in violation of § 1902(a)(23) of the Social Security Act.

1. Eligible individuals shall have free choice of the providers of substance use case management services.

2. Eligible individuals shall have free choice of the providers of other services under the plan.

G. Payment for substance use case management or substance use care coordination services under the ~~Plan~~ plan does not duplicate payments for other case management made to public agencies or private entities under other Title XIX program authorities for this same purpose.

H. The state ~~assures~~ ensures that the individual will not be compelled to receive substance use case management services, condition receipt of case management services on the receipt of other Medicaid services, or condition receipt of other Medicaid services on receipt of case management services.

I. The state ~~assures~~ ensures that providers of substance use case management ~~service~~ services do not exercise the agency's authority to authorize or deny the provision of other services under the plan.

J. The state ~~assures~~ ensures that substance use case management is only provided by and reimbursed to community case management providers.

K. The state ~~assures~~ ensures that substance use case management does not include the following:

1. The direct delivery of an underlying medical, educational, social, or other service to which an eligible individual has been referred.

2. Activities for which an individual may be eligible~~,~~ that are integral to the administration of another nonmedical program, except for case management that is included in an individualized education program or individualized family service plan consistent with § 1903(c) of the Social Security Act.

**12VAC30-60-143. Mental health services utilization criteria; definitions.**

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

"Certified prescreener" means an employee of either the local community services board or behavioral health authority, or its designee, who is skilled in the assessment and treatment of mental illness and who has completed a certification program approved by the Department of Behavioral Health and Developmental Services (DBHDS).

"Certified prescreener assessment" means an assessment for crisis intervention and crisis stabilization completed by a certified prescreener that meets the elements of a comprehensive needs assessment.

"Comprehensive needs assessment" means the same as defined in 12VAC30-50-130 and also includes individuals who are older than 21 years of age.

"Emergency services" means unscheduled and sometimes scheduled crisis intervention, stabilization, acute psychiatric inpatient services, and referral assistance provided over the telephone or face-to-face if indicated, and available 24 hours a day, seven days per week.

"Licensed mental health professional" or "LMHP" means the same as defined in ~~12VAC30-50-130~~ 12VAC30-105-20.

"LMHP-resident" or "LMHP-R" means the same as defined in 12VAC30-50-130.

"LMHP-resident in psychology" or "LMHP-RP" means the same as defined in 12VAC30-50-130.

"LMHP-supervisee in social work," "LMHP-supervisee," or "LMHP-S" means the same as defined in 12VAC30-50-130.

"Qualified mental health professional-adult" or "QMHP-A" means the same as defined in ~~12VAC30-50-130~~ 12VAC35-105-20.

"Qualified mental health professional-child" or "QMHP-C" means the same as defined in 12VAC30-50-130.

"Qualified mental health professional-eligible" or "QMHP-E" means the same as defined in ~~12VAC35-105-20~~ 12VAC30-50-130.

"Qualified paraprofessional in mental health" or "QPPMH" means the same as the term is defined in 12VAC35-105-20.

B. Utilization reviews shall include determinations that providers meet the following requirements:

1. The provider shall meet the federal and state requirements for administrative and financial management capacity. The provider shall obtain, prior to the delivery of services, and shall maintain and update periodically as the Department of Medical Assistance Services (DMAS) or its contractor requires, a current provider enrollment agreement for each Medicaid service that the provider offers. DMAS shall not reimburse providers who do not enter into a provider enrollment agreement for a service prior to offering that service.

2. The provider shall document and maintain individual case records in accordance with state and federal requirements.

3. The provider shall ensure eligible individuals have free choice of providers of mental health services and other medical care under the ~~Individual Service Plan~~ individual service plan (ISP).

4. Providers shall comply with DMAS marketing requirements as set out in 12VAC30-130-2000. Providers that DMAS determines have violated these marketing requirements shall be terminated as a Medicaid provider pursuant to 12VAC30-130-2000 E. Providers whose contracts are terminated shall be afforded the right of appeal pursuant to the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

5. If an individual receiving community mental health rehabilitative services is also receiving case management services pursuant to 12VAC30-50-420 or 12VAC30-50-430, the provider shall collaborate with the case manager by notifying the case manager of the provision of community mental health rehabilitative services and sending monthly updates on the individual's treatment status. A discharge summary shall be sent to the ~~care coordinator/case manager~~ care coordinator or case manager within 30 calendar days of the discontinuation of services. Service providers and case managers who are using the same electronic health record for the individual shall meet requirements for delivery of the notification, monthly updates, and discharge summary upon entry of this documentation into the electronic health record.

6. The provider shall determine who the primary care provider is and inform ~~him~~ the primary care provider of the individual's receipt of community mental health rehabilitative services. The documentation shall include who was contacted, when the contact occurred, and what information was transmitted.

7. Prior to admission, an appropriate comprehensive needs assessment shall be conducted by the ~~licensed mental health professional (~~LMHP~~)~~, LMHP-S, LMHP-R, or LMHP-RP. The comprehensive needs assessment shall include documented history of the severity, intensity, and duration of mental health care problems and issues~~.~~ and all of the following elements: (i) the presenting issue or reason for referral; (ii) mental health history or history of hospitalizations; (iii) previous interventions by providers and timeframes and response to treatment; (iv) medical profile; (v) developmental history, including history of abuse, if appropriate; (vi) educational or vocational status; (vii) current living situation and family history and relationships; (viii) legal status~~;~~; (ix) drug and alcohol profile; (x) resources and strengths; (xi) mental status exam and profile; (xii) diagnosis; (xiii) professional summary and clinical formulation; (xiv) recommended care and treatment goals; and (xv) the dated signature of the LMHP, ~~LMHP-supervisee~~ LMHP-S, ~~LMHP-resident~~ LMHP-R, or LMHP-RP.

a. A single comprehensive needs assessment shall be used to document the medical necessity for one or more community mental health rehabilitative service provided by the same ~~DBHDS-licensed~~ DBHDS-licensed agency.

b. The comprehensive needs assessment shall be~~:~~ completed face to face and signed by the LMHP, LMHP-R, LMHP-RP, or LMHP-S; include all required elements as defined in 12VAC30-50-130; describe how each recommended community mental health rehabilitative service is medically necessary; and be reviewed and updated at a minimum of annually or as the individual's needs change.

c. The comprehensive needs assessment shall be reviewed and updated by an LMHP, LMHP-R, LMHP-RP, or LMHP-S within 31 days if there is a clinical indication based on the medical, psychiatric, or behavioral symptoms of the individual.

d. An LMHP, LMHP-R, LMHP-RP, or LMHP-S shall conduct an annual ~~face-to-face~~ face-to-face review and update of the comprehensive needs assessment that includes~~:~~ a review of the comprehensive needs assessment; any necessary updates to the 15 required elements of the comprehensive needs assessment to reflect the individual's current level of functioning; an updated description of how the individual meets medical necessity criteria for all recommended services; and a contemporaneously dated signature of the LMHP, LMHP-R, LMHP-RP, or LMHP-S.

e. The comprehensive needs assessment is outdated if any of the following occurs: an LMHP, LMHP-R, LMHP-RP, or LMHP-S has not completed the annual review and update; within the past 31 calendar days, the provider has not provided a community mental health rehabilitative service or a case management activity (as defined in

12VAC30-50-420 or 12VAC30-50-430) as recommended by the comprehensive needs assessment~~,~~; or, within the past 31 days, the comprehensive needs assessment has not been updated to reflect a change in the individual's current level of functioning.

f. If the comprehensive needs assessment is outdated, a new comprehensive needs assessment is required prior to resuming a community mental health rehabilitative service that lapsed for more than 31 calendar days. If the comprehensive needs update is not outdated, it must, at a minimum, be updated to document the medical necessity for a community mental health rehabilitative service that lapsed for more than 31 calendar days.

g. Providers shall only bill under the community mental health rehabilitative service assessment codes for the initial comprehensive needs assessment and for comprehensive needs assessments that replace an outdated assessment. Providers of multiple community mental health rehabilitative services shall only bill one community mental health rehabilitative service assessment code per individual.

h. Claims for services that are based upon comprehensive needs assessments that are incomplete, outdated, or missing shall not be reimbursed.

i. For crisis intervention and crisis stabilization services, a certified prescreener assessment may be used in place of the comprehensive needs assessment.

8. The provider shall include the individual and the ~~family/caregiver~~ family or caregiver, as may be appropriate, in the development of the ISP. To the extent that the individual's condition requires assistance for participation, assistance shall be provided. The ISP shall be updated annually or as the needs and progress of the individual changes. An ISP that is not updated either annually or as the treatment interventions based on the needs and progress of the individual change shall be considered outdated. An ISP that does not include all required elements specified in 12VAC30-50-226 shall be considered incomplete. Claims for services that are based upon ISPs that are incomplete, outdated, or missing shall not be reimbursed. All ISPs shall be completed, signed, and contemporaneously dated by the appropriate professional for the service~~,~~ who is preparing the ISP within a maximum of 30 days of the date of the completed assessment unless otherwise specified. A youth's ISP shall also be signed by the parent or legal guardian and the adult individual shall sign his own. If the individual is unwilling to sign the ISP, then the service provider shall document the clinical or other reasons why the individual was not able or willing to sign the ISP. Signatures shall be obtained unless there is a clinical reason that renders the individual unable to sign the ISP.

a. Every three months, the appropriate professional for the service shall review the ISP, modify the ISP as appropriate, and update the ISP, and all of these activities shall occur with the individual in a manner in which the individual may participate in the process. The ISP shall be rewritten at least annually.

b. The goals, objectives, and strategies of the ISP shall be updated to reflect any change ~~or changes~~ in the individual's progress and treatment needs as well as any ~~newly identified~~ newly identified problems.

c. Documentation of ISP review shall be added to the individual's medical record no later than 15 days from the calendar date of the review as evidenced by the dated signatures of the appropriate professional for the service and the individual.

9. Progress notes shall include, at a minimum, the name of the service rendered, the date of the service rendered, the signature and credentials of the person who rendered the service, the setting in which the service was rendered, and the amount of time or units or hours required to deliver the service. The content of each progress note shall corroborate the units or hours billed. Progress notes shall be documented for each service that is billed.

10. Services described in this section shall be rendered consistent with the definitions, service limits, and requirements described in this section and in 12VAC30-50-226.

C. Day ~~treatment/partial~~ treatment or partial hospitalization services shall be provided following a comprehensive needs assessment completed by the LMHP, LMHP-R, LMHP-RP, or LMHP-S. An ISP, as defined in 12VAC30-50-226, shall be fully completed, signed, and dated by either the LMHP, LMHP-R, LMHP-RP, LMHP-S, ~~the~~ QMHP-A, QMHP-E, or QMHP-C and reviewed or approved by the LMHP, LMHP-R, LMHP-RP, or LMHP-S within 30 days of service initiation.

1. The enrolled provider of day ~~treatment/partial~~ treatment or partial hospitalization shall be licensed by DBHDS as ~~providers~~ a provider of day treatment services.

2. Services shall only be provided by an LMHP, LMHP-R, LMHP-RP, LMHP-S, ~~a~~ QMHP-A, ~~a~~ QMHP-C, ~~a~~ QMHP-E, or a qualified paraprofessional under the supervision of a QMHP-A, QMHP-C, QMHP-E, ~~or an~~ LMHP, LMHP-R, LMHP-RP, or LMHP-S.

3. The program shall operate a minimum of two continuous hours in a 24-hour period.

4. Individuals shall be discharged from this service when other less intensive services may achieve or maintain psychiatric stabilization.

D. Psychosocial rehabilitation services shall be provided to those individuals who have experienced long-term or repeated psychiatric hospitalization, ~~or~~ who experience difficulty in activities of daily living and interpersonal skills, ~~or~~ whose support system is limited or nonexistent, or who are unable to function in the community without intensive intervention or

when long-term services are needed to maintain the individual in the community.

1. Psychosocial rehabilitation services shall be provided following a comprehensive needs assessment that clearly documents the need for services. The comprehensive needs assessment shall be completed by either an LMHP, LMHP-R, LMHP-RP, or LMHP-S. An ISP shall be completed by either the LMHP, LMHP-R, LMHP-RP, LMHP-S, ~~or the~~ QMHP-A, QMHP-E, or QMHP-C and be reviewed or approved by either an LMHP, LMHP-R, LMHP-RP, or LMHP-S within 30 calendar days of service initiation. At least every three months, the LMHP, LMHP-R, LMHP-RP, LMHP-S, ~~the~~ QMHP-A, QMHP-C, or QMHP-E must review, modify as appropriate, and update the ISP.

2. Psychosocial rehabilitation services of any individual that continue for more than six months shall be reviewed by an LMHP, LMHP-R, LMHP-RP, or LMHP-S who shall document the continued need for the service. The ISP shall be rewritten at least annually.

3. The enrolled provider of psychosocial rehabilitation services shall be licensed by DBHDS as a provider of psychosocial rehabilitation services.

4. Psychosocial rehabilitation services may be provided by an LMHP, LMHP-R, LMHP-RP, LMHP-S, QMHP-A, QMHP-C, QMHP-E, or a qualified paraprofessional under the supervision of a QMHP-A, ~~a~~ QMHP-C, ~~a~~ QMHP-E, ~~or an~~ LMHP, LMHP-R, LMHP-RP, or LMHP-S.

5. The program shall operate a minimum of two continuous hours in a 24-hour period.

6. Time allocated for field trips may be used to calculate time and units if the goal is to provide training in an integrated setting~~,~~ and to increase the individual's understanding or ability to access community resources.

E. Initiation of crisis intervention services shall be indicated following a comprehensive needs assessment completed by an LMHP, LMHP-R, LMHP-RP, or LMHP-S~~,~~ or a certified prescreener assessment that documents a marked reduction in the individual's psychiatric, adaptive, or behavioral functioning or an extreme increase in personal distress. In order to receive reimbursement, providers shall register this service with DMAS or its contractor within one business day of the completion of the comprehensive needs assessment to avoid duplication of services and to ensure informed care coordination.

1. The crisis intervention services provider shall be licensed as a provider of emergency services by DBHDS.

2. Client-related activities provided in association with a face-to-face contact are reimbursable.

3. An ~~individual service plan (~~ISP~~)~~ shall not be required for newly admitted individuals to receive this service. Inclusion of crisis intervention as a service on the ISP shall not be required for the service to be provided on an emergency basis.

4. For individuals receiving scheduled, short-term counseling as part of the crisis intervention service, an ISP shall be developed or revised to reflect the short-term counseling goals by the fourth face-to-face contact.

5. Reimbursement shall be provided for short-term crisis counseling contacts occurring within a 30-day period from the time of the first face-to-face crisis contact. There are no restrictions (regarding number of contacts or a given time period to be covered) for reimbursement for unscheduled crisis contacts.

6. Crisis intervention services may be provided to eligible individuals outside of the clinic and reimbursed, provided the provision of out-of-clinic services is clinically or programmatically appropriate. Travel by staff to provide out-of-clinic services shall not be reimbursable. Crisis intervention may involve contacts with the family or significant others. If other clinic services are billed at the same time as crisis intervention, documentation must clearly support the separation of the services with distinct treatment goals.

7. An LMHP, LMHP-R, LMHP-RP, or LMHP-S shall conduct a comprehensive needs assessment, or a certified prescreener shall conduct a face-to-face comprehensive assessment that documents the need for and the anticipated duration of the crisis service.

8. Crisis intervention shall be provided by either an LMHP, LMHP-R, LMHP-RP, LMHP-S, or a certified prescreener.

9. For an admission to a freestanding inpatient psychiatric facility for individuals younger than ~~age~~ 21 years of age, federal regulations (42 CFR 441.152) require certification of the admission by an independent team. The independent team must include mental health professionals, including a physician. These preadmission screenings cannot be billed unless the requirement for an independent team certification, with a physician's signature, is met.

10. Services shall be documented through daily notes and a daily log of time spent in the delivery of services.

F. Case management services pursuant to 12VAC30-50-420 (Case management services for seriously mentally ill adults and emotionally disturbed children) or 12VAC30-50-430 (Case management services for youth at risk of serious emotional disturbance).

1. Reimbursement shall be provided only for "active" case management clients, as defined. An active client for case management shall mean an individual for whom there is an ISP in effect that requires regular direct or client-related contacts or activity or communication with the individuals or families, significant others, service providers, and others,

including a minimum of one face-to-face individual contact within a 90-day period. Billing can be submitted only for months in which direct or client-related contacts, activity, or communications occur.

2. The ~~Medicaid-eligible~~ Medicaid-eligible individual shall meet the DBHDS criteria of serious mental illness, serious emotional disturbance in children and adolescents, or youth at risk of serious emotional disturbance.

3. There shall be no maximum service limits for case management services. ~~Case management shall not be billed for persons in institutions for mental disease.~~

4. Reimbursement is allowed for case management services for Medicaid-eligible individuals who are in institutions pursuant to 12VAC30-50-420 and 12VAC30-50-430.

5. The ISP shall document the need for case management and be fully completed within 30 calendar days of initiation of the service. The case manager shall review the ISP at least every ~~three months~~ 90 calendar days. ~~The review will be due by the last day of the third month following the month in which the last review was completed. A grace period will be granted up to the last day of the fourth month following the month of the last review. When the review was completed in a grace period, the next subsequent review shall be scheduled three months from the month the review was due and not the date of actual review. 5.~~ Such reviews shall be documented in the individual's medical record.

6. Reviews will be due by the end of the month following the 90th calendar day from when the last review was completed. If needed, a grace period will be granted up to the last day of the next month. If the review was completed in a grace period, the next subsequent review shall be required within 90 calendar days from when the review was due and not the date of the actual review.

7. The ISP shall also be updated at least annually.

~~6.~~ 8. The provider of case management services shall be licensed by DBHDS as a provider of case management services.

G. Intensive community treatment (ICT).

1. A comprehensive needs assessment that documents eligibility and the need for this service shall be completed by either the LMHP, LMHP-R, LMHP-RP, or LMHP-S prior to the initiation of services. The comprehensive needs assessment documentation shall be maintained in the individual's records.

2. An ~~individual service plan~~ ISP, based on the needs as determined by the comprehensive needs assessment, must be initiated at the time of admission and must be fully developed by either the LMHP, LMHP-R, LMHP-RP, LMHP-S, QMHP-A, QMHP-C, or QMHP-E and approved by the LMHP, LMHP-R, LMHP-RP, or LMHP-S within 30 days of the initiation of services.

3. ICT may be billed if the individual is brought to the facility by ICT staff to see the psychiatrist. Documentation must be present in the individual's record to support this intervention.

4. The enrolled ICT provider shall be licensed by ~~the~~ DBHDS as a provider of intensive community services or as a program of assertive community treatment~~,~~ and must provide and make available emergency services ~~24 hours~~ 24 hours per day, seven days per week, 365 days per year, either directly or on call.

5. ICT services must be documented through a daily log of time spent in the delivery of services and a description of the ~~activities/services~~ activities or services provided. There must also be at least a weekly note documenting progress or lack of progress toward goals and objectives as outlined on the ISP.

H. Crisis stabilization services.

1. This service shall be initiated following a face-to-face comprehensive needs assessment by either an LMHP, LMHP-R, LMHP-RP, or LMHP-S~~,~~ or an assessment completed by a certified prescreener that documents the need for crisis stabilization services.

2. In order to receive reimbursement, providers shall register this service with DMAS or its contractor within one business day of the completion of the provider's assessment to avoid duplication of services and to ensure informed care coordination.

3. The ~~Individual Service Plan (~~ISP~~)~~ must be developed or revised within three calendar days of admission to this service. The LMHP, LMHP-R, LMHP-RP, LMHP-S, certified prescreener, QMHP-A, QMHP-C, or QMHP-E shall develop the ISP.

4. Room and board, custodial care, and general supervision are not components of this service.

5. Clinic option services are not billable at the same time crisis stabilization services are provided, with the exception of clinic visits for medication management. Medication management visits may be billed at the same time that crisis stabilization services are provided, but documentation must clearly support the separation of the services with distinct treatment goals.

6. Individuals qualifying for this service must demonstrate a clinical necessity for the service arising from a condition due to an acute crisis of a psychiatric nature which puts the individual at risk of psychiatric hospitalization.

7. Providers of residential crisis stabilization shall be licensed by DBHDS as providers of residential or nonresidential crisis stabilization services. Providers of

community-based crisis stabilization shall be licensed by DBHDS as providers of mental health nonresidential crisis stabilization.

I. Mental health skill-building services (MHSS) as defined in 12VAC30-50-226 B 6.

1. At admission, an appropriate face-to-face comprehensive needs assessment must be conducted, documented, signed, and dated by the LMHP, LMHP-R, LMHP-RP, or LMHP-S. Providers shall be reimbursed one unit for each intake utilizing the appropriate billing code. Services of any individual that continue more than six months shall be reviewed by the LMHP, LMHP-R, LMHP-RP, or LMHP-S who shall document the continued need for the service in the individual's medical record.

2. The primary mental health diagnosis shall be documented as part of the comprehensive needs assessment by the LMHP, LMHP-R, LMHP-RP, or LMHP-S performing the comprehensive needs assessment.

3. The LMHP, LMHP-R, LMHP-RP, LMHP-S, QMHP-A, QMHP-C, or QMHP-E shall complete, sign, and date the ISP within 30 days of the admission to this service. The ISP shall include documentation of how many days per week and how many hours per week are required to carry out the goals in the ISP. The total time billed for the week shall not exceed the frequency established in the individual's ISP. The ISP shall indicate the dated signature of the LMHP, LMHP-R, LMHP-RP, LMHP-S, QMHP-A, QMHP-C, or QMHP-E and the individual. The ISP shall indicate the specific training and services to be provided, the goals and objectives to be accomplished, and criteria for discharge as part of a discharge plan that includes the projected length of service. If the individual refuses to sign the ISP, this shall be noted in the individual's medical record documentation.

4. Every three months, the LMHP, LMHP-R, LMHP-RP, LMHP-S, QMHP-A, QMHP-C, or QMHP-E shall review with the individual in a manner in which ~~he~~ the individual may participate with the process, modify as appropriate, and update the ISP. The ISP must be rewritten at least annually.

a. The goals, objectives, and strategies of the ISP shall be updated to reflect any change ~~or changes~~ in the individual's progress and treatment needs as well as any newly identified problem.

b. Documentation of this review shall be added to the individual's medical record no later than 15 calendar days from the date of the review, as evidenced by the dated signatures of the LMHP, LMHP-R, LMHP-RP, LMHP-S, QMHP-A, QMHP-C, or QMHP-E and the individual.

5. The ISP shall include discharge goals that will enable the individual to achieve and maintain community stability and independence. The ISP shall fully support the need for interventions over the length of the period of service requested from the service authorization contractor.

6. Reauthorizations for service shall only be granted if the provider demonstrates to either DMAS or the service authorization contractor that the individual is benefitting from the service as evidenced by updates and modifications to the ISP that demonstrate progress toward ISP goals and objectives.

7. If the provider knows or has reason to know of the individual's nonadherence to a regimen of prescribed medication, medication adherence shall be a goal in the individual's ISP. If the care is delivered by the qualified paraprofessional, the supervising LMHP, LMHP-R, LMHP-RP, LMHP-S, QMHP-A, or QMHP-C shall be informed of any nonadherence to the prescribed medication regimen. The LMHP, LMHP-R, LMHP-RP, LMHP-S, QMHP-A, or QMHP-C shall coordinate care with the prescribing physician regarding any concerns about medication nonadherence ~~(~~, provided that the individual has consented to such sharing of information~~)~~. The provider shall document the following minimum elements of the contact between the LMHP, LMHP-R, LMHP-RP, LMHP-S, QMHP-A, or QMHP-C and the prescribing physician:

a. Name and title of caller;

b. Name and title of professional who was called;

c. Name of organization ~~that~~ for which the prescribing professional works ~~for~~;

d. Date and time of call;

e. Reason for the care coordination call;

f. Description of the medication regimen issue ~~or issues to be~~ discussed; and

g. Whether ~~or not~~ there was a resolution of the medication regimen issue ~~or issues~~.

8. Discharge summaries shall be prepared by ~~providers~~ a provider for all of the individuals in ~~their~~ the provider's care. ~~Documentation of prior psychiatric services history shall be maintained in the individual's mental health skill-building services medical record.~~

9. Documentation of prior psychiatric services history shall be maintained in the individual's mental health skill-building services medical record. The provider shall document evidence of the individual's prior psychiatric services history, as required by 12VAC30-50-226 B 6 b (3) and 12VAC30-50-226 B 6 c (4), by contacting the prior provider ~~or providers~~ of such health care services after obtaining written consent from the individual. Documentation of telephone contacts with the prior provider shall include the following minimum elements:

a. Name and title of caller;

b. Name and title of professional who was called;

c. Name of organization ~~that~~ for which the professional works ~~for~~;

d. Date and time of call;

e. Specific placement provided;

f. Type of treatment previously provided;

g. Name of treatment provider; and

h. Dates of previous treatment.

Discharge summaries from prior providers that clearly indicate (i) the type of treatment provided, (ii) the dates of the treatment previously provided, and (iii) the name of the treatment provider shall be sufficient to meet this requirement. Family member statements shall not suffice to meet this requirement.

10. The provider shall document evidence of the psychiatric medication history, as required by 12VAC30-50-226 B 6 b (4) and 12VAC30-50-226 B 6 c (5), by maintaining a photocopy of prescription information from a prescription bottle or by contacting the current or previous prescribing provider of health care services or pharmacy after obtaining written consent from the individual. Prescription lists or medical records, including discharge summaries, obtained from the pharmacy or current or previous prescribing provider of health care services that contain (i) the name of the prescribing physician, (ii) the name of the medication with dosage and frequency, and (iii) the date of the prescription shall be sufficient to meet these criteria. Family member statements shall not suffice to meet this requirement.

11. In the absence of such documentation, the current provider shall document all contacts (i.e., telephone, faxes, electronic communication) with the pharmacy or provider of health care services with the following minimum elements: (i) name and title of caller, (ii) name and title of prior professional who was called, (iii) name of organization ~~that~~ for whom the professional works ~~for~~, (iv) date and time of call, (v) specific prescription confirmed, (vi) name of prescribing physician, (vii) name of medication, and (viii) date of prescription.

12. Only direct face-to-face contacts and services to an individual shall be reimbursable.

13. Any services provided to the individual that are strictly academic in nature shall not be billable. These include~~, but are not limited to,~~ such basic educational programs as instruction or tutoring in reading, science, mathematics, or GED.

14. Any services provided to individuals that are strictly vocational in nature shall not be billable. However, support activities and activities directly related to assisting an individual to cope with a mental illness to the degree necessary to develop appropriate behaviors for operating in an overall work environment shall be billable.

15. Room and board, custodial care, and general supervision are not components of this service.

16. Provider qualifications. The enrolled provider of mental health skill-building services must be licensed by DBHDS as a provider of mental health community support ~~(~~ as defined in 12VAC35-105-20~~)~~. Individuals employed or contracted by the provider to provide mental health skill-building services must have training in the characteristics of mental illness and appropriate interventions, training strategies, and support methods for persons with mental illness and functional limitations. Mental health skill-building services shall be provided by either an LMHP, LMHP-R, LMHP-RP, LMHP-S, ~~a~~ QMHP-A, ~~a~~ QMHP-C, ~~a~~ QMHP-E, or ~~a~~ QPPMH. The LMHP, LMHP-R, LMHP-RP, LMHP-S, QMHP-A, or QMHP-C will supervise the care weekly if delivered by the QMHP-E or QPPMH. Documentation of supervision shall be maintained in the mental health skill-building services record.

17. Mental health skill-building services shall be documented through a daily log of time involved in the delivery of services and a minimum of a weekly summary note of services provided. The provider shall clearly document services provided to detail what occurred during the entire amount of the time billed.

18. If mental health skill-building services are provided in a therapeutic group home or assisted living facility, effective July 1, 2014, there shall be a yearly limit of up to 416 units per fiscal year and a weekly limit of up to eight units per week, with at least half of each week's services provided outside of the group home or assisted living facility. There shall be a daily limit of a maximum of two units. Prior to July 1, 2014, the previous limits shall apply. DMAS or its contractor may authorize additional units of mental health skill-building services that exceed this limit based on documented medical necessity. The ISP shall not include activities that contradict or duplicate those in the treatment plan established by the group home or assisted living facility. The provider shall attempt to coordinate mental health skill-building services with the treatment plan established by the group home or assisted living facility and shall document all coordination activities in the medical record.

19. Limits and exclusions.

a. Therapeutic group home and assisted living facility providers shall not serve as the mental health skill-building services provider for individuals residing in the provider's respective facility. Individuals residing in facilities may, however, receive MHSS from another MHSS agency not affiliated with the owner of the facility in which they reside.

b. Mental health skill-building services shall not be reimbursed for individuals who are receiving in-home residential services or congregate residential services through the Intellectual Disability Waiver or Individual and Family Developmental Disabilities Support Waiver.

c. Mental health skill-building services shall not be reimbursed for individuals who are also receiving independent living skills services, the Department of Social Services independent living program (22VAC40-151), independent living services (22VAC40-131 and 22VAC40-151), or independent living arrangement (22VAC40-131) or any Comprehensive Services Act-funded independent living skills programs.

d. Mental health skill-building services shall not be available to individuals who are receiving treatment foster care (12VAC30-130-900 et seq.).

e. Mental health skill-building services shall not be available to individuals who reside in intermediate care facilities for individuals with intellectual disabilities or hospitals.

f. Mental health skill-building services shall not be available to individuals who reside in nursing facilities, except for up to 60 days prior to discharge. If the individual has not been discharged from the nursing facility during the 60-day period of services, mental health skill-building services shall be terminated and no further service authorizations shall be available to the individual unless a provider can demonstrate and document that mental health skill-building services are necessary. Such documentation shall include facts demonstrating a change in the individual's circumstances and a new plan for discharge requiring up to 60 days of mental health skill-building services.

g. Mental health skill-building services shall not be available for residents of psychiatric residential treatment centers, except for the assessment code H0032 (modifier U8) in the seven days immediately prior to discharge.

h. Mental health skill-building services shall not be reimbursed if personal care services or attendant care services are being received simultaneously, unless justification is provided regarding why this is necessary in the individual's mental health skill-building services record. Medical record documentation shall fully substantiate the need for services when personal care or attendant care services are being provided. This applies to individuals who are receiving additional services through the ~~Intellectual Disability Waiver (12VAC30-120-1000 et seq.), Individual and Family Developmental Disabilities Support Waiver (12VAC30-120-700 et seq.)~~ Developmental Disability Waivers (12VAC30-122), the ~~Elderly or Disabled with Consumer Direction~~ Commonwealth Coordinated Care Plus Waiver (12VAC30-120-900 et seq.), and EPSDT services (12VAC30-50-130).

i. Mental health skill-building services shall not be duplicative of other services. Providers have a responsibility to ensure that if an individual is receiving additional therapeutic services that there will be coordination of services by either the LMHP, LMHP-R, LMHP-RP, LMHP-S, QMHP-A, QMHP-C, or QMHP-E to avoid duplication of services.

j. Individuals who have organic disorders, such as delirium, dementia, or other cognitive disorders not elsewhere classified, will be prohibited from receiving mental health skill-building services unless ~~their physicians issue~~ the individual's physician issues a signed and dated statement indicating that the ~~individuals can~~ individual could benefit from this service.

k. Individuals who are not diagnosed with a serious mental health disorder but who have personality disorders or other mental health disorders, or both, that may lead to chronic disability, will not be excluded from the mental health skill-building services eligibility criteria, provided that the individual has a primary mental health diagnosis from the list included in 12VAC30-50-226 B 6 b (1) or 12VAC30-50-226 B 6 c (2) and that the provider can document and describe how the individual is expected to actively participate in and benefit from mental health support services.

J. Except as noted in subdivision I 18 of this section and in 12VAC30-50-226 B 6 e, the limits described in this section and in 12VAC30-50-226 shall apply to all service authorization requests submitted to either DMAS or the behavioral health services agency as of July 27, 2016. As of July 27, 2016, all annual limits, weekly limits, daily limits, and reimbursement for services shall apply to all services described in 12VAC30-50-226 regardless of the date upon which service authorization was obtained.

**12VAC30-60-185. Utilization review of substance use case management.**

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

"Face-to-face" means the same as that term is defined in 12VAC30-130-5020.

"Individual service plan" or "ISP" means the same as the term is defined in 12VAC30-130-5020.

"Progress notes" means individual-specific documentation that contains the unique differences particular to the individual's circumstances, treatment, and progress that is also signed and contemporaneously dated by the provider's professional staff who have prepared the notes and are part of the minimum documentation requirements that convey the individual's status, staff intervention, and as appropriate, the individual's progress or lack of progress toward goals and objectives in the ISP. The progress notes shall also include, at a minimum, the name of the service rendered, the date of the service rendered, the signature and credentials of the person who rendered the service, the setting in which the service was rendered, and the amount of time or units or hours required to deliver the service. The content of each progress note shall

corroborate the time or units billed for each rendered service. Progress notes shall be documented for each service that is billed.

"Register" or "registration" means notifying the Department of Medical Assistance Services (DMAS) or its contractor that an individual will be receiving services that do not require service authorization, such as outpatient services for substance use disorders or substance use case management.

B. Utilization review: substance use case management services.

1. The Medicaid-enrolled individual shall have a substance use disorder diagnosis based on nationally recognized criteria. Tobacco-related disorders or caffeine-related disorders and non-substance-related disorders shall not be covered.

2. Reimbursement shall be provided only for "active" case management. An active client for substance use case management shall mean an individual for whom there is a current substance use ISP in effect that requires a minimum of two distinct substance use case management activities being performed each calendar month and, at a minimum, one face-to-face client contact at least every 90-calendar-day period.

3. Billing can be submitted for an active recipient only for months in which a minimum of two distinct substance use case management activities are performed.

4. An ISP shall be completed within 30 calendar days of initiation of this service with the individual in a person-centered manner and shall document the need for active substance use case management before such case management services can be billed. The ISP shall require a minimum of two distinct substance use case management activities being performed each calendar month and a minimum of one face-to-face client contact at least every 90 calendar days. The substance use case manager shall review the ISP with the individual at least every 90 calendar days for the purpose of evaluating and updating the individual's progress toward meeting the individualized service plan objectives. Such reviews shall be documented in the individual's medical record.

5. Reviews will be due by the end of month following the 90th calendar day from when the last review was completed. If needed, a grace period will be granted up to the last day of the next month. If the review was completed in a grace period, the next subsequent review shall be required within 90 calendar days from when the review was due and not the date of the actual review.

6. The ISP shall be reviewed with the individual present~~, and the outcome of the review shall be documented in the individual's medical record~~.

~~C. Utilization review: substance use case management services.~~

~~1. Utilization review general requirements. Utilization reviews shall be conducted by DMAS or its designated contractor. Reimbursement shall be provided only when there is an active ISP, a minimum of two distinct substance use case management activities are performed each calendar month, and there is a minimum of one face-to-face client contact at least every 90 calendar day period. Billing can be submitted only for months in which a minimum of two distinct substance use case management activities are performed within the calendar month.~~

~~2.~~ 7. In order to receive reimbursement, providers shall register this service with the managed care organization or the DMAS contractor, as required, within one business day of service initiation to avoid duplication of services and to ensure informed and seamless care coordination between substance use treatment and substance use case management providers.

~~3. The Medicaid-eligible individual shall meet the nationally recognized criteria for a substance use disorder with the exception of tobacco related disorders or caffeine related disorders and non-substance-related disorders.~~

~~4. Substance use case management shall not be billed for individuals in institutions for mental disease, except during the month prior to discharge to allow for discharge planning, limited to two months within a 12 month period.~~ 8. Substance use case management shall not be billed concurrently with any other type of Medicaid reimbursed case management and care coordination.

~~5. The ISP, as defined in 12VAC30 130 5020, shall document the need for substance use case management and be fully completed within 30 calendar days of initiation of the service, and the substance use case manager shall review the ISP at least every 90 calendar days. Such reviews shall be documented in the individual's medical record. If needed, a grace period will be granted following the date of the last review. When the review is completed in a grace period, the next subsequent review shall be scheduled 90 calendar days from the date the review was initially due and not the date of actual review.~~

~~6.~~ 9. The ISP shall be updated and documented in the individual's medical record at least annually and as an individual's needs change.

~~7.~~ 10. The provider of substance use case management services shall be licensed by the Department of Behavioral Health and Developmental Services as a provider of substance use case management and credentialed by the DMAS contractor or the managed care organization as a provider of substance use case management services.

~~8.~~ 11. Progress notes, as defined in subsection A of this section, shall be required to disclose the extent of services provided and corroborate the units billed.

12. Reimbursement is allowed for case management services for Medicaid-eligible individuals who are in institutions pursuant to 12VAC30-50-491.

13. Utilization reviews shall be conducted by DMAS or its designated contractor.

VA.R. Doc. No. R25-7024; Filed October 21, 2024, 12:38 p.m.

# TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

## BOARD OF MEDICINE

### Fast-Track Regulation

Title of Regulation: **18VAC85-21. Regulations Governing Prescribing of Opioids and Buprenorphine (amending 18VAC85-21-20, 18VAC85-21-21, 18VAC85-21-30, 18VAC85-21-40, 18VAC85-21-60, 18VAC85-21-70, 18VAC85-21-80, 18VAC85-21-100, 18VAC85-21-130 through 18VAC85-21-160; adding 18VAC85-21-23).**

Statutory Authority: §§ 54.1-2400 and 54.1-2928.2 of the Code of Virginia.

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: December 18, 2024.

Effective Date: January 2, 2025.

Agency Contact: Erin Barrett, Director of Legislative and Regulatory Affairs, Department of Health Professions, Perimeter Center, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 750-3912, FAX (804) 915-0382, or email erin.barrett@dhp.virginia.gov.

Basis: Regulations of the board are promulgated under the general authority of § 54.1-2400 of the Code of Virginia, which specifically states that the general powers and duties of health regulatory boards shall be to promulgate regulations. Section 54.1-2928.2 directs the Board of Medicine to promulgate regulations governing the prescribing of opioids and buprenorphine.

Purpose: The regulation is necessary to protect the health, safety, and welfare of patients because the regulation guides practitioners in the use of opioids and buprenorphine, which are addictive and often abused drugs. Similarly, the failure to appropriately prescribe these medications to the pain management or opioid use disorder populations can harm the public.

Rationale for Using Fast-Track Rulemaking Process: This rulemaking is expected to be noncontroversial because the board has received comments for several years of the need for these changes. Additionally, the board convened a regulatory advisory panel of 12 stakeholders from a variety of backgrounds to provide assistance in drafting these changes. These amendments have been the subject of substantial public participation.

Substance: These amendments (i) add other FDA-approved opioid reversal agents where "naloxone" is currently used; (ii) change references to addiction treatment to opioid use disorder; (iii) update prescribing guidelines based on patient population or type of pain treated; (iv) clarify tapering; (v) include subacute pain as a pain management category along with acute and chronic; (vi) remove references to the Substance Abuse and Mental Health Services Administration (SAMHSA) waiver to prescribe buprenorphine, as that is no longer issued by SAMHSA or required for buprenorphine prescribing; (vii) clarify the use of telemedicine for prescription of opioids; and (viii) increase the recommended quantity for initial prescription of opioids.

Issues: The primary advantage to the public is updated guidelines for practitioners regarding prescription of opioids and buprenorphine. There are no disadvantages to the public. There are no primary advantages or disadvantages to the agency or the Commonwealth.

Department of Planning and Budget Economic Impact Analysis:

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia and Executive Order 19. The analysis presented represents DPB's best estimate of the potential economic impacts as of the date of this analysis.[1]

Summary of the Proposed Amendments to Regulation. The Board of Medicine (board) proposes to update these regulations to incorporate the latest Clinical Practice Guideline for Prescribing Opioids for Pain issued by the Centers for Disease Control and Prevention (CDC); several other discretionary changes based on the feedback and information received by the board; and editorial changes to improve clarity and remove obsolete references.

Background. These regulations govern prescribing of opioids and buprenorphine for pain by practitioners. Prescribing of these controlled substances was significantly amended in 2018 pursuant to a mandate by the General Assembly.[2] According to the Department of Health Professions (DHP), medical research and CDC guidelines surrounding opioid and buprenorphine prescribing have changed since that time, and the CDC issued new guidelines in late 2022.[3] The proposed action would mainly incorporate the revised guidelines but also make other discretionary changes based on the feedback and information received by the board, as well as editorial changes to improve clarity and remove obsolete references.

Estimated Benefits and Costs. The descriptions, rationales, and anticipated effects of the proposed changes are provided

below. Changes that are prompted by the new CDC guidelines are indicated as "CDC," while other changes (those not prompted by the CDC guidelines) are indicated as "non-CDC."

Allow the use of other opioid reversal agents in addition to Naloxone if they are approved by the Federal Drug Administration (FDA) (non-CDC). According to the board, this change is in response to the expected approval by FDA of opioid reversal agents (also known as antagonists) other than naloxone, which should soon be available to practitioners and the public. This change would still allow naloxone to be used but would also allow use of new opioid reversal agents as they become available. This change would benefit the makers of the new opioid reversal agents as they would have immediate access to the Virginia market under this change. Conversely, however, the incumbent maker of naloxone, currently a de facto monopoly in Virginia, would no longer be sheltered from competition by this regulation. This would benefit consumers because a monopoly can command higher prices at the expense of consumers by controlling supply. Additionally, the practitioner ability to prescribe other opioid reversal agents if indicated would be possible and patients would have immediate access to any such new drugs. In essence, this change would remove a barrier to entry into the Virginia's market for opioid reversal agents. Several changes would remove or revise the limits on opioid-related drugs and expand the use of buprenorphine. One change in this category would increase the seven-day opioid prescription supply limit to 14 days for acute and subacute pain (CDC) and remove the limitation that practitioners must follow the manufacturer's directions for use (non-CDC). The board reports that the seven-day limitation is too restrictive in practice, and that the use of opioids for off-label uses may not need to be, and sometimes should not be, in accordance with manufacturer directions. Practitioners and patients would likely benefit from this change in terms of a decrease in the need to write prescriptions and the associated trips to the pharmacy, and perhaps fewer doctor visits as well. Practitioners and patients would likely also benefit from the ability to diverge from manufacturer directions when needed. Another change would remove the daily limits on buprenorphine, which are currently eight milligrams when starting therapy and 24 milligrams after the initial stages of therapy (CDC). This change is intended to allow practitioners to make clinical decisions based on the patient that presents before them rather than be limited to a set dosage amount for initial and ongoing therapy. Like the previous change, this would provide more flexibility to the practitioners when needed, and patients who need a higher dosage of buprenorphine would also be accommodated. A third set of changes would also allow buprenorphine treatment of a patient who has psychiatric comorbidities and is not stable (non-CDC). The board determined that excluding these patients from buprenorphine treatment was unnecessarily limiting. Many patients who need treatment for opioid use disorder may present with psychiatric comorbidities, but those comorbidities are resolved with successful treatment for opioid use disorder. In addition, according to the board, psychiatric comorbidities can be exacerbated by opioid use disorder, in which case it is proper to initiate treatment for both conditions simultaneously. With this change, practitioners would have buprenorphine treatment as an option for patients with psychiatric comorbidities. Thus, both practitioners and affected patients are likely to benefit from this change.

Several changes would provide some administrative relief to practitioners. The changes in this group would reduce the administrative burden on practitioners as the documentation requirements would be lessened and specific action would no longer be required in certain instances. One of these changes would remove the requirement that providers document the rationale for prescribing doses between 16 and 24 milligrams of buprenorphine per day (CDC). Currently, a practitioner may prescribe up to 24 milligrams per day, but when the dosage is over 16 milligrams certain documentation of the rationale is required. This change is a direct result of removing the daily limits on buprenorphine, as discussed. Another change would no longer require a practitioner to document absence of any indicators for medication misuse or diversion and subsequently take appropriate action when misuse or diversion is indicated (non-CDC). Currently, practitioners are required to record and take appropriate action not only when indicators of misuse or diversion are present, but also when they are absent. Under this change, practitioners would be required to document and take appropriate action only when indicators are present and take appropriate action as part of the standard of care. The board rationale is that in other disciplines of medicine, practitioners are not required to document the absence of symptoms, and it is viewed as unnecessarily burdensome and stigmatizing to include the requirement in these regulations. The regulation would also be amended to remove the requirement that a prescriber "take appropriate action" upon documenting the presence of indicators of medication misuse or diversion. This requirement placed practitioners in a difficult position when working with vulnerable populations, and the board states that it is additionally difficult to enforce. The proposal would also change the requirement that a practitioner "assure that [relapse prevention strategies] are addressed by" a mental health service provider to "document referral to" a mental health services provider (CDC). The board believes that practitioners have no way to "assure" strategies are addressed by another health professional. Documentation of a referral to a mental health service provider is a reasonable requirement that is attainable for prescribers. Additionally, the regulatory advisory panel and the board felt that the limitation of a referral to only certain mental health providers was unnecessarily limiting. This is particularly true in the current environment, in which it is difficult to obtain appointments with any mental health practitioner. Several proposed changes would add new requirements or limit existing options. One such change would newly require the practitioner to taper an opioid if the treatment plan includes opioid tapering (non-CDC). This change requires that no opioid patient should have their treatment stopped

without the use of a tapering plan and documentation of extenuating circumstances. The board states that this is a direct result of complaints and communications it has received regarding practitioners who stop opioid treatment without tapering, which results in severe consequences for patients. The board does, however, recognize that extenuating circumstances may exist, such as if the practitioner receives evidence in the form of drug tests that indicate the patient is not taking the drugs as prescribed. In that example, the patient may be providing drugs to third parties or selling the medication, and continuing to provide prescription medication under such conditions would be inadvisable. Accordingly, tapering would not be required if extenuating circumstances exist and are documented. This change would help spare patients from severe withdrawal symptoms when appropriate, while balancing the need to address drug diversion. Practitioners would also be required to take specific steps to address potential misuse (i.e., using the lowest effective dose, scheduling frequent office visits, performing pill counts, and checking the Prescription Monitoring Program) to reduce chances of buprenorphine misuse, in addition to diversion (non-CDC). Currently, practitioners are required to take certain steps to reduce the chances of diversion, and the proposal would also require that those steps be taken in order to reduce the chances of misuse. According to the board, this change is intended to utilize the tools used to prevent diversion to also prevent misuse. This change is expected to help prevent misuse and benefit patients. Another change in this group would require practitioners to include liver function tests if clinically indicated when performing and documenting an assessment of the patient (non-CDC). The board proposes this change because it feels that liver function tests are an important component of assessing the risk of medication assisted treatment for any practitioner. Under this change, patients will be screened for liver function, thereby increasing the ability to diagnose liver problems and address patient safety and health when clinically indicated. However, any such additional tests would also add to the cost of treatment, which some patients may be responsible for, depending on the extent and nature of their insurance coverage. An additional change would remove the allowance that pregnant women may be treated with the buprenorphine mono product (CDC). According to the board, the latest CDC guidelines state that buprenorphine or methadone is the preferred treatment for pregnant women, not the buprenorphine mono-product. Therefore, this limitation and reference would be deleted. The board also notes that if a mother needs an exemption to take the mono-product, it can still be prescribed under the existing 3.0% rule, and that this change would improve patient safety.

Significant clarifying changes (non-CDC). The board also proposes to make several clarifying changes. First, to be consistent with CDC guidelines, the definition of "acute pain" would be revised and a definition for "subacute pain" would be added. Also, certain changes in descriptions of categories would be made for consistency with CDC guidelines and current terminology. The board states that changes in descriptions of type of pain, such as acute or subacute, do not affect practitioners since they can already prescribe for these categories. So, for example, the changes do not newly "allow" opioid prescriptions for subacute pain, because practitioners can already prescribe for any pain by virtue of having a license. Additionally, patients can already receive opioids for any type of pain. Thus, there would be no change in practice. Other clarifying changes would remove obsolete references to the SAMHSA (federal Substance Abuse and Mental Health Services Administration) waiver, known as "X-waivers," to prescribe buprenorphine, as that waiver is no longer issued by SAMHSA. Lastly, the board would add language stating that DMAS (Department of Medical Assistance Services) members should not pay for services involving prescription of an opioid for pain management related to opioid use disorder. This change incorporates the 2018 DMAS rule[4] addressing cases where some members have been asked by providers for cash or other items of monetary value in exchange for Medicaid-covered substance use disorder services.

Businesses and Other Entities Affected. The proposed amendments mainly affect individual practitioners that prescribe opioids and buprenorphine as part of pain management, opioid use disorder treatment, or surgery, as well as their patients. DHP has no data regarding the number of practitioners that prescribe opioids for these purposes. As of March 31, 2023, DHP reported a total of 53,127 prescribers under the board (42,132 medical doctors, 4,941 doctors of osteopathy, and 6,054 physician assistants). The board believes practitioners affected by the regulatory amendments would likely be a minority of those numbers. No practitioners or patients appear to be disproportionately affected.

The Code of Virginia requires the DPB to assess whether an adverse impact may result from the proposed regulation.[5] An adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined. As noted, all but one of the changes (i.e., the cost of newly required liver function screening) are expected to benefit patients based on the rationales provided or explained by the board. The cost of liver screening does not appear to outweigh the benefits to patients. Similarly, the new administrative requirements to prescribers do not appear to outweigh the benefits to them from many other changes. Thus, an adverse impact on patients or prescribers is not indicated.

However, the proposed changes would replace a reference to naloxone by name and would instead use generic "FDA-approved opioid reversal agents." This change would expose the maker of naloxone to competition from new and upcoming substitute drugs. Thus, an adverse impact on the incumbent maker of naloxone is indicated.

Small Businesses[6] Affected.[7] The proposed changes do not appear to adversely affect small businesses.

Localities[8] Affected.[9] The proposed amendments neither introduce costs for localities nor disproportionately affect them.

Projected Impact on Employment. The proposed amendments do not appear to directly affect total employment.

Effects on the Use and Value of Private Property. As mentioned, one of the proposed amendments would eliminate language protecting the maker of naloxone from competition when and if other substitute drugs are approved by the FDA. Thus, the asset value of that incumbent company may be negatively affected when that occurs. No other significant effect on the use and value of private property nor on real estate development costs is expected.

[1] Section 2.2-4007.04 of the Code of Virginia requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

[2] https://townhall.virginia.gov/l/ViewStage.cfm?stageid=8216.

[3] https://www.cdc.gov/mmwr/volumes/71/rr/rr7103a1.htm.

[4] https://www.dmas.virginia.gov/media/1332/virginia-medicaid-providers-cannot-charge-cash-to-medicaid-enrolled-members-for-covered-substance-use-disorder-treatment.pdf.

[5] Pursuant to § 2.2-4007.04 D: In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance. Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation.

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

[7] If the proposed regulatory action may have an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to § 2.2-4007.1 of the Code of Virginia, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

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

[9] Section 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

Agency Response to Economic Impact Analysis: The Board of Medicine concurs with the economic impact analysis prepared by the Department of Planning and Budget.

Summary:

*The amendments reflect changes in medical research and Centers for Disease Control and Prevention guidelines surrounding opioid and buprenorphine prescribing, including (i) replacing "naloxone" with "other federal Food and Drug Administration-approved opioid reversal agents"; (ii) replacing "addiction" with "opioid use disorder"; (iii) updating prescribing guidelines based on patient population or type of pain treated; (iv) clarifying tapering; (v) adding subacute pain as a pain management category along with acute and chronic; (vi) removing references to the "SAMHSA waiver" to prescribe buprenorphine, as that is no longer issued by the federal Substance Abuse and Mental Health Services Administration or required for buprenorphine prescribing; (vii) clarifying use of telemedicine for prescription of opioids; and (viii) increasing the recommended quantity for initial prescription of opioids.*

**18VAC85-21-20. Definitions.**

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

"Acute pain" means pain ~~that occurs within the normal course of a disease or condition or as the result of surgery for which controlled substances may be prescribed for no more than three months~~ of any origin that has existed less than one month.

"Board" means the Virginia Board of Medicine.

"Chronic pain" means nonmalignant pain that goes beyond the normal course of a disease or condition for which controlled substances may be prescribed for a period greater than three months.

"Controlled substance" means drugs listed in The Drug Control Act (§ 54.1-3400 et seq. of the Code of Virginia) in Schedules II through IV.

"DMAS" means the Virginia Department of Medical Assistance Services.

"FDA" means the U.S. Food and Drug Administration.

"Induction phase" means the initial seven to 14 days of treatment with buprenorphine.

"MME" means morphine milligram equivalent.

"Prescription Monitoring Program" means the electronic system within the Department of Health Professions that monitors the dispensing of certain controlled substances.

~~"SAMHSA" means the federal Substance Abuse and Mental Health Services Administration.~~

"Subacute pain" means pain that has existed for one to three months.

**18VAC85-21-21. Electronic prescribing.**

A. ~~Beginning July 1, 2020, a~~ A prescription for a controlled substance that contains an opioid shall be issued as an electronic prescription consistent with § 54.1-3408.02 of the Code of Virginia, unless the prescription qualifies for an exemption as set forth in subsection C of § 54.1-3408.02.

B. Upon written request, the board may grant a one-time waiver of the requirement of subsection A of this section for a period not to exceed one year due to demonstrated economic hardship, technological limitations that are not reasonably within the control of the prescriber, or other exceptional circumstances demonstrated by the prescriber.

**18VAC85-21-23. Prohibition on payment from DMAS members.**

A. No practitioner shall request payment from a DMAS member for services involving the prescription of an opioid for pain management of opioid use disorder. The prohibition on payment shall not apply to the member's cost-sharing amounts set by DMAS.

B. All practitioners shall provide written notice to DMAS members that the services described in subsection A of this section will be covered by DMAS if medical necessity criteria are met.

Part II

Management of Acute Pain and Subacute Pain

**18VAC85-21-30. Evaluation of the acute pain or subacute pain patient.**

A. Nonpharmacologic and non-opioid treatment for pain shall be given consideration prior to treatment with opioids. If an opioid is considered necessary for the treatment of acute pain or subacute pain, the practitioner shall give a short-acting opioid in the lowest effective dose for the fewest possible days.

B. Prior to initiating treatment with a controlled substance containing an opioid for a complaint of acute pain or subacute pain, the prescriber shall perform a history and physical examination appropriate to the complaint, query the Prescription Monitoring Program as set forth in § 54.1-2522.1 of the Code of Virginia, and conduct an assessment of the patient's history and risk of substance misuse.

**18VAC85-21-40. Treatment of acute pain and subacute pain with opioids.**

A. Initiation of opioid treatment for patients with acute pain and subacute pain shall be with short-acting opioids.

1. A prescriber providing treatment for acute or subacute pain shall not prescribe a controlled substance containing an opioid in a quantity that exceeds a ~~seven-day~~ 14-day supply ~~as determined by the manufacturer's directions for use~~, unless extenuating circumstances are clearly documented in the medical record. ~~This shall also apply to prescriptions of a controlled substance containing an opioid upon discharge from an emergency department.~~

2. An opioid prescribed as part of treatment for a surgical procedure shall be for no more than 14 consecutive days ~~in accordance with manufacturer's direction~~ and within the immediate perioperative period, unless extenuating circumstances are clearly documented in the medical record.

B. Initiation of opioid treatment for all patients shall include the following:

1. The practitioner shall carefully consider and document in the medical record the reasons to exceed 50 MME/day.

2. Prior to exceeding 120 MME/day, the practitioner shall document in the medical record the reasonable justification for such doses or refer to or consult with a pain management specialist.

3. ~~Naloxone~~ An FDA-approved opioid reversal agent shall be prescribed for any patient when risk factors of prior overdose, substance misuse, doses in excess of 120 MME/day, or concomitant benzodiazepine are present.

C. Due to a higher risk of fatal overdose when opioids are prescribed with benzodiazepines, sedative hypnotics, carisoprodol, and tramadol (an atypical opioid), the prescriber shall only co-prescribe these substances when there are extenuating circumstances and shall document in the medical record a tapering plan to achieve the lowest possible effective doses if these medications are prescribed.

~~D. Buprenorphine is not indicated for acute pain in the outpatient setting, except when a prescriber who has obtained a SAMHSA waiver is treating pain in a patient whose primary diagnosis is the disease of addiction.~~

**18VAC85-21-60. Evaluation of the chronic pain patient.**

A. Prior to initiating management or continuing management of chronic pain with a controlled substance containing an opioid, a medical history and physical examination, to include a mental status examination, shall be performed and documented in the medical record, including:

1. The nature and intensity of the pain;

2. Current and past treatments for pain;

3. Underlying or coexisting diseases or conditions;

4. The effect of the pain on physical and psychological function, quality of life, and activities of daily living;

5. Psychiatric~~, addiction,~~ and substance use disorder or misuse history of the patient and any family history of ~~addiction or~~ substance use disorder or misuse;

6. A urine drug screen or serum medication level;

7. A query of the Prescription Monitoring Program as set forth in § 54.1-2522.1 of the Code of Virginia;

8. An assessment of the patient's history and risk of substance misuse; and

9. A request for prior applicable records.

B. Prior to initiating opioid treatment for chronic pain, the practitioner shall discuss with the patient the known risks and benefits of opioid therapy and the responsibilities of the patient during treatment to include securely storing the drug and properly disposing of any unwanted or unused drugs. The practitioner shall also discuss with the patient an exit strategy for the discontinuation of opioids in the event they are not effective.

**18VAC85-21-70. Treatment of chronic pain with opioids.**

A. Nonpharmacologic and non-opioid treatment for pain shall be given consideration prior to treatment with opioids.

B. In initiating and treating with an opioid, the practitioner shall:

1. Carefully consider and document in the medical record the reasons to exceed 50 MME per day;

2. Prior to exceeding 120 MME per day, the practitioner shall document in the medical record the reasonable justification for such doses or refer to or consult with a pain management specialist;

3. Prescribe ~~naloxone~~ an FDA-approved opioid reversal agent for any patient when risk factors of prior overdose, substance misuse, doses in excess of 120 MME per day, or concomitant benzodiazepine are present; and

4. Document the rationale to continue opioid therapy every three months.

C. Buprenorphine mono-product in tablet form shall not be prescribed for chronic pain.

D. Due to a higher risk of fatal overdose when opioids, including buprenorphine, are given with other opioids, benzodiazepines, sedative hypnotics, carisoprodol, and tramadol (an atypical opioid), the prescriber shall only co-prescribe these substances when there are extenuating circumstances and shall document in the medical record a tapering plan to achieve the lowest possible effective doses of these medications if prescribed.

E. The practitioner (i) shall regularly evaluate the patient for opioid use disorder and (ii) shall initiate specific treatment for opioid use disorder, consult with an appropriate health care provider, or refer the patient for evaluation and treatment if indicated.

**18VAC85-21-80. Treatment plan for chronic pain.**

A. The medical record shall include a treatment plan that states measures to be used to determine progress in treatment, including pain relief and improved physical and psychosocial function, quality of life, and daily activities.

B. The treatment plan shall include further diagnostic evaluations and other treatment modalities or rehabilitation that may be necessary depending on the etiology of the pain and the extent to which the pain is associated with physical and psychosocial impairment.

C. The prescriber shall document in the medical record the presence ~~or absence~~ of any indicators for medication misuse or diversion ~~and shall take appropriate action~~.

**18VAC85-21-100. Opioid therapy for chronic pain.**

A. The practitioner shall review the course of pain treatment and any new information about the etiology of the pain and the patient's state of health at least every three months.

B. Continuation of treatment with opioids shall be supported by documentation of continued benefit from such prescribing. If the patient's progress is unsatisfactory, the practitioner shall assess the appropriateness of continued use of the current treatment plan and consider the use of other therapeutic modalities.

C. If the treatment plan includes opioid tapering, the taper rate shall be individualized based on the patient's clinical situation. A practitioner should not abruptly stop opioid treatment without tapering unless the prescriber documents extenuating circumstances.

D. The practitioner shall check the Prescription Monitoring Program at least every three months after the initiation of treatment.

~~D.~~ E. The practitioner shall order and review a urine drug screen or serum medication levels at the initiation of chronic pain management and thereafter randomly at the discretion of the practitioner but at least once a year.

~~E.~~ F. The practitioner ~~(i)~~ shall (i) regularly evaluate the patient for opioid use disorder and (ii) ~~shall~~ initiate specific treatment for opioid use disorder, consult with an appropriate health care provider, or refer the patient for evaluation for treatment if indicated.

Part IV

Prescribing of Buprenorphine for ~~Addiction Treatment~~ Opioid Use Disorder

**18VAC85-21-130. General provisions pertaining to prescribing of buprenorphine for ~~addiction treatment~~ opioid use disorder.**

~~A. Practitioners engaged in office-based opioid addiction treatment with buprenorphine shall have obtained a SAMHSA waiver and the appropriate U.S. Drug Enforcement Administration registration.~~

~~B.~~ A. Practitioners shall abide by all federal and state laws and regulations governing the prescribing of buprenorphine for the treatment of opioid use disorder.

~~C.~~ B. Physician assistants ~~and nurse practitioners who have obtained a SAMHSA waiver~~ shall ~~only~~ prescribe buprenorphine for opioid ~~addiction~~ use disorder pursuant to a practice agreement with a ~~waivered~~ patient care team doctor of medicine or doctor of osteopathic medicine.

~~D.~~ C. Practitioners engaged in medication-assisted treatment shall either provide counseling in their practice or refer the patient to a mental health service provider, as defined in § 54.1-2400.1 of the Code of Virginia, who has the education and experience to provide substance misuse counseling. The practitioner shall document provision of counseling or referral in the medical record.

**18VAC85-21-140. Patient assessment and treatment planning for ~~addiction treatment~~ opioid use disorder.**

A. A practitioner shall perform and document an assessment that includes a comprehensive medical and psychiatric history, substance misuse history, family history and psychosocial supports, appropriate physical examination, urine drug screen, pregnancy test for women of childbearing age and ability, a check of the Prescription Monitoring Program, and, when clinically indicated, infectious disease testing for human immunodeficiency virus, hepatitis B, hepatitis C, ~~and~~ tuberculosis, and liver function tests.

B. The treatment plan shall include the practitioner's rationale for selecting ~~medication-assisted treatment~~ medications for opioid use disorder, patient education, written informed consent, ~~how counseling will be accomplished~~ referral for counseling, and a signed treatment agreement that outlines the responsibilities of the patient and the prescriber.

**18VAC85-21-150. Treatment with buprenorphine for ~~addiction~~ opioid use disorder.**

A. Buprenorphine without naloxone (buprenorphine mono-product) shall not be prescribed except:

1. When a patient is pregnant;

2. When converting a patient from methadone or buprenorphine mono-product to buprenorphine containing naloxone for a period not to exceed seven days;

3. In formulations other than tablet form for indications approved by the FDA; or

4. For patients who have a demonstrated intolerance to naloxone; such prescriptions for the mono-product shall not exceed 3.0% of the total prescriptions for buprenorphine written by the prescriber, and the exception shall be clearly documented in the patient's medical record.

B. Buprenorphine mono-product tablets may be administered directly to patients in federally licensed opioid treatment programs. With the exception of those conditions listed in subsection A of this section, only the buprenorphine product containing naloxone shall be prescribed or dispensed for use off site from the program.

C. The evidence for the decision to use buprenorphine mono-product shall be fully documented in the medical record.

D. Due to a higher risk of fatal overdose when buprenorphine is prescribed with other opioids, benzodiazepines, sedative hypnotics, carisoprodol, and tramadol (an atypical opioid), the prescriber shall only co-prescribe these substances when there are extenuating circumstances and shall document in the medical record a tapering plan to achieve the lowest possible effective doses if these medications are prescribed.

E. Prior to starting ~~medication-assisted treatment~~ medications for opioid use disorder, the practitioner shall perform a check of the Prescription Monitoring Program.

F. During the induction phase, ~~except for medically indicated circumstances as documented in the medical record, patients should be started on no more than eight milligrams of buprenorphine per day~~ dosage shall be based on the patient's history and current usage, including exposure to high-potency opioids. The patient shall be ~~seen~~ evaluated by the prescriber at least once a week.

G. During the stabilization phase, the prescriber shall increase the daily dosage of buprenorphine in safe and effective increments to achieve the lowest dose that avoids intoxication, withdrawal, or significant drug craving.

H. Practitioners shall take steps to reduce the chances of buprenorphine diversion and misuse by using the lowest effective dose, appropriate frequency of office visits, pill counts, and checks of the Prescription Monitoring Program. The practitioner shall also require urine drug screens or serum medication levels at least every three months for the first year of treatment and at least every six months thereafter.

I. Documentation of the rationale for prescribed doses exceeding ~~16~~ 24 milligrams of buprenorphine per day shall be placed in the medical record. ~~Dosages exceeding 24 milligrams of buprenorphine per day shall not be prescribed.~~

J. The practitioner shall incorporate relapse prevention strategies into counseling or ~~assure that they are addressed by~~ document referral to a mental health service provider, as defined in § 54.1-2400.1 of the Code of Virginia~~, who has the education and experience to provide substance misuse counseling~~.

**18VAC85-21-160. Special populations in ~~addiction~~ treatment for opioid use disorder.**

~~A. Pregnant women may be treated with the buprenorphine mono-product, usually 16 milligrams per day or less.~~

~~B.~~ A. Patients younger than ~~the age of~~ 16 years of age shall not be prescribed buprenorphine for addiction treatment unless such treatment is approved by the FDA.

~~C.~~ B. The progress of patients with chronic pain shall be assessed by reduction of pain and functional objectives that can be identified, quantified, and independently verified.

~~D.~~ C. Practitioners shall (i) evaluate patients with medical comorbidities by history, physical exam, and appropriate laboratory studies and (ii) be aware of interactions of buprenorphine with other prescribed medications.

~~E. Practitioners shall not undertake buprenorphine treatment with a patient who has psychiatric comorbidities and is not stable. A patient who is determined by the prescriber to be psychiatrically unstable shall be referred for psychiatric evaluation and treatment prior to initiating medication-assisted treatment.~~

VA.R. Doc. No. R25-7609; Filed October 18, 2024, 8:34 a.m.

## Fast-Track Regulation

Title of Regulation: **18VAC85-140. Regulations Governing the Practice of Polysomnographic Technologists (amending 18VAC85-140-10, 18VAC85-140-40, 18VAC85-140-140, 18VAC85-140-150; repealing 18VAC85-140-20, 18VAC85-140-110, 18VAC85-140-170).**

Statutory Authority: §§ 54.1-2400 and 54.1-2957.15 of the Code of Virginia.

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: December 18, 2024.

Effective Date: January 2, 2025.

Agency Contact: Erin Barrett, Director of Legislative and Regulatory Affairs, Department of Health Professions, Perimeter Center, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 750-3912, FAX (804) 915-0382, or email erin.barrett@dhp.virginia.gov.

Basis: Regulations of the board are promulgated under the general authority of § 54.1-2400 of the Code of Virginia, which specifically states that the general powers and duties of health regulatory boards shall be to promulgate regulations.

Purpose: The elimination of redundant provisions and reduction of barriers to licensure generally protect the health, safety, and welfare of citizens by ensuring a sufficient workforce of licensed polysomnographic technologists with a reduction of barriers and reduction of redundant or outdated requirements.

Rationale for Using Fast-Track Rulemaking Process: These amendments are noncontroversial and appropriate for fast-track rulemaking because the changes delete or modify provisions that, as currently effective, are redundant of statutory requirements, are not related to the practice of polysomnographic technology, are outdated, or are otherwise ineffectual.

Substance: The changes delete redundant statutory provisions or useless directions in regulation, including provisions related to public participation regulations; restatements of statutory scope of practice; provisions related to handling of patient records that were intended to cover physicians; provisions related to the sale, closure, or transfer of a practice that are redundant of statutory provisions; revisions related to communications to patients; and solicitation or remuneration in exchange for referral.

Issues: There are no primary advantages or disadvantages to the public. There are no primary advantages or disadvantages to the agency or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia and Executive Order 19. The analysis presented represents DPB's best estimate of the potential economic impacts as of the date of this analysis.[1]

Summary of the Proposed Amendments to Regulation. As a result of a 2022 periodic review[2] and in response to Executive Order 19 (2022)[3] (EO 19), the Board of Medicine (board) is proposing editorial updates to this regulation governing polysomnographic technologists.[4]

Background. As a result of a 2022 periodic review and in order to reduce regulatory requirements as directed by EO 19, the board proposes to revise or delete language that duplicates statutory requirements, is not related to the practice of polysomnographic technology, is outdated, or is otherwise ineffectual. The affected regulatory language pertains to a reference to a public participation regulation; restatements of statutory scope of practice; provisions related to handling of patient records that were intended to cover physicians; provisions related to the sale, closure, or transfer of a practice that are redundant of statutory provisions; provisions related to communications to patients; and language regarding solicitation or remuneration in exchange for referral.

Estimated Benefits and Costs. The Department of Health Professions states, and it so appears, that the proposed changes to this regulation are editorial in nature and would not affect the practice of polysomnographic technology. For example, removing duplicative or redundant references, such as to the public participation regulation or provisions in the Code of Virginia that deal with the sale, closure, or transfer of a practice, would not make that regulation or the Code of Virginia any less enforceable or applicable. However, to the extent that polysomnographic technologists and other members of the public relied upon these regulatory provisions to better understand the requirements that pertain to this profession, some lack of clarity may result. Otherwise, no

significant economic impact is expected to result from the proposed changes.

Businesses and Other Entities Affected. As of March 2023, there were 497 individuals licensed as polysomnographic technologists. None of the licensed professionals would be disproportionately affected. The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.[5] An adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined. As noted, the proposed changes are editorial in nature and do not alter rights or obligations of polysomnographic technologists. Thus, no adverse impact is indicated.

Small Businesses[6] Affected.[7] The proposed amendments do not adversely affect small businesses.

Localities[8] Affected.[9] The proposed amendments apply throughout the Commonwealth and do not introduce costs for local governments.

Projected Impact on Employment. The proposed amendments do not affect total employment.

Effects on the Use and Value of Private Property. No effect on the use and value of private property or the real estate development costs is expected.

[1] Section 2.2-4007.04 of the Code of Virginia requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

[2] https://townhall.virginia.gov/l/ViewPReview.cfm?PRid=2155.

[3] https://townhall.virginia.gov/EO-19-Development-and-Review-of-State-Agency-Regulations.pdf.

[4] Polysomnographic technology means the process of analyzing, scoring, attended monitoring, and recording of physiologic data during sleep and wakefulness to assist in the clinical assessment and diagnosis of sleep/wake disorders and other disorders, syndromes, and dysfunctions that either are sleep related, manifest during sleep, or disrupt normal sleep/wake cycles and activities.

[5] Pursuant to § 2.2-4007.04 D: In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance. Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation.

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

[7] If the proposed regulatory action may have an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to § 2.2-4007.1 of the Code of Virginia, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

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

[9] Section 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

Agency Response to Economic Impact Analysis: The Board of Medicine concurs with the economic impact analysis prepared by the Department of Planning and Budget.

Summary:

*Pursuant to Executive Directive One (2022) and Executive Order 19 (2022), the amendments delete redundant statutory provisions or useless directions, including provisions related to (i) public participation regulations; (ii) restatements of statutory scope of practice and provisions related to handling of patient records that were intended to cover physicians; (iii) provisions related to the sale, closure, or transfer of a practice that are redundant of statutory provisions; (iv) provisions related to communications to patients; and (v) solicitation or remuneration in exchange for referral.*

**18VAC85-140-10. Definitions.**

A. The following word ~~and~~ or term when used in this chapter shall have the meaning ascribed to it in § 54.1-2900 of the Code of Virginia:

"Board"

B. The following words and terms when used in this chapter shall have the meanings ascribed to them in § 54.1-2957.15 of the Code of Virginia:

"Polysomnographic technology"

"Practice of polysomnographic technology"

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

"Active practice" means a minimum of 160 hours of professional practice as a polysomnographic technologist within the 24-month period immediately preceding application for reinstatement or reactivation of licensure. The active practice of polysomnographic technology may include supervisory, administrative, educational, or consultative activities or responsibilities for the delivery of such services.

~~"Advisory board" means the Advisory Board on Polysomnographic Technology to the Board of Medicine as specified in § 54.1-2957.14 of the Code of Virginia.~~

**18VAC85-140-20. ~~Public participation.~~ (Repealed.)**

~~A separate board regulation, 18VAC85-11, provides for involvement of the public in the development of all regulations of the Virginia Board of Medicine.~~

**18VAC85-140-40. Fees.**

The following fees are required:

1. The application fee, payable at the time the application is filed, shall be $130.

2. The biennial fee for renewal of active licensure shall be $135 and for renewal of inactive licensure shall be $70, payable in each odd-numbered year in the license holder's birth month. ~~For 2021, the renewal fee for an active license shall be $108, and the renewal fee for an inactive license shall be $54.~~

3. The additional fee for late renewal of licensure within one renewal cycle shall be $50.

4. The fee for reinstatement of a license that has lapsed for a period of two years or more shall be $180 and must be submitted with an application for licensure reinstatement.

5. The fee for reinstatement of a license pursuant to § 54.1-2408.2 of the Code of Virginia shall be $2,000.

6. The fee for a duplicate license shall be $5.00, and the fee for a duplicate wall certificate shall be $15.

7. The handling fee for a returned check or a dishonored credit card or debit card shall be $50.

8. The fee for a letter of good standing or verification to another jurisdiction shall be $10.

**18VAC85-140-110. ~~General responsibility.~~ (Repealed.)**

~~A polysomnographic technologist shall engage in the practice of polysomnographic technology, as defined in § 54.1-2957.15 of the Code of Virginia, upon receipt of written or verbal orders from a qualified practitioner and under qualified medical direction. The practice of polysomnographic technology may include supervisory, administrative, educational, or consultative activities or responsibilities for the delivery of such services.~~

**18VAC85-140-140. Patient records.**

A. A practitioner shall comply with the provisions of § 32.1-127.1:03 of the Code of Virginia related to the confidentiality and disclosure of patient records.

B. A practitioner shall provide patient records to another practitioner or to the patient or ~~his~~ the patient's personal representative in a timely manner in accordance with provisions of § 32.1-127.1:03 of the Code of Virginia.

C. A practitioner shall properly manage and keep timely, accurate, legible, and complete patient records.

D. A practitioner who is employed by a health care institution or other entity in which the individual practitioner does not own or maintain his own records shall maintain patient records in accordance with the policies and procedures of the employing entity.

E. A practitioner who is self-employed or employed by an entity in which the individual practitioner owns and is responsible for patient records shall:

1. Maintain a patient record for a minimum of six years following the last patient encounter with the following exceptions:

a. Records of a minor child, including immunizations, shall be maintained until the child reaches ~~the age of~~ 18 years of age or becomes emancipated, with a minimum time for record retention of six years from the last patient encounter regardless of the age of the child;

b. Records that have previously been transferred to another practitioner or health care provider or provided to the patient or ~~his~~ the patient's personal representative; or

c. Records that are required by contractual obligation or federal law may need to be maintained for a longer period of time.

2. Post information or in some manner inform all patients concerning the time frame for record retention and destruction. Patient records shall only be destroyed in a manner that protects patient confidentiality, such as by incineration or shredding.

~~3. When closing, selling, or relocating his practice, meet the requirements of § 54.1-2405 of the Code of Virginia for giving notice that copies of records can be sent to any like-regulated provider of the patient's choice or provided to the patient.~~

**18VAC85-140-150. Practitioner-patient communication~~; termination of relationship~~.**

~~A. Communication with patients.~~

~~1.~~ Except as provided in § 32.1-127.1:03 F of the Code of Virginia, a practitioner shall accurately present information to a patient or ~~his~~ a patient's legally authorized representative in understandable terms and encourage participation in decisions regarding the patient's care.

~~2. A practitioner shall not deliberately make a false or misleading statement regarding the practitioner's skill or the efficacy or value of a medication, treatment, or procedure provided or directed by the practitioner in the treatment of any disease or condition.~~

~~3. Before an invasive procedure is performed, informed consent shall be obtained from the patient in accordance with the policies of the health care entity. Practitioners shall inform patients of the risks, benefits, and alternatives of the recommended procedure that a reasonably prudent~~

~~practitioner practicing polysomnographic technology in Virginia would tell a patient.~~

~~a. In the instance of a minor or a patient who is incapable of making an informed decision on his own behalf or is incapable of communicating such a decision due to a physical or mental disorder, the legally authorized person available to give consent shall be informed and the consent documented.~~

~~b. An exception to the requirement for consent prior to performance of an invasive procedure may be made in an emergency situation when a delay in obtaining consent would likely result in imminent harm to the patient.~~

~~c. For the purposes of this provision, "invasive procedure" means any diagnostic or therapeutic procedure performed on a patient that is not part of routine, general care and for which the usual practice within the health care entity is to document specific informed consent from the patient or surrogate decision maker prior to proceeding.~~

~~4. Practitioners shall adhere to requirements of § 32.1-162.18 of the Code of Virginia for obtaining informed consent from patients prior to involving them as subjects in human research with the exception of retrospective chart reviews.~~

~~B. Termination of the practitioner-patient relationship.~~

~~1. The practitioner or the patient may terminate the relationship. In either case, the practitioner shall make the patient record available, except in situations where denial of access is allowed by law.~~

~~2. A practitioner shall not terminate the relationship or make his services unavailable without documented notice to the patient that allows for a reasonable time to obtain the services of another practitioner.~~

**18VAC85-140-170. ~~Solicitation or remuneration in exchange for referral.~~ (Repealed.)**

~~A practitioner shall not knowingly and willfully solicit or receive any remuneration, directly or indirectly, in return for referring an individual to a facility or institution as defined in § 37.2-100 of the Code of Virginia or hospital as defined in § 32.1-123 of the Code of Virginia.~~

~~"Remuneration" means compensation, received in cash or in kind, but shall not include any payments, business arrangements, or payment practices allowed by 42 USC § 1320a-7b(b), as amended, or any regulations promulgated thereto.~~

VA.R. Doc. No. R25-7386; Filed October 18, 2024, 8:03 a.m.

## Final Regulation

Title of Regulation: **18VAC85-160. Regulations Governing the Licensure of Surgical Assistants and Certification of Surgical Technologists (amending 18VAC85-160-40, 18VAC85-160-60; adding 18VAC85-160-65 through 18VAC85-160-130).**

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

Effective Date: December 18, 2024.

Agency Contact: Erin Barrett, Director of Legislative and Regulatory Affairs, Department of Health Professions, Perimeter Center, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 750-3912, FAX (804) 915-0382, or email erin.barrett@dhp.virginia.gov.

Summary:

*The amendments (i) add definitions; (ii) conform fees for licensure to other professions under the board; (iii) add requirements for continuing competency for surgical assistants licensed under a grandfathering provision; (iv) provide for an inactive license and for reactivation or reinstatement of a license; (v) provide for a restricted volunteer license or voluntary practice by out-of-state practitioners; and (vi) provide for renewal of certification of surgical technologists, including requirements for continuing education. Finally, the standards of practice are similar to those for other licensed professions under its jurisdiction and a code of ethics specific to surgical assistants.*

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

Part I

General Provisions

**18VAC85-160-40. Fees.**

A. The following fees have been established by the board:

1. The fee for licensure as a surgical assistant shall be $130 [ ~~or~~ and the fee for ] certification as a surgical technologist shall be $75.

2. The fee for renewal of licensure ~~or certification~~ as a surgical assistant shall be ~~$70~~ $135 and for certification as a surgical technologist, it shall be $70. Renewals shall be due in the birth month of the licensee or certificate holder in each even-numbered year. ~~For 2020, the renewal fee shall be $54.~~

3. The additional fee for processing a late renewal application within one renewal cycle shall be ~~$25~~ $50 for a surgical assistant and $25 for a surgical technologist.

4. The handling fee for a returned check or a dishonored credit card or debit card shall be $50.

5. The fees for inactive license renewal shall be $70 for a surgical assistant and $35 for inactive certification renewal for a surgical technologist.

6. The fee for reinstatement of a surgical assistant license that has been lapsed for two years or more shall be $180; for a surgical technologist certification, it shall be $90.

7. The fee for a letter of good standing or verification to another jurisdiction for a license shall be $10.

8. The fee for reinstatement of licensure as a surgical assistant pursuant to § 54.1-2408.2 of the Code of Virginia shall be $2,000.

B. Unless otherwise provided, fees established by the board are not refundable.

Part II

Requirements for Licensure or Certification

**18VAC85-160-60. Renewal of licensure for a surgical assistant.**

A. A surgical assistant who was licensed based on a credential as a surgical assistant or surgical first assistant issued by the National Board of Surgical Technology and Surgical Assisting or the National Commission for the Certification of Surgical Assistants or their successors shall attest that the credential is current at the time of renewal.

B. A surgical assistant who was licensed based on successful completion of a surgical assistant training program during the person's service as a member of any branch of the armed forces of the United States or based on practice as a surgical assistant in the Commonwealth at any time in the six months immediately prior to July 1, 2020, shall attest to completion of 38 hours of continuing education recognized by the National Surgical Assistant Association at the time of biennial renewal.

**18VAC85-160-65. Renewal of certification for a surgical technologist.**

A. A surgical technologist who was certified based on certification as a certified surgical technologist from the National Board of Surgical Technology and Surgical Assisting or its successor shall attest that the credential is current at the time of renewal.

B. A surgical technologist who was certified based on successful completion of a training program for surgical technology during the person's service as a member of any branch of the armed forces of the United States, or based on practice as a surgical technologist at any time in the six months prior to July 1, 2021, shall attest to completion of 30 hours of continuing education recognized by the Association of Surgical Technologists at the time of biennial renewal.

**18VAC85-160-70. Reinstatement or reactivation of surgical assistant licensure.**

A. A licensed surgical assistant who holds a current, unrestricted license in Virginia shall, upon a request on the renewal application and submission of the required fee, be issued an inactive license. The holder of an inactive license shall not be required to maintain hours of active practice or meet the continued competency requirements of 18VAC85-160-60 and shall not be entitled to perform any act requiring a license to practice surgical assisting in Virginia.

B. An inactive licensee may reactivate his license upon submission of the following:

1. An application as required by the board;

2. A payment of the difference between the current renewal fee for inactive licensure and the renewal fee for active licensure; and

3. Documentation of completed continued competency hours as required by 18VAC85-160-60.

C. A surgical assistant who allows his license to lapse for a period of two years or more and chooses to resume his practice shall submit a reinstatement application to the board and information on any practice and licensure or certification in other jurisdictions during the period in which the license was lapsed and shall pay the fee for reinstatement of licensure as prescribed in 18VAC85-160-40.

D. The board reserves the right to deny a request for reactivation or reinstatement to any licensee who has been determined to have committed an act in violation of § 54.1-2915 of the Code of Virginia or any provisions of this chapter.

E. A surgical assistant whose license has been revoked by the board and who wishes to be reinstated shall make a new application to the board and payment of the fee for reinstatement of his license as prescribed in 18VAC85-160-40 pursuant to § 54.1-2408.2 of the Code of Virginia.

Part III

Standards of Conduct

**18VAC85-160-80. Confidentiality.**

A practitioner shall not willfully or negligently breach the confidentiality between a practitioner and a patient. A breach of confidentiality that is required or permitted by applicable law or beyond the control of the practitioner shall not be considered negligent or willful.

**18VAC85-160-90. Patient records.**

A. Practitioners shall comply with the provisions of § 32.1-127.1:03 of the Code of Virginia related to the confidentiality and disclosure of patient records.

B. Practitioners shall provide patient records to another practitioner or to the patient or the patient's personal representative in a timely manner and in accordance with provisions of § 32.1-127.1:03 of the Code of Virginia.

C. Practitioners shall properly manage and keep timely, accurate, legible, and complete patient records.

D. Practitioners who are employed by a health care institution or other entity in which the individual practitioner does not own or maintain the practitioner's own records shall maintain patient records in accordance with the policies and procedures of the employing entity.

E. Practitioners who are self-employed or employed by an entity in which the individual practitioner does own and is responsible for patient records shall:

1. Maintain a patient record for a minimum of six years following the last patient encounter with the following exceptions:

a. Records of a minor child shall be maintained until the child reaches the age of 18 [ years ] or becomes emancipated, with a minimum time for record retention of six years from the last patient encounter regardless of the age of the child;

b. Records that have previously been transferred to another practitioner or health care provider or provided to the patient or the patient's personal representative; or

c. Records that are required by contractual obligation or federal law may need to be maintained for a longer period of time.

2. Post information or in some manner inform all patients concerning the timeframe for record retention and destruction. Patient records shall only be destroyed in a manner that protects patient confidentiality, such as by incineration or shredding.

F. When a practitioner is closing, selling, or relocating his practice, the practitioner shall meet the requirements of § 54.1-2405 of the Code of Virginia for giving notice that copies of records can be sent to any like-regulated provider of the patient's choice or provided to the patient.

**18VAC85-160-100. Communication with patients; termination of relationship.**

A. Communication with patients.

1. Except as provided in § 32.1-127.1:03 F of the Code of Virginia, a practitioner shall accurately present information to a patient or the patient's legally authorized representative in understandable terms and encourage participation in decisions regarding the patient's care.

2. A practitioner shall not deliberately make a false or misleading statement regarding the practitioner's skill or the efficacy or value of a treatment or procedure provided or directed by the practitioner in the treatment of any disease or condition.

3. Practitioners shall adhere to requirements of § 32.1-162.18 of the Code of Virginia for obtaining informed consent from patients prior to involving them as subjects in human research with the exception of retrospective chart reviews.

B. Termination of the [ ~~practitioner/patient~~ practitioner-patient ] relationship.

1. The practitioner or the patient may terminate the relationship. In either case, the practitioner shall make the patient record available, except in situations where denial of access is allowed by law.

2. A practitioner shall not terminate the relationship or make the practitioner's services unavailable without documented notice to the patient that allows for a reasonable time to obtain the services of another practitioner.

**18VAC85-160-110. Practitioner responsibility.**

A. A practitioner shall not:

1. Perform procedures or techniques that are outside the scope of his practice or for which the practitioner is not trained and individually competent;

2. Knowingly allow subordinates to jeopardize patient safety or provide patient care outside of the subordinate's scope of practice or the subordinate's area of responsibility. Practitioners shall delegate patient care only to subordinates who are properly trained and supervised;

3. Engage in an egregious pattern of disruptive behavior or interaction in a health care setting that interferes with patient care or could reasonably be expected to adversely impact the quality of care rendered to a patient; or

4. Exploit the practitioner-patient relationship for personal gain.

B. Advocating for patient safety or improvement in patient care within a health care entity shall not constitute disruptive behavior provided the practitioner does not engage in behavior prohibited in subdivision A 3 of this section.

**18VAC85-160-120. Sexual contact.**

A. For purposes of § 54.1-2915 A 12 and A 19 of the Code of Virginia and this section, sexual contact includes sexual behavior or verbal or physical behavior that:

1. May reasonably be interpreted as intended for the sexual arousal or gratification of the practitioner, the patient, or both; or

2. May reasonably be interpreted as romantic involvement with a patient regardless of whether such involvement occurs in the professional setting or outside of it.

B. Sexual contact with a patient.

1. The determination of when a person is a patient for purposes of § 54.1-2915 A 19 of the Code of Virginia is made on a case-by-case basis with consideration given to the nature, extent, and context of the professional relationship between the practitioner and the person. The fact that a person is not actively receiving treatment or professional services from a practitioner is not determinative of this issue. A person is presumed to remain a patient until the [ ~~patient-practioner~~ practitioner-patient ] relationship is terminated.

2. The consent to, initiation of, or participation in sexual behavior or involvement with a practitioner by a patient does not change the nature of the conduct nor negate the statutory prohibition.

C. Sexual contact between a practitioner and a former patient after termination of the practitioner-patient relationship may

still constitute unprofessional conduct if the sexual contact is a result of the exploitation of trust, knowledge, or influence of emotions derived from the professional relationship.

D. Sexual contact between a practitioner and a key third party shall constitute unprofessional conduct if the sexual contact is a result of the exploitation of trust, knowledge, or influence derived from the professional relationship or if the contact has had or is likely to have an adverse effect on patient care. For purposes of this section, key third party of a patient means spouse or partner, parent or child, guardian, or legal representative of the patient.

E. Sexual contact between a supervisor and a trainee shall constitute unprofessional conduct if the sexual contact is a result of the exploitation of trust, knowledge, or influence derived from the professional relationship or if the contact has had or is likely to have an adverse effect on patient care.

**18VAC85-160-130. Refusal to provide information.**

A practitioner shall not willfully refuse to provide information or records as requested or required by the board or its representative pursuant to an investigation or to the enforcement of a statute or regulation.

VA.R. Doc. No. R21-6696; Filed October 18, 2024, 8:35 a.m.

## Fast-Track Regulation

Title of Regulation: **18VAC85-160. Regulations Governing the Licensure of Surgical Assistants and Certification of Surgical Technologists (adding 18VAC85-160-75).**

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

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: December 18, 2024.

Effective Date: January 2, 2025.

Agency Contact: Erin Barrett, Director of Legislative and Regulatory Affairs, Department of Health Professions, Perimeter Center, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 750-3912, FAX (804) 915-0382, or email erin.barrett@dhp.virginia.gov.

Basis: Regulations of the board are promulgated under the general authority of § 54.1-2400 of the Code of Virginia, which specifically states that the general powers and duties of health regulatory boards shall be to promulgate regulations.

Purpose: The purpose of this action is to ease the burden on surgical technologists applying for reinstatement as a certified surgical technologist and to allow surgical technologists to elect inactive status, similar to licensed surgical assistants. Doing so protects the public health, safety, and welfare by ensuring surgical technologists have a method by which to reinstate a certification.

Rationale for Using Fast-Track Rulemaking Process: This action is appropriate for a fast-track rulemaking action because it is noncontroversial. There is unlikely to be any opposition to the inclusion of a standard pathway for reinstatement of surgical technologists.

Substance: The amendments add 18VAC85-160-75, which allows a surgical technologist to request inactive status at renewal. The new section establishes the procedure and requirements for a surgical technologist requesting reinstatement from inactive status or from disciplinary action that resulted in suspension or revocation.

Issues: The primary advantages to the public are the ability for surgical technologists to request inactive status of certification and to have a defined path to reinstatement. There are no disadvantages to the public. There are no primary advantages or disadvantages to the agency or the Commonwealth.

Department of Planning and Budget Economic Impact Analysis:

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia and Executive Order 19. The analysis presented represents DPB's best estimate of the potential economic impacts as of the date of this analysis.[1]

Summary of the Proposed Amendments to Regulation. The Board of Medicine (board) proposes to add new text pertaining to surgical technologists (STs) regarding (i) issuance of an inactive certificate, (ii) reactivation of a certificate, (iii) reinstatement of a certificate that has lapsed for two years or more, and (iv) reinstatement of a certificate that has been revoked.

Background. The current regulation does not include text on inactive certification, reactivating an inactive certificate, or reinstating lapsed or revoked certificates. The board proposes to add new text regarding these topics.

Inactive Certificates. An active, unrestricted certificate holder may be issued an inactive certificate upon submission of the following: (i) a renewal application and (ii) the required fee. The proposed regulation would also note that the "holder of an inactive certificate shall not be entitled to perform any act requiring a certification to practice surgical technology in Virginia."

Reactivating a Certificate. An inactive certificate holder may reactivate his certificate upon submission of the following: (i) an application as required by the board, (ii) a payment of the difference between the current renewal fee for inactive certification and the renewal fee for active certification, and (iii) documentation of completed continued competency hours as required by 18VAC85-160-65.

Lapsed Certificates. The holder of a certificate that has lapsed for two years or more can reinstate their certificate upon submission of the following: (i) a reinstatement application, (ii) information on any practice and licensure or certification in other jurisdictions during the period in which the certificate was lapsed, and (iii) the required fee.[2]

Revoked Certificates. For reinstating a certificate that has been revoked by the board, the proposal is that the ST shall (i) make a new application to the board and (ii) pay the fee for

reinstatement of the certificate as prescribed in 18VAC85-160-40[3] pursuant to § 54.1-2408.2 of the Code of Virginia.[4] The proposal also includes a statement that the board reserves the right to deny a request for reactivation or reinstatement to any certificate holder who has been determined to have committed an act in violation of § 54.1-2915 of the Code of Virginia[5] or any provisions of 18VAC85-160.

Estimated Benefits and Costs.

Lapsed Certificates. According to the Department of Health Professions (DHP), because the current regulation does not address lapsed certificates, an ST whose certificate has lapsed for two years or more and who wishes to resume practice must use the same process as an initial applicant. The application fee for initial certification is $75. Through a separate regulatory action, the board proposes to add a $90 reinstatement fee for a certificate that has lapsed for two years or more.[6] In conjunction with this action, the result is that the fee to be paid would be $15 more than under the regulation currently in effect. On the other hand, according to DHP, the time to process a reinstatement of a lapsed certificate would be significantly faster than processing a new application. If this time savings would allow, as seems likely, an ST to return to practice sooner, that would very likely be worth more than $15 to the applicant. According to the U.S. Bureau of Labor Statistics, the median hourly wage for STs in the Commonwealth is $23.15.

Revoked Certificates. As mentioned, the current regulation does not address reinstating revoked certificates. Section 54.1-2408.2 of the Code of Virginia states in part that the board may consider an application for reinstatement upon the payment of a fee prescribed by the board.[7] Further, that statute provides that the board shall conduct an investigation and review an application for reinstatement after revocation to determine whether there are causes for denial of the application. The burden of proof shall be on the applicant to show by clear and convincing evidence that the applicant is safe and competent to practice. Given the statutory directive to conduct an investigation, the cost for the board and DHP to address an application to reinstate a revoked certificate would likely be considerably more than the cost to reinstate a lapsed certificate. The current regulation does not state what fee the board would charge, but the separate regulatory action noted above would establish that fee as $2,000.[8] The proposal to state the process for reinstating a revoked certificate in the regulation does not appear to change current practice, and thus the added clarity would be beneficial for readers of the regulation.

Inactive Certificates. In both the current and proposed regulation, there is a late fee of $25 for paying for certification renewal as long as the fee is paid less than two years after it is due. For STs who plan to take a break from active practice for a period of two years to less than four years, the proposed inactive status may be beneficial because the total amount of fees paid would be less. The table below shows the total fees that would be paid for an ST who went into inactive status and applied for reactivation at different points in time, versus an ST who let their certificate lapse and applied for reinstatement at the same times.

| | 2 Years | 2.5 Years | 3 Years | 3.5 Years | 4 Years |
|---|---|---|---|---|---|
| Reactivate | $70 | $70 | $70 | $70 | $105 |
| Reinstate | $90 | $90 | $90 | $90 | $90 |

The ST who goes into inactive status pays $35 at the beginning, and the remainder when applying for reactivation. The ST who lets a certificate lapse pays nothing initially, and $90 when applying for reactivation. For those that discount future spending, it may be preferable to let the certificate lapse and pay nothing initially and then pay $90 in three years (for example), versus paying $35 initially and another $35 three years later.

Businesses and Other Entities Affected. The proposed amendments affect surgical technologists. According to DHP, surgical technologists typically practice in large hospital systems. As of June 1, 2022, there were 1,186 surgical technologists registered with the Commonwealth. The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.[9] An adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined. As discussed, the proposal does not appear to increase net cost or reduce net revenue. Thus, an adverse impact is not indicated.

Small Businesses[10] Affected.[11] The proposed amendments do not appear to adversely affect small businesses.

Localities[12] Affected.[13] The proposed amendments neither disproportionately affect any particular locality nor introduce costs for local governments.

Projected Impact on Employment. The proposed amendments do not appear to substantively affect total employment.

Effects on the Use and Value of Private Property. The proposed amendments do not appear substantively affect the use and value of private property. The proposal does not affect real estate development costs.

---

[1] Section 2.2-4007.04 of the Code of Virginia requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

[2] The fee (that is proposed in Action 5639 to be) prescribed in 18VAC85-160-40 is $90.

[3] The fee (that is proposed in Action 5639 to be) prescribed in 18VAC85-160-40 is $2,000.

[4] Section 54.1-2408.2 of the Code of Virginia states that in part that "the board may, after three years and upon the payment of a fee prescribed by the board, consider an application for reinstatement of a certificate, registration, permit, or license in the same manner as the original certificates, registrations, permits, or licenses are granted; however, if a license has been revoked pursuant to subdivision A 19 of § 54.1-2915, the board shall not consider an application for reinstatement until five years have passed since revocation. A board shall conduct an investigation and review an application for reinstatement after revocation to determine whether there are causes for denial of the application. The burden of proof shall be on the applicant to show by clear and convincing evidence that he is safe and competent to practice. § 54.1-2915 states in part that the board may "impose a monetary penalty or terms as it may designate".

[5] See https://law.lis.virginia.gov/vacode/54.1-2915/.

[6] This proposed fee is in Action 5639, which at the date of this report was at the final stage being reviewed by the Secretary of Health and Human Resources.

[7] See https://law.lis.virginia.gov/vacode/title54.1/chapter24/section54.1-2408.2/.

[8] This proposed fee is in Action 5639, which at the date of this report was at the final stage being reviewed by the Secretary of Health and Human Resources.

[9] Pursuant to § 2.2-4007.04 D: In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance. Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation.

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

[11] If the proposed regulatory action may have an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to § 2.2-4007.1 of the Code of Virginia, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

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

[13] Section 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

Agency Response to Economic Impact Analysis: The Board of Medicine concurs with the economic impact analysis prepared by the Department of Planning and Budget.

Summary:

*The amendments allow certified surgical technologists to (i) voluntarily request inactive status and (ii) reinstate a certification from inactive status or from suspension or revocation following disciplinary action.*

**18VAC85-160-75. Reinstatement or reactivation of surgical technologist certification.**

A. A certified surgical technologist who holds a current, unrestricted certificate in Virginia shall, upon a request on the renewal application and submission of the required fee, be issued an inactive certificate. The holder of an inactive certificate shall not be entitled to perform any act requiring a certification to practice surgical technology in Virginia.

B. An inactive certificate holder may reactivate a certificate upon submission of the following:

1. An application as required by the board;

2. A payment of the difference between the current renewal fee for inactive certification and the renewal fee for active certification; and

3. Documentation of completed continued competency hours as required by 18VAC85-160-65.

C. A surgical technologist who allows his certificate to lapse for a period of two years or more and chooses to resume practice shall submit a reinstatement application to the board and information on any practice and licensure or certification in other jurisdictions during the period in which the certificate was lapsed and shall pay the fee for reinstatement of certification as prescribed in 18VAC85-160-40.

D. The board reserves the right to deny a request for reactivation or reinstatement to any certificate holder who has been determined to have committed an act in violation of § 54.1-2915 of the Code of Virginia or any provisions of this chapter.

E. A surgical technologist whose certificate has been revoked by the board and who wishes to be reinstated shall make a new application to the board and payment of the fee for reinstatement of a certificate as prescribed in 18VAC85-160-40 pursuant to § 54.1-2408.2 of the Code of Virginia.

VA.R. Doc. No. R25-7236; Filed October 18, 2024, 8:17 a.m.

## BOARD OF PHARMACY

### Proposed Regulation

Title of Regulation: **18VAC110-20. Regulations Governing the Practice of Pharmacy (amending 18VAC110-20-110; adding 18VAC110-20-113).**

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

Public Hearing Information:

December 17, 2024 - 9:06 a.m. - Department of Health Professions, 9960 Mayland Drive, Suite 201, Board Room 4, Henrico, VA 23233.

Public Comment Deadline: January 17, 2025.

Agency Contact: Caroline Juran, RPh, Executive Director, Board of Pharmacy, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4456, FAX (804) 527-4472, or email caroline.juran@dhp.virginia.gov.

Basis: Regulations of the Board of Pharmacy are promulgated under the general authority of § 54.1-2400 of the Code of Virginia, which authorizes health regulatory boards to promulgate regulations that are reasonable and necessary to administer effectively the regulatory system. Section 54.1-3307 of the Code of Virginia requires the board to regulate the practice of pharmacy, including criteria for maintaining the integrity of, and public confidence in, the profession and improving the delivery of quality pharmaceutical services to the citizens of Virginia.

Purpose: The purpose of the amendments is to safeguard the health, safety, and welfare of patients by ensuring (i) safe working environments exist for pharmacists and pharmacy personnel, (ii) pharmacist authority and control over the practice of pharmacy is not usurped by the pharmacy permit holder, and (iii) proper breaks are provided for pharmacists while protecting patient safety.

Substance: In general, the substantive provisions (i) ensure that the decisions of the pharmacist are not overridden by the pharmacy permit holder, including staffing decisions and the decision of whether pharmacy staff can safely provide vaccines at a given time; (ii) ensure that pharmacy permit holders provide sufficient staffing levels to avoid interference with pharmacist ability to practice with reasonable competence and safety; (iii) ensure that a pharmacist and pharmacy personnel are provided with proper and functioning equipment; (iv) ensure pharmacists and pharmacy staff are not burdened with external factors that may inhibit the ability to provide services to the public; (v) ensure staff are properly trained to provide the services they are tasked with; (vi) ensure pharmacists are provided appropriate breaks while maintaining drug stock integrity and providing required consultation services to the public; (vii) ensure pharmacists are provided adequate time to perform professional duties; and (viii) provide a reporting mechanism for staffing concerns.

Issues: The primary advantage to the public is the provision of pharmacy services in a safe and efficient manner. There are no disadvantages to the public. There are no primary advantages or disadvantages to the agency or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia and Executive Order 19. The analysis presented represents DPB's best estimate of the potential economic impacts as of the date of this analysis.[1]

Summary of the Proposed Amendments to Regulation. Pursuant to Chapter 628 of the 2022 Acts of Assembly,[2] the Board of Pharmacy (board) proposes to make permanent an emergency regulation[3] related to work environment requirements for pharmacy personnel that protect the health, safety, and welfare of patients.

Background. Chapter 628 directed the board "to adopt regulations related to work environment requirements for pharmacy personnel that protect the health, safety, and welfare of patients." The mandate further specified that "such regulations shall include provisions (i) addressing sufficient pharmacy staffing to prevent fatigue, distraction, or other conditions that interfere with a pharmacist's ability to practice with competence and safety; (ii) stating standards for uninterrupted rest periods and meal breaks for pharmacy personnel; (iii) stating standards that ensure adequate time for pharmacists to complete professional duties and responsibilities, including drug utilization reviews, immunization administration, patient counseling, and verification of prescription accuracy; and (iv) limiting external factors such as productivity or production quotas to the extent that such factors interfere with the ability to provide appropriate professional services to the public." The board promulgated emergency regulation effective September 29, 2023. This action would make the emergency regulation permanent. Relatedly, the board notes that although the General Assembly, rather than the board, determined that this legislation required emergency regulations, the emergency is likely related to concern for the safety of pharmacists, pharmacy staff, and patients given the current health care climate and increased workloads for pharmacists and other pharmacy personnel.

Estimated Benefits and Costs. The potential for conflict between two parties with different incentives is a common issue in various business settings. This issue is known as the "principal-agent problem" in economics. Applied to this case, the problem may arise when the principle (pharmacy owner), who seeks to maximize profit and ensure the smooth operation of the pharmacy, and the agent (pharmacist in charge or PIC), who is responsible for managing day-to-day operations may have different priorities or incentives. This understanding is consistent with the board's statement that the purpose of the proposed action in part is "ensuring pharmacist authority and control over the practice of pharmacy is not usurped by the pharmacy permit holder." Furthermore, the mandate's preferred mechanism appears to be to address such potential conflicts by clearly outlining the expectations and responsibilities of the owner and the PIC, regarding specific issues listed in items (i) through (iv), in the regulation. Generally speaking, the proposed regulatory language appears to be closely aligned with the mandate. Notably, the board proposes a form titled "Staffing Requests or Concerns"[4] to be used by the PIC to communicate such issues to the pharmacy permit holder. The owner must maintain these forms on record for possible inspections. Thus, the proposed form is expected to help facilitate and ensure compliance and help improve working conditions for pharmacists and pharmacy technicians. The board believes that pharmacies may need to hire additional

staff if pharmacies are inadequately staffed, which would add to compliance costs, although such costs would be related to complying with basic standards of care. Additionally, the board expects a small administrative cost for pharmacies to keep staffing records on board-provided forms, but expects these costs to be negligible especially if an electronic version of the form is used. Although the mandate may introduce some costs for pharmacy owners and support the provision of pharmacy services in a safe and efficient manner, given the requirements in the mandate and the presence of the emergency regulation, this action's impact mainly consists of updating the Virginia Administrative Code (VAC) permanently to reflect what has already been implemented in practice since September 29, 2023.

Businesses and Other Entities Affected. The proposed amendments would affect owners of pharmacies, including chain pharmacies, as well as pharmacists and pharmacy technicians. The board has no estimate of the number of corporations or other entities that may be affected, since many hold more than one pharmacy permit. However, as of September 30, 2023, there were 1,751 permitted pharmacies in the Commonwealth. As of the same date, there were 16,606 licensed pharmacists and 13,310 registered pharmacy technicians.[5] No affected entity appears to be disproportionately affected. The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.[6] An adverse impact is indicated if there is any increase in net cost or reduction in net benefit for any entity, even if the benefits exceed the costs for all entities combined.[7] As noted, while the legislation may have created some costs for the pharmacy owners and benefits for the pharmacists, pharmacy technicians, and patients, the proposed action's main impact is to permanently incorporate the rules that are already in effect into VAC. Thus, an adverse impact is not indicated.

Small Businesses[8] Affected.[9] According to the board, there are fewer than 300 independent pharmacies in the Commonwealth that are most likely to be small businesses. However, the proposed incorporation of the existing rules permanently into VAC does not adversely affect small businesses.

Localities[10] Affected.[11] The proposed action does not create costs or other effects for localities.

Projected Impact on Employment. The proposed action by itself does not appear to affect employment.

Effects on the Use and Value of Private Property. No effects on the use and value of private property nor on real estate costs is expected on account of this regulatory action by itself.

[1] Section 2.2-4007.04 of the Code of Virginia requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

[2] https://lis.virginia.gov/cgi-bin/legp604.exe?221+ful+CHAP0628.

[3] https://townhall.virginia.gov/l/ViewStage.cfm?stageid=9792.

[4] https://ris.dls.virginia.gov/uploads/18VAC110/forms/Staffing Requests or Concerns Form (eff. 9-2023)-20230929153548.pdf.

[5] Data source: Department of Health Professions.

[6] Pursuant to § 2.2-4007.04 D: In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance. Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation.

[7] Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation. As a result, DPB has adopted a definition of adverse impact that assesses changes in net costs and benefits for each affected Virginia entity that directly results from discretionary changes to the regulation.

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

[9] If the proposed regulatory action may have an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to § 2.2-4007.1 of the Code of Virginia, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

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

[11] Section 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

Agency Response to Economic Impact Analysis: The Board of Pharmacy concurs with the economic impact analysis prepared by the Department of Planning and Budget.

Summary:

*Pursuant to Chapter 628 of the 2022 Acts of Assembly, the amendments add a new section addressing pharmacy work environments, ensuring that (i) the decisions of the pharmacist are not overridden by the pharmacy permit holder, including staffing decisions and the decision of whether pharmacy staff can safely provide vaccines at a given time; (ii) pharmacy permit holders provide sufficient staffing levels to avoid interference with a pharmacist's ability to practice with reasonable competence and safety; (iii) pharmacists and pharmacy personnel are provided with proper and functioning equipment; (iv) pharmacists and pharmacy staff are not burdened with external factors that may inhibit the ability to provide services to the*

*public; (v) staff are properly trained to provide the services with which they are tasked; (vi) pharmacists are provided appropriate breaks while maintaining drug stock integrity and providing required consultation services to the public; (vii) pharmacists are provided adequate time to perform professional duties; and (viii) a reporting mechanism exists for staffing concerns.*

**18VAC110-20-110. Pharmacy permits generally.**

A. A pharmacy permit shall not be issued to a pharmacist to be simultaneously in charge of more than two pharmacies.

B. Except in an emergency, a permit holder shall not require a pharmacist to work longer than 12 continuous hours in any work day and shall allow at least six hours of off-time between consecutive shifts. A pharmacist may, however, volunteer to work longer than 12 continuous hours. A pharmacist working longer than six continuous hours shall be allowed to take a 30-minute break. Breaks, including uninterrupted rest periods and meal breaks, shall be provided consistent with 18VAC110-20-113 B 5.

C. The PIC or the pharmacist on duty shall control all aspects of the practice of pharmacy. Any decision overriding such control of the PIC or other pharmacist on duty shall be deemed the practice of pharmacy and may be grounds for disciplinary action against the pharmacy permit.

D. A pharmacist shall not be eligible to serve as PIC until after having obtained a minimum of two years of experience practicing as a pharmacist in Virginia or another jurisdiction in the United States. The board may grant an exception to the minimum number of years of experience for good cause shown.

E. When the PIC ceases practice at a pharmacy or no longer wishes to be designated as PIC, ~~he~~ the pharmacist shall immediately return the pharmacy permit to the board indicating the effective date on which ~~he~~ the pharmacist ceased to be the PIC.

F. Although not required by law or regulation, an outgoing PIC shall have the opportunity to take a complete and accurate inventory of all Schedules II through V controlled substances on hand on the date ~~he~~ the pharmacist ceases to be the PIC, unless the owner submits written notice to the board showing good cause as to why this opportunity should not be allowed.

G. A PIC who is absent from practice for more than 30 consecutive days shall be deemed to no longer be the PIC. Pharmacists-in-charge having knowledge of upcoming absences for longer than 30 days shall be responsible for notifying the board and returning the permit. For unanticipated absences by the PIC~~, which~~ that exceed 15 days with no known return date within the next 15 days, the owner shall immediately notify the board and shall obtain a new PIC.

H. An application for a permit designating the new PIC shall be filed with the required fee within 14 days of the original date of resignation or termination of the PIC on a form provided by the board. It shall be unlawful for a pharmacy to operate without a new permit past the 14-day deadline unless the board receives a request for an extension prior to the deadline. The executive director for the board may grant an extension for up to an additional 14 days for good cause shown.

I. Only one pharmacy permit shall be issued to conduct a pharmacy occupying the same designated prescription department space. A pharmacy shall not engage in any other activity requiring a license or permit from the board, such as manufacturing or wholesale-distributing, out of the same designated prescription department space.

J. Before any permit is issued, the applicant shall attest to compliance with all federal, state, and local laws and ordinances. A pharmacy permit shall not be issued to any person to operate from a private dwelling or residence after September 2, 2009.

**18VAC110-20-113. Pharmacy working conditions.**

A. A pharmacy permit holder shall protect the health, safety, and welfare of patients by consulting with the PIC or pharmacist on duty and other pharmacy staff to ensure patient care services are safely provided in compliance with applicable standards of patient care. A permit holder's decisions shall not override the control of the PIC or other pharmacist on duty regarding appropriate working environments for all pharmacy personnel necessary to protect the health, safety, and welfare of patients.

B. To provide a safe working environment in a pharmacy, a permit holder shall, at a minimum:

1. Ensure sufficient personnel are scheduled to work at all times in order to prevent fatigue, distraction, or other conditions that interfere with a pharmacist's ability to practice with reasonable competence and safety. Staffing levels shall not be solely based on prescription volume, but shall consider any other requirements of pharmacy staff during working hours;

2. Provide sufficient tools and equipment in good repair and minimize excessive distractions to support a safe workflow for a pharmacist to practice with reasonable competence and safety to address patient needs in a timely manner;

3. Avoid the introduction of external factors, such as productivity or production quotas or other programs, to the extent that they interfere with the pharmacist's ability to provide appropriate professional services to the public;

4. Ensure staff are sufficiently trained to safely and adequately perform assigned duties, ensure staff demonstrate competency, and ensure that pharmacy technician trainees work closely with pharmacists and pharmacy technicians with sufficient experience as determined by the PIC;

5. Provide appropriate opportunities for uninterrupted rest periods and meal breaks consistent with 18VAC110-20-110 and the following:

a. A pharmacy may close when a pharmacist is on break based on the professional judgment of the pharmacist on duty, provided that the pharmacy has complied with the 14-day notice to the public pursuant to § 54.1-3434 of the Code of Virginia and 18VAC110-20-135;

b. If a pharmacy does not close while the pharmacist is on break, the pharmacist must ensure adequate security of drugs by taking a break within the prescription department or on the premises. The pharmacist on duty must determine whether pharmacy technicians or pharmacy interns may continue to perform duties and whether the pharmacist is able to provide adequate supervision; and

c. If the pharmacy remains open, only prescriptions verified by a pharmacist pursuant to 18VAC110-20-270 may be dispensed when the pharmacist is on break. An offer to counsel any person filling a new prescription must be offered pursuant to § 54.1-3319 of the Code of Virginia. Persons who request to speak to the pharmacist shall be told that the pharmacist is on break and that they may wait to speak with the pharmacist or provide a telephone number for the pharmacist to contact them upon return from break. Pharmacists returning from break shall immediately attempt to contact persons who requested counseling and document when such counseling is provided;

6. Provide adequate time for a pharmacist to complete professional duties and responsibilities, including:

a. Drug utilization review;

b. Immunization;

c. Counseling;

d. Verification of prescriptions;

e. Patient testing; and

f. All other duties required by Chapters 33 (§ 54.1-3300 et seq.) and 34 (§ 54.1-3400 et seq.) of Title 54.1 of the Code of Virginia and this chapter; and

7. Ensure that pharmacy technicians shall never perform duties otherwise restricted to a pharmacist.

C. A pharmacy permit holder shall not override the control of the pharmacist on duty regarding any aspects of the practice of pharmacy, including a pharmacist's decision not to administer vaccines when one pharmacist is on duty and, in the pharmacist's professional judgment, vaccines cannot be administered safely.

D. Staffing requests or concerns as described in this section shall be communicated by the PIC or pharmacist on duty to the permit holder using the Staffing Requests or Concerns Form developed by the board or a form containing information identical to the form developed by the board, which may be electronic.

1. Such forms, once completed, shall be provided to the immediate supervisor of the PIC or pharmacist on duty, with one copy maintained in the pharmacy for three years, and produced for inspection by the board within 48 hours of request.

2. The PIC or pharmacist on duty may report any staffing issues directly to the board if the PIC or pharmacist on duty believes the situation warrants immediate board review.

3. Under no circumstances shall a good faith report of staffing concerns by the PIC, pharmacist on duty, or notification of such issues by pharmacy personnel to the PIC, pharmacist on duty, or board result in workplace discipline against the reporting staff member.

E. Permit holders shall review completed staffing reports and shall:

1. Respond to the reporting staff member to acknowledge receipt of the staffing request or concern;

2. Resolve any issues listed in a timely manner to ensure a safe working environment for pharmacy staff and appropriate medication access for patients;

3. Document any corrective action taken, steps taken toward corrective action as of the time of inspection, or justification for inaction, which documentation shall be maintained on site or produced for inspection by the board within 48 hours of request; and

4. Communicate corrective action taken or justification for inaction to the PIC or reporting pharmacist on duty.

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, General Assembly Building, 201 North Ninth Street, Fourth Floor, Richmond, Virginia 23219.

FORMS (18VAC110-20)

Application for a Pharmacy Permit (rev. 1/2024)

Application for a Nonresident Pharmacy Registration (rev. 1/2024)

Application for a Nonresident Wholesale Distributor Registration (rev. 4/2024)

Application for Registration as Nonresident Manufacturer (rev. 10/2020)

Application for a Nonresident Third-Party Logistics Provider Registration (rev. 4/2024)

Application for Registration as a Nonresident Warehouser (rev. 10/2020)

Application for a Nonresident Outsourcing Facility Registration (rev. 10/2020)

Application for an Outsourcing Facility Permit (rev. 10/2020)

Application for a Medical Equipment Supplier Permit (rev. 10/2020)

Application for a Permit as a Restricted Manufacturer (rev. 10/2020)

Application for a Permit as a Nonrestricted Manufacturer (rev. 10/2020)

Application for a Wholesale Distributor Permit (rev. 4/2024)

Application for a Permit as a Warehouser (rev. 10/2020)

Application for a Permit as a Third-Party Logistics Provider (rev. 4/2024)

Application for Registration as a Nonresident Medical Equipment Supplier (rev. 10/2020)

Application for a Controlled Substances Registration Certificate (rev. 8/2024)

Closing of a Pharmacy (rev. 5/2018)

Application for Approval of an Innovative (Pilot) Program (rev. 8/2023)

Registration for a Pharmacy to be a Collection Site for Donated Drugs (rev. 5/2018)

Application for Approval of a Repackaging Training Program (rev. 10/2020)

Registration for a Facility to be an Authorized Collector for Drug Disposal (rev. 5/2018)

Application for Reinspection of a Facility (rev. 3/2023)

Notification of Distribution Cessation due to Suspicious Orders (rev. 5/2018)

Staffing Requests or Concerns Form (eff. 9/2023)

VA.R. Doc. No. R24-7342; Filed October 18, 2024, 8:13 a.m.

## BOARD OF PSYCHOLOGY

### Fast-Track Regulation

Title of Regulation: **18VAC125-20. Regulations Governing the Practice of Psychology (amending 18VAC125-20-10, 18VAC125-20-30, 18VAC125-20-41, 18VAC125-20-42, 18VAC125-20-65, 18VAC125-20-120, 18VAC125-20-121, 18VAC125-20-123, 18VAC125-20-150; repealing 18VAC125-20-170).**

Statutory Authority: §§ 54.1-2400 and 54.1-3605 of the Code of Virginia.

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: December 18, 2024.

Effective Date: January 2, 2025.

Agency Contact: Jaime Hoyle, Executive Director, Board of Psychology, 9960 Mayland Drive Suite 300, Henrico, VA 23233, telephone (804) 367-4406, FAX (804) 327-4435, or email jaime.hoyle@dhp.virginia.gov.

Basis: Regulations of the board are promulgated under the general authority of § 54.1-2400 of the Code of Virginia, which specifically states that the general powers and duties of health regulatory boards shall be to promulgate regulations.

Purpose: The elimination of redundant provisions and reduction of barriers to licensure generally protect the health, safety, and welfare of citizens by ensuring a sufficient workforce of psychologists.

Rationale for Using Fast-Track Rulemaking Process: A fast-track rulemaking action is being used because these changes reduce requirements and are therefore deemed to be noncontroversial.

Substance: The changes (i) delete unused defined terms and move defined terms used only once into the section in which the term is used; (ii) delete obsolete provisions, including a one-time fee reduction for the board; (iii) delete requirements that are not necessary to protect the public health, safety, and welfare, including requirements to attest to having read the laws and regulations governing licensees in Virginia and to attest to having read and agreed to comply with the current standards of practice and laws governing the practice of psychology in Virginia; (iv) remove requirements to conform to vague standards not appropriate for regulation; (v) amend requirements to justify services to include non-clinical psychology services such as forensic psychology; (vi) amend provisions to use active voice; and (vii) repeal requirements contained in statute.

Issues: There are no primary advantages or disadvantages to the public. There are no primary advantages or disadvantages to the agency or the Commonwealth.

Department of Planning and Budget Economic Impact Analysis:

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia and Executive Order 19. The analysis presented represents DPB's best estimate of the potential economic impacts as of the date of this analysis.[1]

Summary of the Proposed Amendments to Regulation. The Board of Psychology (board) proposes amendments for improved clarity and elimination of text that is either duplicative or obsolete.

Background. The board proposes to amend 10 sections of the regulation, typically by deleting existing text. In 18VAC125-

20-10, Definitions, the board proposes to delete the definition of "intern" and move the definition of "demonstrable areas of competence" to 18VAC125-20-65, Residency, where it is used. Obsolete language is proposed to be deleted in 18VAC125-20-30, Fees required by the board. The existing text in 18VAC125-20-41, Requirements for licensure by examination, and 18VAC125-20-42, Prerequisites for licensure by endorsement, states that "Every applicant shall attest to having read and agreed to comply with the current standards of practice and laws governing the practice of psychology in Virginia." The board proposes to delete this requirement. In 18VAC125-20-120, Annual renewal of licensure, the board proposes to delete a duplicative sentence and amend language for improved clarity. To improve clarity, the board proposes to reword both 18VAC125-20-121, Continuing education course requirements for renewal of an active license, and 18VAC125-20-123, Documenting compliance with continuing education requirements. The existing text in 18VAC125-20-150, Standards of practice, states that "Psychologists respect the rights, dignity, and worth of all people and are mindful of individual differences." The board proposes to delete this sentence. In addition, the current text in this section states that licensees shall "Be able to justify all services rendered to clients as necessary for diagnostic or therapeutic purposes." The board proposes to replace "diagnostic or therapeutic purposes" with "the practice of psychology." Additional rewording to improve clarity and deleting text that is repetitious of the Code of Virginia is proposed as well. The board also proposes to repeal all of 18VAC125-20-170, Reinstatement following disciplinary action, as it is repetitive of the Code of Virginia.

Estimated Benefits and Costs. To the extent that rewording for clarity makes the requirements of the regulation more easily understood, these proposed amendments are beneficial. Elimination of duplicative or obsolete language has no impact on requirements, but may save readers of the regulation a small amount of time. Eliminating the requirement that licensure applicants attest to having read and agreed to comply with the current standards of practice and laws would not likely have a substantive impact. Licensees are required to comply with the law whether they make such an attestation or not. The statement "Psychologists respect the rights, dignity, and worth of all people and are mindful of individual differences" is aspirational and likely too vague to be enforceable. Thus, removing it from the regulation should not have a substantive impact. The Department of Health Professions (DHP) notes that "diagnostic or therapeutic purposes" does not cover all standard parts of psychology practice. For example, it does not include forensic psychology.[2] Thus, it is more appropriate that the standard of practice be that the licensee is able to justify all services rendered to clients as necessary for the practice of psychology, not just for diagnostic or therapeutic purposes. As far as DHP staff are aware no licensee has been disciplined for rendering services to clients that are standard parts of psychology practice, but not for diagnostic and therapeutic purposes.

Businesses and Other Entities Affected. The proposed amendments pertain to the 25 applied psychologists, 4,461 clinical psychologists, 26 residents in school psychology, 392 residents in training, 100 school psychologists, 583 school psychologists-limited, 439 sex offender treatment providers, and 79 sex offender treatment provider trainees licensed by the board.[3] The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.[4] An adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined. Since none of the proposed amendments increase net costs or reduce net revenue, no adverse impact is indicated.

Small Businesses[5] Affected.[6] The proposed amendments do not appear to adversely affect small businesses.

Localities[7] Affected.[8] The proposed amendments do not disproportionally affect any particular localities or affect costs for local governments.

Projected Impact on Employment. The proposed amendments do not appear to affect employment.

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

---

[1] Section 2.2-4007.04 of the Code of Virginia requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

[2] See page eight of the Agency Background Document: https://townhall.virginia.gov/L/GetFile.cfm?File=31\6110\9829\AgencyStatement_DHP_9829_v1.pdf.

[3] Data source: See https://www.dhp.virginia.gov/about/stats/2023Q3/04CurrentLicenseCountQ3FY2023.pdf.

[4] Pursuant to § 2.2-4007.04 D: In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance. Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation.

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

[6] If the proposed regulatory action may have an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the

proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to § 2.2-4007.1 of the Code of Virginia, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

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

[8] Section 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

Agency Response to Economic Impact Analysis: The Board of Psychology concurs with the Department of Planning and Budget's economic impact analysis.

Summary:

*Pursuant to Executive Directive One (2022) and Executive Order 19 (2022), the amendments (i) delete unused defined terms and move defined terms used only once into the section in which the term is used; (ii) delete obsolete provisions, including a one-time fee reduction for the board; (iii) delete requirements that are not necessary to protect the public health, safety, and welfare, including requirements to attest to having read the laws and regulations governing licensees in Virginia and to attest to having read and agreed to comply with the current standards of practice and laws governing the practice of psychology in Virginia; (iv) remove vague requirements not appropriate for regulation; (v) amend requirements to justify services to include non-clinical psychology services such as forensic psychology; and (vi) repeal requirements contained in statute.*

**18VAC125-20-10. Definitions.**

The following words and terms, in addition to the words and terms defined in §§ 54.1-3600 and 54.1-3606.2 of the Code of Virginia, when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise:

"APA" means the American Psychological Association.

"APPIC" means the Association of Psychology Postdoctoral and Internship Centers.

"ASPPB" means the Association of State and Provincial Psychology Boards.

"Board" means the Virginia Board of Psychology.

"CAEP" means Council for the Accreditation of Educator Preparation.

"Compact" means the Psychology Interjurisdictional Compact.

"Conversion therapy" means any practice or treatment as defined in § 54.1-2409.5 A of the Code of Virginia.

"CPA" means Canadian Psychological Association.

~~"Demonstrable areas of competence" means those therapeutic and assessment methods and techniques for the populations served and for which one can document adequate graduate training, workshops, or appropriate supervised experience.~~

"E.Passport" means a certificate issued by ASPPB that authorizes telepsychology services in a compact state.

"Face-to-face" means in person.

~~"Intern" means an individual who is enrolled in a professional psychology program internship.~~

"Internship" means an ongoing, supervised, and organized practical experience obtained in an integrated training program identified as a psychology internship. Other supervised experience or on-the-job training does not constitute an internship.

"IPC" means an interjurisdictional practice certificate issued by ASPPB that grants temporary authority to practice in a compact state.

"NASP" means the National Association of School Psychologists.

"Practicum" means the pre-internship clinical experience that is part of a graduate educational program.

"Practicum student" means an individual who is enrolled in a professional psychology program and is receiving pre-internship training and seeing clients.

"Professional psychology program" means an integrated program of doctoral study in clinical or counseling psychology or a master's degree or higher program in school psychology designed to train professional psychologists to deliver services in psychology.

"Regional accrediting agency" means one of the six regional accrediting agencies recognized by the U.S. Secretary of Education established to accredit senior institutions of higher education.

"Residency" means a post-internship, post-terminal degree, supervised experience approved by the board.

"Resident" means an individual who has received a doctoral degree in a clinical or counseling psychology program or a master's degree or higher in school psychology and is completing a board-approved residency.

"School psychologist-limited" means a person licensed pursuant to § 54.1-3606 of the Code of Virginia to provide school psychology services solely in public school divisions.

"Supervision" means the ongoing process performed by a supervisor who monitors the performance of the person supervised and provides regular, documented individual consultation, guidance, and instruction with respect to the skills and competencies of the person supervised.

"Supervisor" means an individual who assumes responsibility for the education and training activities of a person under supervision and for the care of such person's clients and who provides supervision consistent with the training and experience of both the supervisor and the person under supervision and with the type of services being provided.

**18VAC125-20-30. Fees required by the board.**

A. The board has established fees for the following:

| | Applied psychologists, Clinical psychologists, School psychologists | School psychologists-limited |
|---|---|---|
| 1. Registration of residency (per residency request) | $50 | - - |
| 2. Add or change supervisor | $25 | - - |
| 3. Application processing and initial licensure | $200 | $85 |
| 4. Annual renewal of active license | $140 | $70 |
| 5. Annual renewal of inactive license | $70 | $35 |
| 6. Late renewal | $50 | $25 |
| 7. Verification of license to another jurisdiction | $25 | $25 |
| 8. Duplicate license | $5 | $5 |
| 9. Additional or replacement wall certificate | $15 | $15 |
| 10. Handling fee for returned check or dishonored credit card or debit card | $50 | $50 |
| 11. Reinstatement of a lapsed license | $270 | $125 |
| 12. Reinstatement following revocation or suspension | $500 | $500 |

B. Fees shall be made payable to the Treasurer of Virginia and forwarded to the board. All fees are nonrefundable.

~~C. Between May 1, 2020, and June 30, 2020, the following renewal fees shall be in effect:~~

~~1. For annual renewal of an active license as a clinical, applied, or school psychologist, it shall be $100. For an inactive license as a clinical, applied, or school psychologist, it shall be $50.~~

~~2. For annual renewal of an active license as a school psychologist-limited, it shall be $50. For an inactive license as a school psychologist-limited, it shall be $25.~~

**18VAC125-20-41. Requirements for licensure by examination.**

A. Every applicant for licensure by examination shall:

1. Meet the education requirements prescribed in 18VAC125-20-54, 18VAC125-20-55, or 18VAC125-20-56 and the experience requirement prescribed in 18VAC125-20-65 as applicable for the particular license sought; and

2. Submit the following:

a. A completed application on forms provided by the board;

b. A completed residency agreement or documentation of having fulfilled the experience requirements of 18VAC125-20-65;

c. The application processing fee prescribed by the board;

d. Official transcripts documenting the graduate work completed and the degree awarded; transcripts previously submitted for registration of supervision do not have to be resubmitted unless additional coursework was subsequently obtained. Applicants who are graduates of institutions that are not regionally accredited shall submit documentation from an accrediting agency acceptable to the board that ~~their~~ the applicant's education meets the requirements set forth in 18VAC125-20-54, 18VAC125-20-55, or 18VAC125-20-56;

e. A current report from the National Practitioner Data Bank; and

f. Verification of any other health or mental health professional license, certificate, or registration ever held in Virginia or another jurisdiction. The applicant shall not have surrendered a license, certificate, or registration while under investigation and shall have no unresolved action against a license, certificate, or registration.

B. In addition to fulfillment of the education and experience requirements, each applicant for licensure by examination must achieve a passing score on all parts of the Examination for Professional Practice of Psychology required at the time the applicant took the examination.

~~C. Every applicant shall attest to having read and agreed to comply with the current standards of practice and laws governing the practice of psychology in Virginia.~~

**18VAC125-20-42. Prerequisites for licensure by endorsement.**

Every applicant for licensure by endorsement shall submit:

1. A completed application;

2. The application processing fee prescribed by the board;

3. ~~An attestation of having read and agreed to comply with the current Standards of Practice and laws governing the practice of psychology in Virginia;~~

~~4.~~ Verification of all other health and mental health professional licenses, certificates, or registrations ever held in Virginia or any jurisdiction of the United States or Canada. In order to qualify for endorsement, the applicant shall not have surrendered a license, certificate, or registration while under investigation and shall have no unresolved action against a license, certificate, or registration;

~~5.~~ 4. A current report from the National Practitioner Data Bank; and

~~6.~~ 5. Further documentation of one of the following:

a. A current credential issued by the National Register of Health Service Psychologists;

b. Current diplomate status in good standing with the American Board of Professional Psychology in a category comparable to the one in which licensure is sought;

c. A Certificate of Professional Qualification in Psychology (CPQ) issued by the Association of State and Provincial Psychology Boards;

d. Five years of active licensure in a category comparable to the one in which licensure is sought with at least 24 months of active practice within the last 60 months immediately preceding licensure application; or

e. If less than five years of active licensure or less than 24 months of active practice within the last 60 months, documentation of current psychologist licensure in good standing obtained by standards substantially equivalent to the education, experience, and examination requirements set forth in this chapter for the category in which licensure is sought as verified by a certified copy of the original application submitted directly from the out-of-state licensing agency or a copy of the regulations in effect at the time of initial licensure and the following: ~~(1)~~ (i) Verification of a passing score on all parts of the Examination for Professional Practice of Psychology that were required at the time of original licensure~~;~~ and ~~(2) Official~~ (ii) official transcripts documenting the graduate work completed and the degree awarded in the category in which licensure is sought.

**18VAC125-20-65. Residency.**

A. Candidates for clinical or school psychologist licensure shall have successfully completed a residency consisting of a minimum of 1,500 hours of supervised experience in the delivery of clinical or school psychology services acceptable to the board.

1. For clinical psychology candidates, the hours of supervised practicum experiences in a doctoral program may be counted toward the residency hours, as specified in 18VAC125-20-54. Hours acquired during the required internship shall not be counted toward the 1,500 residency hours. If the supervised experience hours completed in a practicum do not total 1,500 hours or if a candidate is deficient in any of the categories of hours, a candidate may fulfill the remainder of the hours by meeting requirements specified in subsection B of this section.

2. School psychologist candidates shall complete all the residency requirements after receipt of ~~their~~ a final school psychology degree.

B. Residency requirements.

1. Candidates for clinical or school psychologist licensure shall have successfully completed a residency consisting of a minimum of 1,500 hours in a period of not less than 12 months and not to exceed three years of supervised experience in the delivery of clinical or school psychology services acceptable to the board, or the applicant may request approval to extend a residency if there were extenuating circumstances that precluded completion within three years.

2. Supervised experience obtained in Virginia without prior written board approval will not be accepted toward licensure. Candidates shall not begin the residency until after completion of the required degree as set forth in 18VAC125-20-54 or 18VAC125-20-56.

3. In order to have the residency accepted for licensure, an individual who proposes to obtain supervised post-degree experience in Virginia shall register with the board prior to the onset of such supervision by submission of:

a. A supervisory contract along with the application package;

b. The registration of supervision fee set forth in 18VAC125-20-30; and

c. An official transcript documenting completion of educational requirements as set forth in 18VAC125-20-54 or 18VAC125-20-56 as applicable.

4. If board approval was required for supervised experience obtained in another United States jurisdiction or Canada in which residency hours were obtained, a candidate shall provide evidence of board approval from such jurisdiction.

5. There shall be a minimum of two hours of individual supervision per 40 hours of supervised experience. Group supervision of up to five residents may be substituted for one of the two hours on the basis that two hours of group supervision equals one hour of individual supervision, but in no case shall the resident receive less than one hour of individual supervision per 40 hours.

6. Supervision shall be provided by a psychologist who holds a current, unrestricted license in the jurisdiction in which supervision is being provided and who is licensed to practice in the licensure category in which the resident is seeking licensure; however, a resident seeking licensure as a school psychologist may be supervised by a clinical psychologist.

7. The supervisor shall ~~not~~ neither provide supervision for activities beyond the supervisor's demonstrable areas of competence nor for activities for which the applicant has not had appropriate education and training. "Demonstrable areas of competence" means those therapeutic and assessment methods and techniques for the populations served and for which one can document adequate graduate training, workshops, or appropriate supervised experience.

8. The supervising psychologist shall maintain records of supervision performed and shall regularly review and co-sign case notes written by the supervised resident during the residency period. At the end of the residency training period, the supervisor shall submit to the board a written evaluation of the applicant's performance.

9. The board may consider special requests in the event that the regulations create an undue burden in regard to geography or disability that limits the resident's access to qualified supervisors.

C. Residents shall not refer to or identify themselves as clinical psychologists or school psychologists, independently solicit clients, bill directly for services, or in any way represent themselves as licensed psychologists. ~~Notwithstanding, this~~ This does not preclude supervisors or employing institutions from billing for the services of an appropriately identified resident. During the residency period, residents shall use their names, the initials of their degree, and the title "Resident in Psychology" in the licensure category in which licensure is sought.

**18VAC125-20-120. Annual renewal of licensure.**

~~Every license issued by the board shall expire each year on June 30.~~

~~1. Every licensee who intends to continue to practice shall, on or before the expiration date of the license, submit to the board a license renewal form supplied by the board and the renewal fee prescribed in 18VAC125-20-30.~~

~~2. Licensees who wish to maintain an active license shall pay the appropriate fee and verify on the renewal form compliance with the continuing education requirements prescribed in 18VAC125-20-121. First-time licensees by examination are not required to verify continuing education on the first renewal date following initial licensure.~~

~~3.~~ A. Licensees shall renew licenses on or before June 30 of each year and shall:

1. Pay the renewal fee prescribed by the board; and

2. Verify compliance with continuing education requirements prescribed in 18VAC125-20-121 on the renewal form. A practitioner shall be exempt from the continuing competency requirements for the first renewal following the date of initial licensure by examination in Virginia.

B. A licensee who wishes to place his license in inactive status may do so upon payment of the fee prescribed in 18VAC125-20-30. ~~A person with an inactive license is not authorized to practice; no~~ No person shall practice psychology in Virginia without a current active license. An inactive licensee may activate a license by fulfilling the reactivation requirements set forth in 18VAC125-20-130.

~~4.~~ C. Failure of a licensee to receive a renewal notice and application forms from the board shall not excuse the licensee from the renewal requirement.

**18VAC125-20-121. Continuing education course requirements for renewal of an active license.**

A. Licensees shall ~~be required to~~ complete a minimum of 14 hours of board-approved continuing education courses each year for annual licensure renewal. A minimum of 1.5 of these hours shall be in courses that emphasize the ethics, laws, and regulations governing the profession of psychology, including the standards of practice set out in 18VAC125-20-150. A licensee who completes continuing education hours in excess of the 14 hours may carry up to seven hours of continuing education credit forward to meet the requirements for the next annual renewal cycle.

B. For the purpose of this section, "course" means an organized program of study, classroom experience, or similar educational experience that is directly related to the practice of psychology and is provided by a board-approved provider that meets the criteria specified in 18VAC125-20-122.

1. At least six of the required hours shall be earned in face-to-face or real-time interactive educational experiences. Real-time interactive shall include a course in which the learner has the opportunity to interact with the presenter during the time of the presentation.

2. The board may approve up to four hours per renewal cycle for each of the following specific educational experiences:

a. Preparation for and presentation of a continuing education program, seminar, workshop, or academic course offered by an approved provider and directly

related to the practice of psychology. Hours may only be credited one time, regardless of the number of times the presentation is given, and may not be credited toward the face-to-face requirement.

b. Publication of an article or book in a recognized publication directly related to the practice of psychology. Hours may only be credited one time, regardless of the number of times the writing is published, and may not be credited toward the face-to-face requirement.

c. Serving at least six months as editor or associate editor of a national or international, professional, peer-reviewed journal directly related to the practice of psychology.

3. Ten hours will be accepted for one or more three-credit-hour academic courses completed at a regionally accredited institution of higher education that are directly related to the practice of psychology.

4. The board may approve up to two hours per renewal cycle for membership on a state licensing board in psychology.

C. Courses must be directly related to the scope of practice in the category of licensure held. Continuing education courses for clinical psychologists shall emphasize, but not be limited to, the diagnosis, treatment, and care of patients with moderate and severe mental disorders.

D. The board may grant an extension for good cause of up to one year for the completion of continuing education requirements upon written request from the licensee prior to the renewal date. Such extension shall not relieve the licensee of the continuing education requirement.

E. The board may grant an exemption for all or part of the continuing education requirements for one renewal cycle due to circumstances determined by the board to be beyond the control of the licensee.

F. Up to two of the 14 continuing education hours required for renewal may be satisfied through delivery of psychological services, without compensation, to low-income individuals receiving mental health services through a local health department or a free clinic organized in whole or primarily for the delivery of those health services as verified by the department or clinic. Three hours of volunteer service is required for one hour of continuing education credit.

**18VAC125-20-123. Documenting compliance with continuing education requirements.**

A. All licensees in active status ~~are required to~~ shall maintain original documentation for a period of four years.

B. After the end of each renewal period, the board may conduct a random audit of licensees to verify compliance with the requirement for that renewal period.

C. Upon request, a licensee shall provide documentation as follows:

1. Official transcripts showing credit hours earned from an accredited institution; or

2. Certificates of completion from approved providers.

D. Compliance with continuing education requirements, including the maintenance of records and the relevance of the courses to the category of licensure, is the responsibility of the licensee. The board may request additional information if such compliance is not clear from the transcripts or certificates.

E. Continuing education hours required by disciplinary order shall not be used to satisfy renewal requirements.

**18VAC125-20-150. Standards of practice.**

A. The protection of the public health, safety, and welfare and the best interest of the public shall be the primary guide in determining the appropriate professional conduct of all persons whose activities are regulated by the board. ~~Psychologists respect the rights, dignity, and worth of all people and are mindful of individual differences.~~ Regardless of the delivery method, whether face-to-face or by use of technology, ~~these~~ practice standards shall apply to the practice of psychology.

B. Persons regulated by the board and persons practicing in Virginia with an E.Passport or an IPC shall:

1. Provide and supervise only those services and use only those techniques for which they are qualified by education, training, and appropriate experience;

2. Delegate to persons under their supervision only those responsibilities such persons can be expected to perform competently by education, training, and experience;

3. Maintain current competency in the areas of practices through continuing education, consultation, or other procedures consistent with current standards of scientific and professional knowledge;

4. Accurately represent their areas of competence, education, training, experience, professional affiliations, credentials, and published findings to ensure that such statements are neither fraudulent nor misleading;

5. Neither accept nor give commissions, rebates, or other forms of remuneration for referral of clients for professional services. Make appropriate consultations and referrals consistent with the law and based on the interest of patients or clients;

6. Refrain from undertaking any activity in which their personal problems are likely to lead to inadequate or harmful services;

7. Avoid harming, exploiting, misusing influence, or misleading patients or clients, research participants, students, and others for whom they provide professional services and minimize harm when it is foreseeable and unavoidable;

8. Not engage in, direct, or facilitate torture, which is defined as any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person, or in any other cruel, inhuman, or degrading behavior that causes harm;

9. Withdraw from, avoid, adjust, or clarify conflicting roles with due regard for the best interest of the affected party and maximal compliance with these standards;

10. Make arrangements for another professional to deal with emergency needs of clients during periods of foreseeable absences from professional availability and provide for continuity of care when services must be terminated;

11. Conduct financial responsibilities to clients in an ethical and honest manner by:

a. Informing clients of fees for professional services and billing arrangements as soon as is feasible;

b. Informing clients prior to the use of collection agencies or legal measures to collect fees and provide opportunity for prompt payment;

c. Obtaining written consent for fees that deviate from the practitioner's usual and customary fees for services;

d. Participating in bartering only if it is not clinically contraindicated and is not exploitative; and

e. Not obtaining, attempting to obtain, or cooperating with others in obtaining payment for services by misrepresenting services provided, dates of service, or status of treatment;

12. Be able to justify all services rendered to clients as necessary for ~~diagnostic or therapeutic purposes~~ the practice of psychology;

13. Construct, maintain, administer, interpret, and report testing and diagnostic services in a manner and for purposes that are current and appropriate;

14. Design, conduct, and report research in accordance with recognized standards of scientific competence and research ethics. Practitioners shall adhere to requirements of § 32.1-162.18 of the Code of Virginia for obtaining informed consent from patients prior to involving them as participants in human research, with the exception of retrospective chart reviews;

15. Report to the board known or suspected violations of the laws and regulations governing the practice of psychology;

16. Accurately inform a client or a client's legally authorized representative of the client's diagnoses, prognosis, and intended treatment or plan of care. A psychologist shall present information about the risks and benefits of the recommended treatments in understandable terms and encourage participation in the decisions regarding the patient's care. When obtaining informed consent for a treatment for which generally recognized techniques and procedures have not been established, a psychologist shall inform clients of the developing nature of the treatment, the potential risks involved, alternative treatments that may be available, and the voluntary nature of ~~their~~ participation;

17. Clearly document at the outset of service delivery what party the psychologist considers to be the client and what, if any, responsibilities the psychologist has to all related parties;

18. Determine whether a client is receiving services from another mental health service provider, and if so, document efforts to coordinate care;

19. Document the reasons for and steps taken if it becomes necessary to terminate a therapeutic relationship (e.g., when it becomes clear that the client is not benefiting from the relationship or when the psychologist feels endangered). Document assistance provided in making arrangements for the continuation of treatment for clients, if necessary, following termination of a therapeutic relationship; and

20. Not engage in conversion therapy with any person younger than 18 years of age.

C. In regard to confidentiality, persons regulated by the board shall:

1. Keep confidential their professional relationships with patients or clients and disclose client information to others only with written consent, except as required or permitted by law. Psychologists shall inform clients of legal limits to confidentiality;

2. Protect the confidentiality in the usage of client information and clinical materials by obtaining informed consent from the client or the client's legally authorized representative before (i) videotaping, (ii) audio recording, (iii) permitting third party observation, or (iv) using clinical information in teaching, writing, or public presentations; and

3. Not willfully or negligently breach the confidentiality between a practitioner and a client. A disclosure that is required or permitted by applicable law or beyond the control of the practitioner shall not be considered negligent or willful.

D. In regard to client records, persons regulated by the board shall:

1. Maintain timely, accurate, legible, and complete written or electronic records for each client. For a psychologist practicing in an institutional setting, the recordkeeping shall follow the policies of the institution or public facility. For a psychologist practicing in a noninstitutional setting, the record shall include:

a. The name of the client and other identifying information;

b. The presenting problem, purpose, or diagnosis;

c. Documentation of the fee arrangement;

d. The date and clinical summary of each service provided;

e. Any test results, including raw data, or other evaluative results obtained;

f. Notation and results of formal consults with other providers; and

g. Any releases by the client;

2. Maintain client records securely, inform all employees of the requirements of confidentiality and dispose of written, electronic, and other records in such a manner as to ensure ~~their~~ confidentiality; and

3. Maintain client records for a minimum of five years or as otherwise required by law from the last date of service, with the following exceptions:

a. At minimum, records of a minor child shall be maintained for five years after attaining 18 years of age;

b. Records that are required by contractual obligation or federal law to be maintained for a longer period of time; or

c. Records that have been transferred pursuant to § 54.1-2405 of the Code of Virginia pertaining to closure, sale, or change of location of one's practice.

E. In regard to dual relationships, persons regulated by the board shall:

1. Not engage in a dual relationship with a person under supervision that could impair professional judgment or increase the risk of exploitation or harm. Psychologists shall take appropriate professional precautions when a dual relationship cannot be avoided, such as informed consent, consultation, supervision, and documentation to ensure that judgment is not impaired and no exploitation occurs;

2. Not engage in sexual intimacies or a romantic relationship with a student, supervisee, resident, intern, therapy patient, client, or those included in collateral therapeutic services (such as a parent, spouse, or significant other of the client) while providing professional services. For at least five years after cessation or termination of professional services, not engage in sexual intimacies or a romantic relationship with a therapy patient, client, or those included in collateral therapeutic services. Consent to, initiation of, or participation in sexual behavior or romantic involvement with a psychologist does not change the exploitative nature of the conduct nor lift the prohibition. Because sexual or romantic relationships are potentially exploitative, psychologists shall bear the burden of demonstrating that there has been no exploitation, based on factors such as duration of therapy, amount of time since therapy, termination circumstances, client's personal history and mental status, and adverse impact on the client;

3. Not engage in a personal relationship with a former client in which there is a risk of exploitation or potential harm or if the former client continues to relate to the psychologist in ~~his~~ the psychologist's professional capacity; and

4. Recognize conflicts of interest and inform all parties of the nature and directions of loyalties and responsibilities involved.

~~F. Upon learning of evidence that indicates a reasonable probability that another mental health provider is or may be guilty of a violation of standards of conduct as defined in statute or regulation, persons licensed by the board shall advise their clients of their right to report such misconduct to the Department of Health Professions in accordance with § 54.1-2400.4 of the Code of Virginia.~~

**18VAC125-20-170. ~~Reinstatement following disciplinary action.~~ (Repealed.)**

~~A. Any person whose license has been revoked by the board under the provisions of 18VAC125-20-160 may, three years subsequent to such board action, submit a new application to the board for reinstatement of licensure. The board in its discretion may, after a hearing, grant the reinstatement.~~

~~B. The applicant for such reinstatement, if approved, shall be licensed upon payment of the appropriate fee applicable at the time of reinstatement.~~

VA.R. Doc. No. R25-7373; Filed October 18, 2024, 8:02 a.m.

# TITLE 20. PUBLIC UTILITIES AND TELECOMMUNICATIONS

## STATE CORPORATION COMMISSION

### Final Regulation

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

Title of Regulation: **20VAC5-309. Rules for Enforcement of the Underground Utility Damage Prevention Act (amending 20VAC5-309-190).**

Statutory Authority: §§ 12.1-13 and 56-265.30 of the Code of Virginia.

Effective Date: July 22, 2025.

Agency Contact: William Henry Harrison IV, Senior Counsel, Office of General Counsel, Public Utility Regulation, State Corporation Commission, P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9228, or email william.harrison@scc.virginia.gov.

Summary:

*The amendments enable the implementation of new electronic white lining technology, which will assist in defining planned areas of excavation for the further prevention of damage to underground utility lines.*

AT RICHMOND, OCTOBER 22, 2024

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. URS-2024-00068

Ex Parte: In the matter concerning a

rulemaking proceeding to revise the Commission's Rules

for Enforcement of the Virginia Underground Utility Damage

Prevention Act, 20VAC5-309-10 et seq.

ORDER ADOPTING RULES

Virginia Code ("Code") § 56-265.30 directs the State Corporation Commission ("Commission") to enforce the provisions of Chapter 10.3 of Title 56, the Virginia Underground Utility Damage Prevention Act ("Act") and provides for the Commission's promulgation of rules or regulations necessary to implement the Commission's authority. The Commission's Rules for Enforcement of the Underground Utility Damage Prevention Act ("Damage Prevention Rules") are set forth in Chapter 309 of Title 20 of the Virginia Administrative Code.[1]

The Commission's Division of Utility Railroad and Safety ("Division") has proposed revisions to the Damage Prevention Rules ("Proposed Rules") to facilitate use of electronic white lining that may not involve aerial imagery and provided the following information in support. Electronic white lining is a method by which excavators may indicate their intended excavation area visually through electronic data entry. The purpose of this Rulemaking is to modify 20VAC5-309-190 ("Rule 190") to supplement the text-based description currently employed by Virginia Utility Protection Services, Inc. ("Va811").[2] Electronic white lining will allow excavators to provide detailed and specific visual renderings of excavation areas to Va811, and ultimately to utility operators or their locators. In this way, the Rulemaking is intended to advance safety by allowing excavators to provide a more precise excavation area which could result in more accurate and efficient utility line locates. Electronic white lining is currently contemplated in the Commission's Damage Prevention Rules;[3] however, electronic white lining has not before been used in conjunction with the submission of locate requests to Va811.

On April 23, 2024, the Commission entered an Order for Notice and Comment ("Procedural Order") which, among other things, directed that notice of the Proposed Rules be given to interested persons and that such interested persons and the Commission Staff ("Staff") be provided an opportunity to file written comments on, propose modifications or supplements to, or request a hearing on the Proposed Rules. The Procedural Order directed the Staff to respond to any comments, proposals, or requests for hearing, and to provide a copy of the Procedural Order to the Registrar of Regulations for publication in the Virginia Register of Regulations.[4]

Washington Gas Light Company; S&N Communications; Virginia 811; Mastec North America; Appalachian Power Company; Danville Utilities; Chesterfield County, Utilities Department; Brightspeed; Shentel; and the Virginia Cable Telecommunications Association - Broadband Association of Virginia; the Virginia Broadband Industry Association; and the Virginia, Maryland, and Delaware Association of Cooperatives filed comments in support of the Proposed Rules. On September 4, 2024, Staff filed its response to comments filed in this proceeding.

NOW THE COMMISSION, having considered this matter, is of the opinion and finds that the proposed amendments to the Rules should be adopted.

Accordingly, IT IS ORDERED THAT:

(1) The Commission's Rules for Enforcement of the Underground Utility Damage Prevention Act, 20VAC5-309-10 et seq., are amended as shown in Attachment A to this Order and shall become effective nine months from the date of this Order.

(2) A copy of these regulations as set out in Attachment A of this Order Adopting Regulations shall be forwarded to the Registrar of Regulations for publication in the Virginia Register of Regulations.

(3) This case is dismissed.

A COPY hereof shall be sent by the Clerk of the Commission to all persons on the official Service List in this matter. The Service List is available from the Clerk of the State Corporation Commission, c/o Document Control Center, 1300 E. Main Street, First Floor, Tyler Building, Richmond, Virginia 23219. A copy shall also be sent to the Commission's Office of General Counsel and Division Utility and Railroad Safety.

---

[1] 20VAC5-309-10 et seq.

[2] Va811 is the entity certificated to operate as the single one-call notification center provider for the Commonwealth pursuant to Va. Code § 56-265.16:1.

[3] See 20VAC5-309-190.

[4] The Procedural Order and the proposed regulation amendments were published in the Virginia Register of Regulations, Vol. 40 Iss. 20 (May 24, 2024).

**20VAC5-309-190. Delineating specific location of a proposed excavation or demolition.**

A. Any person, as defined in § 56-265.15 of the Code of Virginia, submitting a locate request shall clearly describe the limits of the proposed excavation or demolition with sufficient detail to enable the operators to ascertain the location of the proposed excavation. The specific location of the proposed excavation or demolition may include:

1. GPS coordinates taken at a single point where work is planned or GPS coordinates taken to delineate a line, multi-segment line, or polygon. When providing a single point, line, or multi-segment line, the person providing notice shall include an area measured in feet from the coordinates that describe the work area. If a polygon is used, the proposed work area shall be inside the polygon. GPS nomenclatures used for providing coordinates to the notification center shall be as approved by the advisory committee.

2. White lining to delineate the area where excavation will take place. For single point excavation, the area shall be marked using dots, dashes, or white flags to show the operators the area of excavation. If utility markings are desired outside a white lined area, the excavator shall provide clear instructions, to include the distance in feet outside the white lined area, to the notification center. For continuous excavations, such as trenching and boring, the excavator shall mark the center line of excavation by the use of dots or dashes. The excavation width, in feet, shall be indicated on either side of the center line in legible figures or noted in the marking instructions given to the notification center.

3. White lining performed by electronic means ~~using aerial imagery~~. White lining performed by electronic means shall follow the same requirements as listed in subdivision 2 of this subsection. When submitting information to the notification center pursuant to § 56-265.17 of the Code of Virginia, any conflict between text-based descriptions of the specific location of a proposed excavation and any images depicting the specific location of a proposed excavation submitted in compliance with the notification center's electronic white lining standards shall be resolved in favor of the electronically white lined image.

4. A reference to the two nearest intersecting streets, if available, or driving directions.

B. In the event that a proposed excavation or demolition is planned at a single address at which there is no more than one structure, the area of proposed excavation or demolition may, if geographically feasible, be described by dividing the parcel or property into four quadrants from the perspective of facing the front of the property using the center of the structure as the center point of the four quadrants. If no structure exists on the property, the center of the parcel or property will be used as the center point of the four quadrants. These four quadrants shall be referred to as Front Left, Front Right, Rear Left, and Rear Right. If the proposed area consists only of Front Left and Front Right quadrants, the term "Front" shall be sufficient. If the proposed area of excavation consists only of Rear Left and Rear Right quadrants, the term "Rear" shall be sufficient. If the proposed area of excavation consists only of Front Left and Rear Left quadrants, the term "Left Side" shall be sufficient. If the proposed area of excavation consists only of Front Right and Rear Right quadrants, the term "Right Side" shall be sufficient. If the proposed area of excavation includes three out of the four quadrants, the entire property may be used for the proposed excavation or demolition.

C. If the locate request does not contain specific location information, the notification center shall suspend the issuance of the locate request until specific location information is obtained, except in the case of excavations or demolitions performed during an emergency, as defined in § 56-265.15 of the Code of Virginia. The notification center shall issue the emergency notices with as much information as is available to it.

D. The area covered under each locate request shall not exceed 1/3 of a mile. Locate requests with areas of proposed excavation located on parcels defined within the existing notification center mapping data and having one or more sides that is 1/3 of a mile or longer shall not automatically exceed the area covered by a single locate request.

VA.R. Doc. No. R24-7846; Filed October 22, 2024, 3:32 p.m.

# TITLE 22. SOCIAL SERVICES

## STATE BOARD OF SOCIAL SERVICES

### Fast-Track Regulation

Title of Regulation: **22VAC40-880. Child Support Enforcement Program (amending 22VAC40-880-10, 22VAC40-880-390, 22VAC40-880-430; adding 22VAC40-880-800, 22VAC40-880-810).**

Statutory Authority: § 63.2-217 of the Code of Virginia; 42 USC § 651 et seq.

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: December 18, 2024.

Effective Date: January 2, 2025.

Agency Contact: Matthew Gomez, Manager, Program Initiatives, Department of Social Services, 801 East Main Street, Richmond, VA 24018, telephone (804) 726-7437, or email matthew.gomez@dss.virginia.gov.

Basis: Section 63.2-217 of the Code of Virginia states that the State Board of Social Services shall adopt regulations, not in conflict with Title 63.2 of the Code of Virginia, as may be necessary or desirable to carry out the purpose of that title. Section 63.2-1901 of the Code of Virginia provides an outline of the duties of the department, which include "to further the effective and timely enforcement of such support while ensuring that all functions in the department are appropriate or necessary to comply with applicable federal law." 45 CFR § 303.6 requires IV-D (child support) agencies to "maintain and use an effective system for: monitoring compliance with the support obligation (and) enforcing the support obligation

by: taking any appropriate enforcement action." Chapter 448 of the 2008 Acts of Assembly provides for a pilot of intensive case monitoring services.

Purpose: This regulation is essential to protect the public health, safety, and welfare because the amendments clarify the use of family engagement services (FES), allowing the Division of Child Support Enforcement (division) to provide more intensive case management services for participants facing obstacles that hinder participant ability to maintain steady employment. The proposed change also sets clear public guidelines regarding accountability for active participation and compliance and clarifies how the division will provide consistent and equitable services.

Rationale for Using Fast-Track Rulemaking Process: This action is expected to be noncontroversial because the changes clarify and reflect existing FES activities, rather than changing those activities.

Substance: This action (i) creates new sections to allow the division to establish and maintain services to assist persons with a duty to pay child support with needed resources to meet the requirements of the support obligation; (ii) defines supporting terms; (iii) amends sections to allow the department to clarify use of state and federal remedies to ensure compliance with a child support order; and (iv) adds "of process" after the word "service" in two instances.

Issues: The primary advantage to the public and the Commonwealth is that these amendments will allow the division to provide intensive case management services, referrals, and assistance to participants to help them overcome the challenges faced when complying with support obligations and leverage community and governmental agency partnerships to assist with increasing the frequency and amount of child support payments. There are no disadvantages to the public or the Commonwealth.

Department of Planning and Budget Economic Impact Analysis:

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia and Executive Order 19. The analysis presented represents DPB's best estimate of the potential economic impacts as of the date of this analysis.[1]

Summary of the Proposed Amendments to Regulation. The State Board of Social Services (board) proposes to amend the Child Support Enforcement Program regulation in order to help establish the regulatory authority for the provision of Family Engagement Services (FES).

Background. According to the Department of Social Services (DSS), the impetus for this proposed regulatory change is a board decision to ensure there is an authorizing regulation describing use of FES. Federal regulation 45 CFR § 303.6 requires IV-D (child support) agencies to use appropriate and available enforcement methods to obtain compliance with child support obligations. As a component of reviewing for ability to pay, DSS states that there are case participants who may need more assistance than others in maintaining support order compliance. In an article for the National Child Support Enforcement Association, a former DSS official described the need for FES as follows:

"Historically, child support collection efforts have focused on parents who have assets but, for a variety of reasons related to the complexity of their relationships with the other parent, refuse to pay child support as ordered. There is another category of parents who, until recently, have not received focused attention. These parents are often caught up in a revolving door within the child support system; they receive limited acknowledgment or assistance and have significant barriers that inhibit their ability to pay support. This population struggles with limited education, sketchy work histories, substance abuse problems, criminal records, and more. While some also have poor relationships with the other parent and don't want to pay, others would pay child support if they were able. For this latter group - those who would but can't pay conventional enforcement remedies - often result only in recurring penalization rather than changes to behavior, regular child support payments, and long-term compliance. Instead, these noncustodial parents are often chronically taken to court, found noncompliant, and jailed because there is no alternative solution."[2]

FES activities are therefore designed to help increase the noncustodial parent's ability to pay child support. As indicated in the proposed regulation, following an administrative or judicial determination that such services may assist the person to pay child support owed, the DSS Division of Child Support Enforcement may provide FES activities such as "referrals to (i) employment services, to include employment assessment, employment search, and employment training; (ii) family services, including parenting skills, co-parenting skills, and relationship-building activities for parents and children; (iii) educational services, including GED preparation and GED testing; (iv) housing services, including referrals to organizations that operate shelters and provide subsidies; (v) document assistance, including referrals to organizations and assistance in securing vital records, driver's licenses, commercial driver's licenses, or other documents; (vi) social services, health and mental health services, and substance abuse services; and (vii) any other services that would assist the person to pay support owed." These activities may be offered in conjunction with, but not as a substitute for, state and federal enforcement remedies. In practice, DSS has provided FES since 2008. According to DSS, the board is proposing this new language upon advice of the Office of the Attorney General. The proposed text would not change the existing FES activities.

Estimated Benefits and Costs. As indicated, the proposed amendments reflect existing FES activities. The proposed text could be beneficial in that the public may become better informed concerning FES.

Businesses and Other Entities Affected. The proposed amendments pertain to the noncustodial parents who receive FES, the custodial parents who may receive greater child support payments due to improved employment situations for the noncustodial parents, the 15 FES case managers at DSS, and the organizations that provide the various FES services. In 2022, 3,364 noncustodial parents received FES.[3] The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.[4] An adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined. As the proposed amendments reflect current practice, no adverse impact is indicated.

Small Businesses[5] Affected.[6] As the proposed amendments reflect current practice, small businesses are not affected.

Localities[7] Affected.[8] No localities are disproportionately affected. As the proposed amendments reflect current practice, costs for local governments are not affected.

Projected Impact on Employment. As the proposed amendments reflect current practice, no impact on employment is anticipated.

Effects on the Use and Value of Private Property. As the proposed amendments reflect current practice, no effects on the use and value of private property are expected. Real estate development costs are not affected.

[1] Section 2.2-4007.04 of the Code of Virginia requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

[2] See https://www.ncsea.org/documents/ICMP_FINAL1.pdf.

[3] Data source: DSS.

[4] Pursuant to § 2.2-4007.04 D: In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance. Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation.

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

[6] If the proposed regulatory action may have an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to § 2.2-4007.1 of the Code of Virginia, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

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

[8] Section 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

Agency Response to Economic Impact Analysis: The Department of Social Services reviewed the economic impact analysis prepared by the Department of Planning and Budget and concurs.

Summary:

*The amendments (i) create new sections to allow the Division of Child Support Enforcement to establish and maintain services to assist persons with a duty to pay child support with needed resources to meet the requirements of their support obligation; (ii) define supporting terms;(iii) allow the department to clarify use of state and federal remedies to ensure compliance with a child support order; and (iv) add "of process" after the word "service" in two instances.*

**22VAC40-880-10. Definitions.**

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

"Administrative referral" means when a unit of the department or executive branch makes a referral for a parent or case.

"Appeal" means a request for a review of an administrative action taken by the division, or an action taken to contest a court order.

"Applicant" or "applicant/recipient" means a party who applies for and receives services from the division.

"Application" means a written document requesting child support enforcement services, which the department provides to the individual or agency applying for services and which is signed by the applicant.

"Arrearage" means unpaid child or medical support payments, interest, and other costs for past periods owed by a parent to the state or obligee. This may include unpaid spousal support when child support is also being enforced.

"Bad check" means a check not honored by the bank on which it is drawn.

"Case management services" means individualized services provided by a trained case manager.

"Case summary" means a written statement outlining the actions taken by the department on a case that has been appealed.

"Child support guideline" means a method for calculating a child support obligation as set out in § 20-108.2 of the Code of Virginia.

"Delinquency" means an unpaid child or medical support obligation. The obligation may include spousal support when child support is also being enforced.

"Department" means the Virginia Department of Social Services.

"District office" means a local office of the Division of Child Support Enforcement responsible for the operation of the child support enforcement program.

"Division" means the Division of Child Support Enforcement of the Virginia Department of Social Services, also known as a IV-D agency.

"Enforcement" means ensuring the payment of child support through the use of administrative or judicial means.

"Family engagement services" means services through which the department identifies barriers to providing support and provides case management services to address those barriers.

"Federal foster care" means foster care that is established under Title IV-E of the Social Security Act. This is a category of financial assistance paid on behalf of children who otherwise meet the eligibility criteria for TANF and who are in the custody of local social service agencies.

"Financial statement" means the provision of financial information from the natural or adoptive parents.

"Good cause" means, as it pertains to TANF applicants and recipients, an agency determination that the individual is not required to cooperate with the division in its efforts to collect child support.

"Hearing officer" means an impartial person charged by the Commissioner of the Department of Social Services to hear appeals and decide if an agency followed its policy and procedures.

"IV-D agency" means a governmental entity administering the child support enforcement program under Title IV-D of the Social Security Act. In Virginia the IV-D agency is the Division of Child Support Enforcement.

"Locate services" means obtaining information ~~which~~ that is sufficient and necessary to take action on a child support case, including information concerning (i) the physical whereabouts of the obligor or the obligor's employer~~,~~ or (ii) other sources of income or assets, as appropriate. Certain individuals and entities such as courts and other state child support enforcement agencies can receive locate-only services from the department.

"Medicaid-only" means a category of public assistance whereby a family receives Medicaid but is not eligible for or receiving TANF.

"Medical support services" means the establishment of a medical support order and the enforcement of health insurance coverage or, if court ordered, medical expenses.

"Obligation" means the amount and frequency of payments ~~which~~ that the obligor is legally bound to pay as set out in a court or administrative support order.

"Occupational license" means any license, certificate, registration, or other authorization to engage in a business, trade, profession, or occupation issued by the Commonwealth pursuant to Title 22.1, 38.2, 46.2, or 54.1 of the Code of Virginia or any other provision of law.

"Parent" means any natural or adoptive parent; the natural or adoptive parent with whom the child resides; a stepparent or other person who has physical custody of the child and with whom the child resides; a local board that has legal custody of a child in foster care; or a responsible person who is or may be obligated under Virginia law for support of a dependent child or child's caretaker.

"Past due support" means support payments determined under a court or administrative order ~~which~~ that have not been paid.

"Pendency of an appeal" means the period of time after an administrative appeal has been made and before the final disposition by an administrative hearing officer, or between the time a party files an appeal with the court and the court renders a decision.

"Putative father" means a person alleged to be the father of a child whose paternity has not been established.

"Recipient" means a person or agency that has applied for or receives public assistance or child support enforcement services.

"Recreational license" means any license, certificate, or registration used for the purpose of participation in games, sports, or hobbies, or for amusement or relaxation.

"Referral" means when one entity or organization formally or informally requests action by another with respect to an item.

"Service~~" or "service~~ of process" means the delivery to or leaving of a child support document, in a manner prescribed by state statute, giving the party reasonable notice of the action being taken.

"Summons" means a document notifying a parent or other person that ~~he or she~~ the parent or other person must appear at a time and place named in the document to provide information needed to pursue child support actions.

**22VAC40-880-390. Additional remedies.**

In addition to state ~~administrative~~ enforcement remedies, the department shall utilize available federal enforcement remedies to enforce child support obligations and collect accumulated support arrearages. Use of state and federal

enforcement remedies shall continue until the noncustodial parent is compliant with the support order.

**22VAC40-880-430. Validity of the appeal.**

A. The department shall determine the validity of an administrative appeal.

1. The appeal must be in writing.

2. If the appeal is personally delivered, the appeal must be received within 10 business days of service of process of the notice of the proposed action on the appellant.

3. If mailed, the postmark must be within 10 business days from the date of service of process of the notice of the proposed action on the appellant.

B. For appeals of federal and state tax intercepts, the appellant shall have 30 days to note an appeal to the department.

**22VAC40-880-800. Family engagement services.**

The division is authorized to establish programs to provide family engagement services to persons following an administrative or judicial determination that such services may assist the person to pay support owed. Such programs shall provide referrals to (i) employment services, to include employment assessment, employment search, and employment training; (ii) family services, including parenting skills, co-parenting skills, and relationship-building activities for parents and children; (iii) educational services, including general education development (GED) preparation and GED testing; (iv) housing services, including referrals to organizations that operate shelters and provide subsidies; (v) document assistance, including referrals to organizations and assistance in securing vital records, driver's licenses, commercial driver's licenses, or other documents; (vi) social services, health and mental health services, and substance abuse services; and (vii) any other services that would assist the person to pay support owed. These services may be offered in conjunction with, but not as a substitute for, state and federal enforcement remedies.

**22VAC40-880-810. Family engagement services, case management.**

Services authorized pursuant to 22VAC40-880-800 shall include case management services. The case manager shall conduct an orientation session with a new participant and create a services plan within 30 days of referral. The services plan shall identify services, programs, and requirements necessary to comply with the administrative referral or court order. The services plan shall also provide that the nonparticipating party be given monthly status updates regarding compliance with and status of the services plan. The case manager shall (i) assist the participant to contact and make appointments with organizations offering the required services and programs; (ii) provide the participant with appointment reminders and follow up with the participant and service providers to determine any next steps that may be required; (iii) track the participant's compliance with the services plan, the support order, and the terms of the administrative referral or court order; and (iv) in cases involving court orders, provide to the court timely and regular reports regarding the participant's compliance with the services plan and with the court orders.

During the first 90 days after an administrative referral, participants shall not be referred for civil contempt if they are substantially compliant with the services plan, whether or not they are paying support as ordered. Upon conclusion of this 90-day period, participants who are substantially compliant with the services plan and not paying support as ordered may continue to participate but shall be referred for civil contempt. Participants who are, at any time, not substantially compliant with the services plan shall be referred for civil contempt. If after referral for civil contempt, a court orders the parent to continue participating in family engagement services, the participant must comply with the terms of the services plan and any additional terms of the court order.

VA.R. Doc. No. R25-7481; Filed October 28, 2024, 10:18 a.m.

# TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

## DEPARTMENT OF MOTOR VEHICLES

### Fast-Track Regulation

Title of Regulation: **24VAC20-121. Virginia Driver Training Schools Regulations (amending 24VAC20-121-60).**

Statutory Authority: §§ 46.2-203 and 46.2-1703 of the Code of Virginia.

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: December 18, 2024.

Effective Date: January 2, 2025.

Agency Contact: Nicholas Megibow, Senior Policy Analyst, Department of Motor Vehicles, 2300 West Broad Street, Richmond, VA 23220, telephone (804) 367-6701, FAX (804) 367-4336, or email nicholas.megibow@dmv.virginia.gov.

Basis: Department of Motor Vehicles (DMV) regulations are promulgated under the general authority of § 46.2-203 of the Code of Virginia, which grants DMV statutory authority to promulgate regulations necessary to carry out the laws administered by DMV. Section 46.2-1703 of the Code of Virginia authorizes DMV to promulgate regulations that include curriculum requirements, contractual arrangements with students, obligations to students, facilities and equipment, qualifications and other requirements for instructors, school ownership requirements, surety bond requirements, and financial stability of schools.

Purpose: This action will reduce the regulatory burden on driver training school businesses without detrimentally affecting the health, safety, or welfare of citizens of the Commonwealth.

Rationale for Using Fast-Track Rulemaking Process: Because this action would reduce the regulatory burden on driver training school businesses without detrimentally affecting citizens of the Commonwealth, DMV anticipates that the action will be noncontroversial and therefore appropriate for the fast-track rulemaking process.

Substance: This action removes the "collect" requirement from subsection A, amends subsection G to eliminate duplicative language, and eliminates subsection H in 24VAC20-121-60.

Issues: The advantage to the public and the Commonwealth is that this action removes unnecessary regulatory requirements from the regulation and lessen the regulatory burden on driver training school businesses. This action does not present any disadvantages to the public or the Commonwealth.

Department of Planning and Budget Economic Impact Analysis:

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia and Executive Order 19. The analysis presented represents DPB's best estimate of the potential economic impacts as of the date of this analysis.[1]

Summary of the Proposed Amendments to Regulation. The Department of Motor Vehicles (DMV) proposes to eliminate superfluous language and a provision in the regulation that conflicts with the Code of Virginia.

Background. The current and proposed regulations both indicate that DMV may refuse to approve any application, including originals or renewals, in which the owner or any principal of the owner, or any of the school's employees or instructors has been convicted of any felony. The current regulation includes several examples of felonies. The agency proposes to remove the examples. The current regulation states that "To avoid any conflict of interest, the department will not approve any Class A school license for any applicant that is certified by DMV as a Third Party Tester for the commercial driver's license (CDL) skills testing." DMV proposes to eliminate this language since it conflicts with amendments made to § 46.2-326.1 of the Code of Virginia in 2019 that allows some Class A driver training schools to be third-party testers.[2]

Estimated Benefits and Costs. The proposed removal of language that gives examples of felonies would not have a substantive impact. DMV has not enforced the prohibition against Class A (commercial motor vehicle) school licensure for those who are certified by DMV as a third-party tester for CDL skills testing since the legislation creating the conflict went into effect on October 1, 2019 of the Code of Virginia.[3] Thus, the proposed elimination of the text would not affect the law in effect and what is enforced in practice. To the extent that there are some third-party testers who have been interested in obtaining Class A school licensure, but thought they could not due to the existing language, the proposed elimination of the text may have some positive impact in better informing of available opportunities, possibly leading to the addition of a few more commercial motor vehicle driving schools. Similarly, if there are possessors of Class A school licensure who have had interest in also becoming third-party testers but thought they could not due to the existing language, the proposed amendment may lead to a few additional third-party testers.

Businesses and Other Entities Affected. The proposal potentially affects the 30 Class A licensed driver training schools and third-party testers for CDL skills testing.[4] The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.[5] An adverse impact is indicated if there is any increase in net cost or reduction in net benefit for any entity, even if the benefits exceed the costs for all entities combined.[6] The proposed amendments neither increase costs nor reduce benefits. Thus, no adverse impact is indicated.

Small Businesses[7] Affected.[8] The proposed amendments do not appear to adversely affect small businesses.

Localities[9] Affected.[10] The proposed amendments neither disproportionally affect particular localities nor introduce costs for local governments.

Projected Impact on Employment. There may be a moderate increase in employment at Class A driving schools.

Effects on the Use and Value of Private Property. The proposal may lead to the formation of a small number of additional commercial motor vehicle driving schools. The proposed amendments do not affect real estate development costs.

---

[1] Section 2.2-4007.04 of the Code of Virginia requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

[2] Chapters 78 and 155 of the 2019 Acts of Assembly amended § 46.2-326.1 of the Code of Virginia so that certain Class A driver training schools could be certified as third-party testers. See https://lis.virginia.gov/cgi-bin/legp604.exe?191+ful+CHAP0078+hil.

[3] Ibid.

[4] Data source: DMV.

[5] Pursuant to § 2.2-4007.04 D: In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance. Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation.

[6] Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation. As a result, DPB has adopted a definition of adverse impact that assesses changes in net costs and benefits for each affected Virginia entity that directly results from discretionary changes to the regulation.

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

[8] If the proposed regulatory action may have an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to § 2.2-4007.1 of the Code of Virginia, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

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

[10] Section 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

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

Summary:

*The amendments remove the "collect" requirement, eliminate duplicative language, and reduce the regulatory burden on driver training school businesses.*

**24VAC20-121-60. School licensing requirements.**

A. Schools seeking a license shall file with the department, as required by ~~these regulations~~ this chapter, a completed application for a driver training school license along with any associated fees and other documentation required by the department. In addition, each school shall ~~collect and~~ submit to the department, as required by ~~these regulations~~ this chapter, the instructor applications for those instructors that they employ along with any associated fees and other documentation required by the department.

B. The following shall accompany the school licensing application and shall be in addition to any other application requirements of the department:

1. An application fee;

2. A certificate of insurance;

3. A surety bond;

4. Instructor applications;

5. A local business license or zoning document, or a letter from local authorities indicating none is required; and

6. A national criminal records check completed within 60 days of the application deadline for each individual providing instruction or otherwise employed by or managing the school.

In addition~~,~~ each owner or principal of the owner of a driver training school shall submit a national criminal records check with the school license application package.

C. The application package shall be submitted to the department in a format prescribed by the department. All proper applications will be either approved or denied within 30 business days of receipt by the department.

D. School licenses shall be valid for a period of 12 months and shall display the validity period on the face of the license. The school license shall expire on the last day of the last valid month of the license period.

E. Schools seeking a license shall file with the department evidence of insurance~~,~~ with a company authorized to do business in the Commonwealth of Virginia~~,~~ on all vehicles used by schools to provide instruction, at least in the minimum amounts as required by § 46.2-472 of the Code of Virginia.

The school shall provide and maintain evidence of insurance coverage on a certificate of insurance in a format prescribed by the department. The certificate shall be filed upon application and at other times of the licensure period as requested by the department. The certificate shall stipulate the make, model, year, vehicle identification number, vehicle color, and license plate number for all vehicles and shall also stipulate that the department will be notified by the insurance carrier (i) 10 calendar days before the school's insurance policy expires or (ii) on the same day that the policy is canceled or not maintained in full force.

~~Schools~~ A school shall provide to the department verification from ~~their~~ the school's insurance company in a format prescribed by the department that the insurance company is aware the vehicles are used for driver training instruction and are operated by student drivers. Schools shall notify the department of any change in liability insurance coverage not later than the effective date of the change.

Each school shall provide notice to the department's driver training school section in a format prescribed by the department in the event that any motor vehicle is added to or deleted from the insurance policy during the coverage period. The notice shall include the make, model, year, vehicle identification number, vehicle color, and ~~the~~ license plate number. The notice shall be received by the department prior to using any added motor vehicle for driver education instruction. Failure to maintain required liability insurance for school vehicles or failure to comply with insurance certification requirements shall result in the suspension or revocation of the school's license or the imposition of other sanctions, or both, as set forth in ~~these regulations~~ this chapter.

F. All licensed schools shall file with the department a surety bond in the sum set by statute for Class A and Class B schools, payable to the Commonwealth of Virginia, issued by a corporation licensed to transact surety business in the Commonwealth. The surety bond shall be filed with each application and must provide coverage for the entire licensure period.

G. The department may refuse to approve any application, including originals or renewals, in which the owner or any principal of the owner, or any of the school's employees or instructors (i) have previously been or would be subject to any sanctions prescribed by ~~these regulations~~ this chapter or (ii) has been convicted of ~~a~~ any felony~~, including but not limited to bribery, forgery, fraud or embezzlement under the laws of the Commonwealth or any other jurisdiction, or a conviction of any offense included in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2 of the Code of Virginia (Criminal Sexual Assault) or of any similar laws of any other jurisdiction,~~ or any misdemeanor ~~or felony~~ involving:

1. Sexual assault as established in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2 of the Code of Virginia;

2. Obscenity and related offenses as established in Article 5 (§ 18.2-372 et seq.) of Chapter 8 of Title 18.2 of the Code of Virginia;

3. Drugs as established in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 of the Code of Virginia;

4. Crimes of moral turpitude;

5. Contributing to the delinquency of a minor;

6. Taking indecent liberties with a minor;

7. The physical or sexual abuse or neglect of a child;

8. Similar offenses in other jurisdictions; or

9. Other offenses, as determined by the department, which would impact ownership, operation, or instruction by a school.

Any school license issued may be suspended or revoked if such a conviction occurs during any licensure period.

~~H. To avoid any conflict of interest, the department will not approve any Class A school license for any applicant that is certified by DMV as a Third Party Tester for the commercial driver's license (CDL) skills testing.~~

~~I.~~ H. Requests to change (i) the name or address of a school or (ii) a school license to add to or eliminate a licensed location, or any other business offices, classrooms, or other instructional facilities during the licensure period shall be made to the department at least 30 days prior to such change. Such changes shall be subject to a processing fee, as set forth in ~~these regulations~~ this chapter, and the issuance of a modified license, as requested. The expiration on any modified license issued shall be the same as the current license.

VA.R. Doc. No. R25-7906; Filed October 30, 2024, 8:14 a.m.

## Fast-Track Regulation

Title of Regulation: **24VAC20-121. Virginia Driver Training Schools Regulations (amending 24VAC20-121-100).**

Statutory Authority: §§ 46.2-203 and 46.2-1703 of the Code of Virginia.

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: December 18, 2024.

Effective Date: January 2, 2025.

Agency Contact: Nicholas Megibow, Senior Policy Analyst, Department of Motor Vehicles, 2300 West Broad Street, Richmond, VA 23220, telephone (804) 367-6701, FAX (804) 367-4336, or email nicholas.megibow@dmv.virginia.gov.

Basis: Department of Motor Vehicles (DMV) regulations are promulgated under the general authority of § 46.2-203 of the Code of Virginia, which grants DMV statutory authority to promulgate regulations necessary to carry out the laws administered by the DMV. Section 46.2-1703 of the Code of Virginia authorizes DMV to promulgate regulations that include curriculum requirements, contractual arrangements with students, obligations to students, facilities and equipment, qualifications and other requirements for instructors, school ownership requirements, surety bond requirements, and financial stability of schools.

Purpose: This action reduces the regulatory burden on driver training school businesses without detrimentally affecting the health, safety, or welfare of citizens of the Commonwealth.

Rationale for Using Fast-Track Rulemaking Process: Because this action would reduce the regulatory burden on driver training school businesses without detrimentally affecting the health, safety, or welfare of citizens of the Commonwealth, DMV anticipates that the action will be noncontroversial and therefore appropriate for the fast-track rulemaking process.

Substance: This action removes certain requirements related to driving records found in subsection B, removes the traffic accident notification requirement in subsection E, amends subsection G to eliminate duplicative language, and removes the high school diploma requirement for Class A driving instructors from subsection I in 24VAC20-121-100.

Issues: The advantage to the public and the Commonwealth is that this action would remove unnecessary regulatory requirements from DMV regulations and lessen the regulatory burden on driver training school businesses. This action does not present any disadvantages to the public or the Commonwealth.

Department of Planning and Budget Economic Impact Analysis:

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia and Executive Order 19. The analysis presented represents DPB's best

estimate of the potential economic impacts as of the date of this analysis.[1]

Summary of the Proposed Amendments to Regulation. The Department of Motor Vehicles (DMV) proposes to eliminate certain general instructor licensing requirements from the regulation, including the requirement for a Class A instructor to have a high school diploma or equivalent.

Background. DMV proposes to remove the following requirements: (i) that driving records must exhibit the individual's name, the driver's license number, the date of issue, the issuing jurisdiction, the date of expiration and notations of any convictions, license withdrawals, suspensions, revocations, cancellations, disqualifications, or restrictions; (ii) that instructor applicants and those licensed to teach in-vehicle instruction must report any traffic accidents related to driving within 15 days; and (iii) that Class A driving instructors have a high school diploma or equivalent. Class A training is for drivers of commercial motor vehicles.

Estimated Benefits and Costs. According to DMV, the agency already has all of the driving record required elements mentioned in its computer system. Thus, eliminating the elements of the driving records requirement would have no impact beyond perhaps reducing potential confusion by readers of the regulation. Concerning the requirement that instructor applicants and licensed instructors report traffic accidents, the agency states that it does not need to know about accidents that do not result in convictions, and that it is notified through its systems of convictions. To the extent that instructor applicants and licensed instructors have been reporting this information, the removal of this requirement would benefit them in that it would save them the time involved in reporting. Persons without a high school diploma or equivalent who wish to become a Class A driving instructor would benefit from the proposal to no longer require the degree or its equivalent to gain such licensure. Specifically, these persons would save the time and other required resources to gain the diploma or its equivalent. Removing this burden may result in a small increase in the number of persons who gain Class A driving instructor licensure. To the extent that there is an increase in the supply of licensed Class A driving instructors, some commercial motor vehicle driving schools may benefit from increased ease in finding qualified instructors.

Businesses and Other Entities Affected. The proposed amendments potentially affect the 324 licensed driver training schools and their instructors, as well as applicants for driving instructor licensure.[2] Persons without a high school diploma or equivalent who wish to become a Class A driving instructor would be particularly affected. According to DMV, all or almost all licensed driver training schools are small businesses. The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.[3] An adverse impact is indicated if there is any increase in net cost or reduction in net benefit for any entity, even if the benefits exceed the costs for all entities combined.[4] The proposed amendment neither increases costs nor reduces benefits. Thus, no adverse impact is indicated.

Small Businesses[5] Affected.[6] The proposed amendments do not adversely affect small businesses.

Localities[7] Affected.[8] The proposed amendments neither disproportionally affect particular localities nor introduce costs for local governments.

Projected Impact on Employment. There may be a moderate increase in employed Class A driving instructors.

Effects on the Use and Value of Private Property. To the extent that there is an increase in the supply of licensed Class A driving instructors, some commercial motor vehicle driving schools may encounter reduced hiring costs, which may moderately increase their value. The proposed amendments do not affect real estate development costs.

---

[1] Section 2.2-4007.04 of the Code of Virginia requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

[2] Data source: DMV.

[3] Pursuant to § 2.2-4007.04 D: In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance. Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation.

[4] Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation. As a result, DPB has adopted a definition of adverse impact that assesses changes in net costs and benefits for each affected Virginia entity that directly results from discretionary changes to the regulation.

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

[6] If the proposed regulatory action may have an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to § 2.2-4007.1 of the Code of Virginia, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

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

[8] Section 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

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

Summary:

*The amendments remove certain requirements related to driving records, eliminate duplicative language, and remove the high school diploma requirement for Class A driving instructors.*

**24VAC20-121-100. General instructor licensing requirements.**

A. Individuals seeking an instructor's license shall submit, as required by ~~these regulations~~ this chapter, a completed application along with any associated fees and other appropriate documentation to the school with which ~~they are~~ the individual is employed. Schools shall be responsible for submitting the instructor applications, along with any associated fees and other appropriate documentation, to the department~~,~~ as required by ~~these regulations~~ this chapter. Applicants seeking an original or a renewal of an instructor's license shall submit with ~~their~~ the application a national criminal records check completed within 60 days of the submission date of the application.

B. Applicants must be at least 21 years of age and must be able to document with driving records at least five years of licensed driving experience, two years of which shall be experience in the United States or a territory thereof. ~~These driving records must exhibit the individual's name, the driver's license number, the date of issue, the issuing jurisdiction, the date of expiration and notations of any convictions, license withdrawals, suspensions, revocations, cancellations, disqualifications or restrictions.~~ In the event an applicant uses driving records from a foreign country to substantiate licensed driving experience, such records must be translated into English by an appropriate authority, as approved by the department, at the applicant's expense.

C. Individuals seeking an instructor's license must be employed by a licensed school. No instructor shall be employed by more than one school unless all the schools are owned by the same person. Instructors employed by more than one school shall have an application and other appropriate documentation and fees submitted to the department by each school that employs ~~them~~ the individual.

D. Individuals licensed as instructors or seeking an instructor's license must be able to effectively communicate in English in an easily understood and comprehensible manner to ~~their~~ students and the department, as determined by the department.

E. Individuals seeking an instructor's license to teach in-vehicle instruction shall hold a valid driver's license from ~~their~~ the individual's state of domicile at the time of licensing and throughout the entire licensure period. If such driver's licenses are from another state or jurisdiction, the applicant must provide to the department a copy of ~~their~~ the applicant's driving record from that jurisdiction with ~~their~~ the application and every three months thereafter if ~~they receive~~ the applicant receives an instructor's license. Such driving record must be produced within 30 days of ~~its submission~~ submitting the driving record to the department.

All applicants for a license to teach in-vehicle instruction and those persons who are currently licensed to teach in-vehicle instruction must also provide notice to the department, in a format prescribed by the department, of any ~~traffic accidents,~~ convictions of traffic infractions, misdemeanors, or felonies, as well as any administrative actions relating to driving or any driver's license revocation, suspension, cancellation, disqualification, or other loss of driving privileges within 15 calendar days of the conviction or administrative action, or within 15 calendar days of the imposition of the revocation, suspension, cancellation, disqualification, or other loss of driving privileges.

~~Applicants~~ An applicant for a license to teach in-vehicle instruction shall not be approved if ~~their~~ the applicant's current driving privileges are expired, suspended, revoked, ~~cancelled~~ canceled, or disqualified. ~~Persons~~ Any person required to submit to periodic medical reviews may also be denied an in-vehicle instructor's license if, as determined by the department, ~~their~~ the person's conditions are considered to pose a threat to the safety, health, or welfare of driver training students or the public while ~~these persons operate~~ the person operates a motor vehicle.

F. Individuals who obtain an instructor's license shall at the time of licensing have a driving record with no more than six demerit points. After licensing, instructors shall maintain a driving record with no more than six demerit points. If, during the licensure period, the driving record of such individual accumulates more than six demerit points based on violations occurring in a 12-month period, the department shall suspend the person's instructor license and shall notify the instructor and the driver training school where the instructor is employed of such suspension. Safe driving points shall not be used to reduce the accumulated demerit points. In the event that the driving record is from another state, the department will apply Virginia's equivalent demerit points to convictions noted on such record.

Whenever the ~~driver's license of such~~ individual ~~is suspended or revoked,~~ no longer has a valid driving credential or ~~such person~~ is convicted in any court of reckless driving, driving under the influence, or driving while intoxicated, the department shall suspend the person's instructor license and shall notify the person and the driver training school where the instructor is employed of the suspension.

G. The department may refuse to approve any application, including originals or renewals, in which the applicant has been convicted of ~~a~~ any felony~~, including but not limited to bribery, forgery, fraud or embezzlement under the laws of the Commonwealth or any other jurisdiction, or a conviction of any offense included in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2 of the Code of Virginia (Criminal Sexual Assault) or of any similar laws of any other jurisdiction,~~ or ~~any~~ a misdemeanor ~~or felony~~ conviction involving:

1. Sexual assault as established in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2 of the Code of Virginia;

2. Obscenity and related offenses as established in Article 5 (§ 18.2-372 et seq.) of Chapter 8 of Title 18.2 of the Code of Virginia;

3. Drugs as established in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 of the Code of Virginia;

4. Crimes of moral turpitude;

5. Contributing to the delinquency of a minor;

6. Taking indecent liberties with a minor;

7. The physical or sexual abuse or neglect of a child;

8. Similar offenses in other jurisdictions; or

9. Other offenses~~,~~ as determined by the department~~, which~~ that would indicate that the applicant may present a danger to the safety of students or the public.

Instructor licenses may be suspended or revoked if a conviction for any of the offenses outlined in this subsection occurs during any licensure period.

H. Instructor applicants shall not be issued a license if ~~they have~~ the applicant has a conviction of driving under the influence, reckless driving, refusal to submit to a breath or blood test under § 18.2-268.2 of the Code of Virginia, or vehicular or involuntary manslaughter, or of any similar offense from any other jurisdiction within a period of five years prior to the date of the application. If the applicant's driving privileges were revoked for any such conviction, then the five-year period shall be measured from the license restoration date rather than the conviction date. Instructor licenses issued shall be revoked if a conviction, as outlined in this subsection, occurs during the licensure period.

I. ~~Except as otherwise provided in these regulations, an~~ An individual seeking ~~an~~ a Class B instructor's license shall have at least a high school diploma or equivalent. After initial licensure or renewal, Class A and Class B instructors shall attend annual training sessions provided by the department. These one-day training sessions shall be held in each of the department's regional districts every year, as deemed necessary by the department.

These sessions shall include, as appropriate and necessary, updates on department forms, audit processes and other procedural changes, and new legislation that has implications for driver training. They ~~also~~ shall also include discussions about any issues or concerns raised by either the department or the licensees.

When available, these sessions shall also offer information about the latest in driver training instructional techniques as well as other new developments in driver training in order to enhance overall professional training skills and abilities.

The schedule for such training sessions shall be developed by the department and provided to each instructor through the school that employs ~~them~~ the instructor at least 30 days in advance of the scheduled sessions. The schedule also shall include provisions for a make-up training session for those licensees who could not attend the training session in their region. Attendance shall be mandatory and shall be at no cost to licensed instructors, other than those costs associated with travel to and from the training session, including lodging and meals.

Each licensed instructor who, without valid excuse, fails to attend and complete a scheduled training session or a scheduled make-up training session shall be subject to a minimum 30-day license suspension, which shall not be lifted until the instructor has completed a special make-up training session. Special make-up training sessions shall be provided only when necessary, and instructors attending such sessions will be required to pay the department's cost for providing the special make-up training session.

J. All instructors shall complete training on the current curriculum and other course work, as required and approved by the department, prior to instructing students. Evidence of such training shall be maintained by the school employing the instructor and provided to the department upon request.

K. The fee for an instructor license shall be set pursuant to ~~these regulations~~ this chapter. The instructor's license period shall expire when the respective school license expires. At the discretion of the department, instructor licensing fees may be prorated on a monthly basis.

L. The instructor license application package shall be submitted by the school employing the instructor to the department in a format prescribed by the department. All proper applications will be either approved or denied by the department within 30 business days of receipt from the school employing the instructor.

M. All licensed instructors shall have their instructor's license in their possession at all times while providing instruction.

N. Each instructor licensed by the department shall notify the department in a format prescribed by the department within 30 days of establishing a new residential address.

O. In the event that a school licensed by the department changes its name or address, the school shall, no later than 30 days prior to such change (i) notify the department of the

school's name or address change, (ii) request revised instructor's licenses for the instructors it employs reflecting the change, and (iii) submit to the department the processing fees set forth in ~~these regulations~~ this chapter for revising and reissuing an instructor's license for each of its instructors.

After receiving the processing fees, the department will revise and reissue the instructor's licenses, as requested, and will cancel the previously issued licenses. Once it receives the revised licenses from the department, the school shall return the cancelled instructor's licenses to the department.

VA.R. Doc. No. R25-7907; Filed October 30, 2024, 8:12 a.m.

## Fast-Track Regulation

Title of Regulation: **24VAC20-121. Virginia Driver Training Schools Regulations (amending 24VAC20-121-180).**

Statutory Authority: §§ 46.2-203 and 46.2-1703 of the Code of Virginia.

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: December 18, 2024.

Effective Date: January 2, 2025.

Agency Contact: Nicholas Megibow, Senior Policy Analyst, Department of Motor Vehicles, 2300 West Broad Street, Richmond, VA 23220, telephone (804) 367-6701, FAX (804) 367-4336, or email nicholas.megibow@dmv.virginia.gov.

Basis: Department of Motor Vehicles (DMV) regulations are promulgated under the general authority of § 46.2-203 of the Code of Virginia, which grants DMV statutory authority to promulgate regulations necessary to carry out the laws administered by DMV. Section 46.2-1703 of the Code of Virginia authorizes DMV to promulgate regulations that include curriculum requirements, contractual arrangements with students, obligations to students, facilities and equipment, qualifications and other requirements for instructors, school ownership requirements, surety bond requirements, and financial stability of schools.

Purpose: This action reduces the regulatory burden on driver training school businesses without detrimentally affecting the health, safety, or welfare of citizens of the Commonwealth.

Rationale for Using Fast-Track Rulemaking Process: Because this regulatory action will reduce the regulatory burden on driver training school businesses without detrimentally affecting citizens of the Commonwealth, DMV anticipates that the action will be noncontroversial and therefore appropriate for the fast-track rulemaking process.

Substance: This action removes the requirement that the applicant for a Class A instructor's license must possess a valid Virginia nonrestricted interstate commercial driver's license, with the appropriate vehicle classes and endorsements for the type of instruction they intend to provide, for a period of least three years.

Issues: The advantage to the public and the Commonwealth is that this action will remove unnecessary regulatory requirements from the regulation and lessen the regulatory burden on driver training school businesses. This action does not present any disadvantages to the public or the Commonwealth.

Department of Planning and Budget Economic Impact Analysis:

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia and Executive Order 19. The analysis presented represents DPB's best estimate of the potential economic impacts as of the date of this analysis.[1]

Summary of the Proposed Amendments to Regulation. The Department of Motor Vehicles (DMV) proposes to remove from 24VAC20-121-180 Class A instructor license requirements one requirement and additional text that will no longer be applicable upon completion of a separate regulatory action.

Background. Both the current and proposed regulations require that applicants for a Class A[2] instructor's license possess a valid Virginia nonrestricted interstate commercial driver's license (CDL), with the appropriate vehicle classes and endorsements for the type of instruction they intend to provide. The current regulation also requires that the applicant must have held the valid Virginia nonrestricted interstate CDL for at least three years. However, the federal Entry Level Driver Training (ELDT) regulations do not have a minimum amount of time that the applicant must have had the interstate CDL. In order to be consistent with the federal regulations, DMV proposes to eliminate the requirement that the interstate CDL has been held for at least three years. The current 24VAC20-121-100 General instructor licensing requirements states that "Except as otherwise provided in these regulations, an individual seeking an instructor's license shall have at least a high school diploma or equivalent." The current 24VAC20-121-180, Class A instructor license requirements, states that: "Applicants for a Class A instructor's license who do not have a high school diploma may nevertheless be licensed if they provide evidence in a format prescribed by the department that they (i) have at least one year of previous Class A instructing experience or (ii) have successfully completed a Class A driver training course and a minimum of 160 hours of Class A instructor training provided by the hiring school." Since the federal ELDT regulations do not a require high school diploma or its equivalent for Class A driver training instructors, DMV is proposing to repeal that requirement in the 24VAC20-121-100, General instructor licensing requirements, in a separate regulatory action.[3] With the repeal of the high school diploma requirement, the quoted 24VAC20-121-180 Class A instructor license requirements text above would be misleading and unnecessary. Consequently, the agency proposes to repeal it as well.

Estimated Benefits and Costs. Eliminating the requirement that the interstate CDL has been held for at least three years in order to qualify for a Class A instructor's license would likely increase the pool of potential candidates who could be hired as instructors by Class A driver training schools. To the extent that at least some of the schools would be interested in hiring instructors who have had an interstate CDL for fewer than three years, this proposed change could be beneficial for both such schools and individuals interested in becoming instructors who have held an interstate CDL for fewer than three years. Assuming that the repeal of the high school diploma or its equivalent requirement (via the separate regulatory action) becomes effective, the text starting with "Applicants for a Class A instructor's license who do not have a high school diploma may nevertheless be licensed if..." would wrongly imply that a high school diploma or its equivalent would be required for Class A instructor's license outside of the elucidated circumstances. Since this text would be both misleading and unnecessary, repealing it would be beneficial.

Businesses and Other Entities Affected. The proposed amendments affect future Class A instructor's license applicants and the 30 Class A licensed driver training schools in the Commonwealth that would employ them.[4] According to DMV, all or almost all are small businesses. The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.[5] An adverse impact is indicated if there is any increase in net cost or reduction in net benefit for any entity, even if the benefits exceed the costs for all entities combined.[6] The proposed amendments neither increase costs nor reduce benefits. Thus, no adverse impact is indicated.

Small Businesses[7] Affected.[8] The proposed amendments do not adversely affect small businesses.

Localities[9] Affected.[10] The proposed amendments neither disproportionally affect particular localities nor introduce costs for local governments.

Projected Impact on Employment. To the extent that there are schools who have difficulty filling Class A instructor positions, and such schools would be interested in hiring instructors who have had an interstate CDL for fewer than three years, there may be a modest increase in the employment of Class A driving instructors.

Effects on the Use and Value of Private Property. To the extent that there are schools who have difficulty filling Class A instructor positions, and such schools would be willing to hire instructors who have had an interstate CDL for fewer than three years, then the proposed elimination of the three-year requirement may enable these schools to potentially serve more clients, increasing their revenue and value. The proposed amendments do not affect real estate development costs.

[1] Section 2.2-4007.04 of the Code of Virginia requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

[2] Class A training is for drivers of commercial motor vehicles.

[3] See https://townhall.virginia.gov/L/ViewAction.cfm?actionid=6470.

[4] Data source: DMV.

[5] Pursuant to § 2.2-4007.04 D: In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance. Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation.

[6] Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation. As a result, DPB has adopted a definition of adverse impact that assesses changes in net costs and benefits for each affected Virginia entity that directly results from discretionary changes to the regulation.

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

[8] If the proposed regulatory action may have an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to § 2.2-4007.1 of the Code of Virginia, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

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

[10] Section 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

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

Summary:

*The amendments remove the requirement that an applicant for a Class A instructor's license must possess a valid Virginia nonrestricted interstate commercial driver's license, with the appropriate vehicle classes and endorsements for the type of instruction they intend to provide, for a period of least three years.*

**24VAC20-121-180. Class A instructor license requirements.**

A. Applicants for a Class A instructor's license shall possess a valid Virginia nonrestricted interstate commercial driver's license (CDL), with the appropriate vehicle classes and endorsements for the type of instruction ~~they intend~~ the applicant intends to provide~~, and that has been held by the applicant for at least three years~~.

~~Applicants for a Class A instructor's license who do not have a high school diploma may nevertheless be licensed if they provide evidence in a format prescribed by the department that they (i) have at least one year of previous Class A instructing experience or (ii) have successfully completed a Class A driver training course and a minimum of 160 hours of Class A instructor training provided by the hiring school.~~

Instructor applicants shall provide with ~~their~~ applications certifications that ~~they meet~~ the applicant meets the physical requirements~~,~~ and any alcohol and drug screening requirements for commercial drivers as specified in the federal motor carrier safety regulations. A copy of such certification shall be kept in the instructor's file maintained by the driver training school employing the instructor.

If applicants for a Class A instructor's license hold a valid ~~commercial driver's license (~~CDL~~)~~ from a state other than Virginia at the time of licensing, ~~they~~ the applicant shall maintain a valid CDL throughout the entire licensure period and shall provide to the department a copy of ~~their~~ the applicant's driving record from that other state ~~or states~~ upon application and, if licensed as a Class A instructor by the department, on a quarterly basis thereafter.

Those applicants for and holders of a Class A instructor's license shall also provide notice to the department in a format prescribed by the department of any conviction of traffic infractions, misdemeanors, or felonies, any administrative actions relating to driving or any driver's license revocation, suspension, cancellation, disqualification or other loss of driving privilege within 15 calendar days of the conviction or administrative action, or within 15 calendar days of the imposition of the revocation, suspension, cancellation, disqualification, or other loss of driving privilege.

B. Instructors shall complete in-service instructor training provided by the school prior to offering student instruction. The requirements of such in-service instructor training shall be established and made available to licensed Class A schools by the department and shall include~~, but not be limited to,~~ the following topic areas:

1. Basic instructional skills;

2. Student teaching with a mentor;

3. Background in federal, state, and local laws and ordinances;

4. Basic skills for operating commercial motor vehicles;

5. Safe operating practices;

6. Maintenance of commercial motor vehicles; and

7. Safe trip planning.

VA.R. Doc. No. R25-7909; Filed October 30, 2024, 8:12 a.m.

## COMMONWEALTH TRANSPORTATION BOARD

### Final Regulation

Title of Regulation: **24VAC30-92. Secondary Street Acceptance Requirements (amending 24VAC30-92-10, 24VAC30-92-60).**

Statutory Authority: §§ 33.2-210 and 33.2-334 of the Code of Virginia.

Effective Date: December 18, 2024.

Agency Contact: Jo Anne P. Maxwell, Agency Regulatory Coordinator, Governance and Legislative Affairs Division, Department of Transportation, 1401 East Broad Street, Richmond, VA 23219, telephone (804) 786-1830, FAX (804) 225-4700, or email joanne.maxwell@vdot.virginia.gov.

Summary:

*Pursuant to Chapter 425 of the 2022 Acts of Assembly, the amendments to the Secondary Street Acceptance Requirements increase flexibility to connectivity elements, including (i) adding a definition of underground utility trunk easement and (ii) adding waivers and modifications for certain connectivity requirements.*

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

**24VAC30-92-10. Definitions.**

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

"Abandonment" in all its forms means the legislative action reserved for and granted to the local governing body to extinguish the public's right to a roadway under the jurisdiction of the Virginia Department of Transportation pursuant to §§ 33.2-909 and 33.2-912 of the Code of Virginia.

"Accessible route" means a public or private continuous, unobstructed, stable, firm, and slip-resistant path connecting all accessible elements of a facility, ~~(~~which may include parking access aisles, curb ramps, crosswalks at vehicular ways, walks, ramps, and lifts~~)~~, that can be approached, entered, and used by persons with disabilities. An accessible route shall, to the maximum extent feasible, coincide with the route for the general public.

"ADT" means average daily traffic count (see "projected traffic").

"Applicable former requirements" means the 2005 Subdivision Street Requirements for developments submitted prior to July 1, 2009, and the 2009 edition of the Secondary Street Acceptance Requirements for developments submitted between July 1, 2009, and January 31, 2012, inclusive.

"Best management practice" or "BMP" means schedules of activities; prohibitions of practices, including both structural and nonstructural practices; maintenance procedures; and other management practices to prevent or reduce the pollution of surface waters and groundwater systems from the impacts of land-disturbing activities.

"Clear zone" means the total border area of a roadway, including, if any, parking lanes or planting strips, that is sufficiently wide for an errant vehicle to avoid a serious accident. (See the Road Design Manual, 2011 (VDOT) and its Appendix B (1) (the Subdivision Street Design Guide) for details.)

"Commissioner" means the chief executive officer of the Virginia Department of Transportation or ~~his~~ the chief executive officer's designee.

"Conceptual sketch" means a drawing of the proposed development showing the location of existing and proposed land uses, any existing and proposed transportation facilities, and any additional information required so that the reviewer can determine the appropriate functional classification of the proposed street ~~or streets~~ and verify if the connectivity standards have been met.

"Cul-de-sac" means a street with only one outlet and having an appropriate turnaround for a safe and convenient reverse traffic movement.

"Dam" means an embankment or structure intended or used to impound, retain, or store water, either as a permanent pond or as a temporary storage facility.

"Department" or "VDOT" means the Virginia Department of Transportation.

"Design speed" means a speed selected for purposes of design and correlation of those features of a street such as curvature, super elevation, and sight distance, upon which the safe operation of vehicles is dependent.

"Developer" means an individual, corporation, local government, or registered partnership engaged in the subdivision, improvement, or renovation of land.

"Discontinuance~~,~~" in all its forms~~,~~ means the legislative act of the Commonwealth Transportation Board, pursuant to § 33.2-908 of the Code of Virginia, that determines that a road no longer serves public convenience warranting its maintenance with funds at the disposal of the department.

"District administrator" means the department employee assigned the overall supervision of the departmental operations in one of the Commonwealth's construction districts.

"District administrator's designee" means the department employee ~~or employees~~ designated by the district administrator to oversee the implementation of this regulation.

"Drainage Manual" means the department's Drainage Manual, 2002.

"Dwelling unit" means a structure or part of a structure containing sleeping, kitchen, and bathroom facilities that is suitable for occupancy as a home or residence by one or more persons.

"Easement" means a grant of a right to use property of an owner for specific or limited purpose.

"FAR" means floor area ratio, which is the ratio of the total floor area of a building ~~or buildings~~ on a parcel to the land area of the parcel where the building ~~or buildings are~~ is located.

"Functional classification" means the assigned classification of a roadway based on the roadway's intended purpose of providing priority to through traffic movement and access to adjoining property as determined by the department, based on the federal system of classifying groups of roadways according to the character of service they are intended to provide.

"Governing body" means the board of supervisors of the county~~,~~ but may also mean the local governing body of a town or city, if appropriate, in the application of these requirements.

"Level of service" means a qualitative measure describing operational conditions within a vehicular traffic stream~~,~~ and their perception by motorists and passengers. For the purposes of these requirements, the applicable provisions of the Highway Capacity Manual, 2010 (TRB) shall serve as the basis for determining "levels of service."

"Locally controlled grade separation structure" means a grade separation structure that does not qualify for maintenance by the department but was established within the right-of-way of a street intended for state maintenance.

"Local official" means the representative of the governing body appointed to serve as its agent in matters relating to subdivisions and land development.

"Multiuse trail" means a facility designed and constructed for the purpose of providing bicycle and pedestrian transportation~~,~~ that is located within a dedicated public way and is anticipated to be maintained by an entity other than the department.

"Municipal separate storm sewer system" or "MS4" means all separate storm sewers that are designated under 9VAC25-870-380 as municipal separate storm sewer systems.

"Municipal Separate Storm Sewer System Management Program" or "MS4 Program" means a management program covering the duration of a permit for a municipal separate storm sewer system that includes a comprehensive planning process that involves public participation and intergovernmental coordination, to reduce the discharge of

pollutants to the maximum extent practicable, to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act and corresponding regulations and the Virginia Stormwater Management Act and attendant regulations, using management practices, control techniques, and system, design, and engineering methods, and such other provisions that are appropriate.

"Network addition" means a group of interconnected street segments and intersections shown in a plan of development that are connected to the state highway system.

"Parking bay" means an off-street area for parking two or more vehicles that provides access to a public street.

"Parking lane" means an area, generally seven or eight feet in width, adjacent to and parallel with the travel lane of a roadway that is used for parking vehicles.

"Pavement Design Guide" means the Pavement Design Guide for Subdivision and Secondary Roads in Virginia, 2009 (VDOT).

"Permit Regulations" means the department's Land Use Permit Regulations (24VAC30-151).

"Phased development (streets)" means the method outlined in 24VAC30-92-80 (phased development of streets) whereby the acceptance of certain streets into the secondary system of state highways may be considered before being completely developed in accordance with all applicable requirements (e.g., two lanes of a four-lane facility are considered for acceptance in advance of lanes three and four being finished).

"Plan of development" means any site plat, subdivision plan, preliminary subdivision plat, conceptual subdivision sketch, or other engineered or surveyed drawings depicting proposed development of land and street layout, including plans included with rezoning proposals.

"Plans" means the standard drawings, including profile and roadway typical section, that show the location, character, dimensions, and details for the proposed construction of the street.

"Planting strip" means a section of land between the curb face and the pedestrian accommodation or shared use path.

"Plat" means the schematic representation of the land divided or to be divided.

"Projected traffic" means the number of vehicles, normally expressed in average daily traffic (ADT), forecast to travel over the segment of the street involved.

"Public street" means a street dedicated to public use and available to the public's unrestricted use without regard to the jurisdictional authority responsible for its operation and maintenance.

"Requirements" means the design, construction, public benefit, and related administrative considerations ~~herein~~ prescribed in this chapter for the acceptance of a street for maintenance by the department as part of the secondary system of state highways.

"Right-of-way" means the land, property, or interest therein, usually in a strip, acquired for or devoted to a public street designated to become part of the secondary system of state highways.

"Roadway" means the portion of the road or street within the limits of construction and all structures, ditches, channels, etc., necessary for the correct drainage thereof.

"Secondary system of state highways" means those public roads, streets, bridges, etc., established by a local governing body pursuant to § 33.2-705 of the Code of Virginia and subsequently accepted by the department for supervision and maintenance under the provisions of Article 3 (§ 33.2-324 et seq.) of Chapter 3 and Article 2 (§ 33.2-908 et seq.) of Chapter 9 of Title 33.2 of the Code of Virginia.

"Shared use path" means a facility that is designed and constructed according to the Road Design Manual, 2011 (VDOT), for the purpose of providing bicycle and pedestrian transportation.

"Specifications" means the department's Road and Bridge Specifications, 2007, revised 2011, including related supplemental specifications and special provisions.

"Standards" means the applicable drawings and related criteria contained in the department's Road and Bridge Standards, 2008, revised 2011.

"Storm sewer system" means a conveyance or system of conveyances and its appurtenances, including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, ~~or~~ and storm drains.

"Street" means any roadway that is created as part of a plan of development, other subdivision of land, or is constructed by or at the direction of the local governing body and is a public way for purposes of vehicular traffic, including the entire area within the right-of-way.

"Stub out" means a transportation facility (i) whose right-of-way terminates at a parcel abutting the development~~,~~; (ii) that consists of a short segment that is intended to serve current and future development by providing continuity and connectivity of the public street network~~,~~; (iii) that, based on the spacing between the stub out and other streets or stub outs~~,~~ and the current terrain, there is a reasonable expectation that connection with a future street is possible~~,~~; and (iv) that is constructed to the property line.

"Subdivision" means the division of a lot, tract, or parcel into two or more lots, plats, sites, or other divisions of land for the purpose, whether immediate or future, of sale or of building development. Any resubdivision of a previously subdivided tract or parcel of land shall also be interpreted as a

"subdivision." The division of a lot or parcel permitted by § 15.2-2244 of the Code of Virginia will not be considered a "subdivision" under this definition, provided no new road or street is thereby established. However, any further division of such parcels shall be considered a "subdivision."

"Subdivision Street Design Guide" means Appendix B (1) of the Road Design Manual, 2011 (VDOT).

"Swale" means a broad depression within which stormwater may drain during inclement weather, but that does not have a defined bed or banks.

"Total maximum daily load" or "TMDL" is a water quality term that means the sum of the individual wasteload allocations for point sources, load allocations (LAs) for nonpoint sources, natural background loading, and a margin of safety. TMDLs can be expressed in terms of either mass per time, toxicity, or other appropriate measure. The TMDL process provides for point versus nonpoint source trade-offs.

"Traveled way" means the portion of the secondary street designated for the movement of vehicles, exclusive of shoulders, parking areas, turn lanes, etc.

"Tree well" means an opening on a sidewalk, generally abutting the curb, where a tree may be planted.

"Underground utility trunk easement" means an easement for the accommodation of an existing underground utility trunk line; specifically, those lines used to carry utilities, such as power, fuel, information, or water, from central facilities to smaller distribution networks but not used for distribution of the utility's services to individual customers.

"VPD" means vehicles per day.

"VPH" means vehicles per hour.

"Wasteload allocation" or "wasteload" or "WLA" means the portion of a receiving surface water's loading or assimilative capacity allocated to one of its existing or future point sources of pollution. WLAs are a type of water quality-based effluent limitation.

"Watercourse" means a defined channel with bed and banks within which water flows, either continuously or periodically.

**24VAC30-92-60. Public benefit requirements.**

A. Public benefit. A street or network addition may only be accepted by the department for maintenance as part of the secondary system of state highways if it provides sufficient public benefit to justify perpetual public maintenance as defined by this chapter. A street shall be considered to provide sufficient public benefit if it meets or exceeds the public service, pedestrian accommodation, and connectivity requirements of this chapter.

B. Public service requirements. In the event the governing body requests the addition of a street or network addition before it meets these public service provisions, the district administrator will review each request on an individual case basis and determine if the acceptance of a street prior to normal service requirements is justified, provided the street or network addition meets all other applicable requirements, including the connectivity requirements, of this chapter. At the request of the local governing body, subject to approval by the district administrator, the public service requirements may be reduced for individual streets serving state or local economic development projects.

1. Individual streets. For the purpose of these requirements, public service may include~~, but is not necessarily limited to,~~ streets meeting one or more of the following situations:

a. Serves three or more occupied units with a unit being a single-family residence, owner-occupied apartment, owner-occupied residence in a qualifying manufactured home park, a stand-alone business, or single business entity occupying an individual building, or other similar facility. Also, streets serving manufactured home parks may only be considered when the land occupied by the manufactured home is in fee simple ownership by the residents of such manufactured home.

b. Constitutes a connecting segment between other streets that qualify from the point of public service.

c. Such street is a stub out.

d. Serves as access to schools, churches, public sanitary landfills, transfer stations, public recreational facilities, or similar facilities open to public use.

e. Serves at least 100 vehicles per day generated by an office building, industrial site, or other similar nonresidential land use in advance of the occupancy of three or more such units of varied proprietorship. Any addition under this provision shall be limited to the segment of a street that serves this minimum projected traffic and has been developed in compliance with these requirements.

f. Constitutes a part of the network of streets envisioned in the transportation plan or element of a locality's comprehensive plan that, at the time of acceptance, serves an active traffic volume of at least 100 vehicles per day.

2. Multifamily, townhouse, and retail shopping complexes. A through street that serves a multifamily building may be considered for maintenance as part of the secondary system of state highways if it is deemed by the department to provide a public service and provided it is well defined and the district administrator's designee determines that it is not a travel way through a parking lot.

Entrance streets and the internal traffic circulation systems of retail shopping complexes qualify only if more than three property owners are served and the district administrator's designee determines that ~~it~~ the street or system is not a travel way through a parking lot.

3. Network additions. A network addition shall be considered to provide service if each street within the addition meets at least one of the criteria in subdivision 1 of this subsection.

4. Special exceptions. There may be other sets of circumstances that could constitute public service. Consequently, any request for clarification regarding unclear situations should be made in writing to the district administrator's designee.

C. Connectivity requirements. All streets in a development as shown in a plan of development shall be considered for acceptance into the secondary system of state highways as one or multiple network additions. However, streets with a functional classification of collector and above may be eligible for acceptance as individual streets.

For the purposes of this subsection, connection shall mean a street connection to an adjacent property or a stub out that will allow for future street connection to an adjacent property.

The connectivity requirements of this chapter shall not apply to the following: a frontage road or reverse frontage road as defined in the Access Management Regulations (~~24VAC 30-73~~ 24VAC30-73), streets petitioned for acceptance into the secondary system of state highways through the Rural Addition Program pursuant to §§ 33.2-335 and 33.2-336 of the Code of Virginia, or streets petitioned for acceptance into the secondary system of state highways through the Commonwealth Transportation Board's Rural Addition Policy, provided such streets were constructed prior to January 1, 2012.

1. Stub out connection standard. If a stub out ~~or stub outs~~ maintained by the department ~~adjoin~~ adjoins the property of a development with a network addition or individual street proposed for acceptance into the secondary system of state highways, such network addition or individual street must connect to such stub out ~~or stub outs~~ to be eligible for acceptance into the secondary system of state highways. The district administrator may waive this requirement if the existing stub out is of such design as to make such a connection unsafe.

2. Multiple connections in multiple directions standard. The streets within a network addition may be accepted into the secondary system of state highways if the network addition provides at least two external connections, one of which must be to a publicly maintained highway and the other providing a connection to a different highway or a stub out to an adjoining property. Local street stub outs generally should not exceed 500 feet in length. If a stub out is constructed, the applicant shall post a sign in accordance with the department's standards that indicates that such stub out is a site for a future roadway connection. Nothing in this chapter shall be construed as to prohibit a stub out from providing service to lots within a development. The district administrator's designee shall waive or modify the second required connection of this standard if one or more of the following situations renders the provision of such connection impracticable:

a. The adjoining property is completely built out, its state is such that redevelopment within 20 years is unlikely, and there is no stub out (either constructed or platted) to the property served by the network addition;

b. The adjoining property is zoned for a use whose traffic is incompatible with the development being served by the network addition, ~~providing~~ provided, however, that in no case shall retail, residential, or office uses be considered incompatible with other retail, residential, or office uses; ~~or~~

c. There is no reasonable connection possible to adjoining property or adjacent highways due to a factor outside the control of the developer of the network addition, ~~such as~~ including the presence of conservation easements not put in place by the developer of the network addition, underground utility trunk easement not put in place by the developer of the network addition, water features such as rivers or lakes, jurisdictional wetlands, grades in excess of 15% whose total elevation change is greater than five feet, limited access highways, railroads, or government property to which access is restricted~~.~~; or

d. The network addition was constructed in accordance with an overall plan of development approved by the department and the locality as meeting all the requirements of this chapter, and the additional phase of the development allowing the network addition to meet connectivity is under construction.

3. Additional connections standard. Network additions providing direct access to (i) more than 200 dwelling units or (ii) lots whose trip generation is expected to be over 2,000 VPD may be accepted into the secondary system of state highways if the network addition provides an additional external connection beyond that required under subdivision 2 of this subsection for each additional 200 dwelling units or 2,000 VPD or portion of each over and above the initial 200 dwelling units or 2,000 VPD. For the purposes of this requirement, each external connection of collector facilities that ~~are~~ is an ~~elements~~ element of the county's transportation plan and to which there is no direct lot access provided counts as two external connections.

a. The district administrator's designee shall waive or modify this additional connections standard if one or more of the following situations renders the provision of such connection impracticable:

~~a.~~ (1) The adjoining property is completely built out, its state is such that redevelopment within 20 years is unlikely, and there is no stub out (either constructed or platted) to the property served by the network addition;

~~b.~~ (2) The adjoining property is zoned for a use whose traffic is incompatible with the development being served by the network addition, ~~providing~~ provided, however, that in no case shall retail, residential, or office uses be considered incompatible with other retail, residential, or office uses;

~~c. In developments with~~ (3) The development has a median density of more than eight lots per acre or ~~with~~ a FAR of 0.4 or higher, ~~where~~ and the number of connections provided would be contrary to the public interest; [ ~~or~~ ]

~~d.~~ (4) There is no reasonable connection possible to adjoining property or adjacent highways due to a factor outside the control of the developer of the network addition, ~~such as~~ including the presence of conservation easements not put in place by the developer of the network addition, underground utility trunk easement not put in place by the developer of the network addition, water features such as rivers or lakes, jurisdictional wetlands, grades in excess of 15% whose total elevation change is greater than five feet, limited access highways, railroads, or government property to which access is restricted [ ~~.~~ ; or ]

(5) The network addition was constructed in accordance with an overall plan of development approved by the department and the locality as meeting all the requirements of this chapter, and the additional phase of the development allowing the network addition to meet connectivity is under construction.

b. The district administrator's designee may also waive or modify this additional connections standard if, in the written opinion of the applicant and locality's chief executive or designee, the provision of such connection is impracticable or unwarranted for any of the following reasons: (i) there are topographic constraints; (ii) the provision is incompatible with an existing adjoining development; (iii) the adjoining property is completely built out as envisioned in the locality's comprehensive plan with no expectation of redevelopment in the next 20 years and there is no stub out (either constructed or platted) to the property served by the network addition; (iv) the connection would impact the developer's ability to comply with any local ordinances related to the preservation of open space or trees during the land development process, after a good faith effort to comply with connectivity requirements and local ordinances; (v) the connection would require work outside the right-of-way (existing or proposed) or easements on an adjoining property outside of the control of the developer; or (vi) other factors as determined by the applicant and locality's chief executive or designee. The district administrator's designee shall respond to requests for such connectivity exceptions within 30 calendar days of receipt of a completed VDOT request form.

4. Individual street standard. Streets that are not part of a network addition shall be accepted into the secondary system of state highways upon petition by the local governing body as long as they meet the requirements of the applicable design standard and one terminus of the street is an intersection with a roadway that is part of the existing publicly maintained highway network and the other terminus is either an intersection with a roadway that is part of the existing publicly maintained highway network or a stub out to an adjoining property. Streets considered for individual acceptance should be (i) streets that provide a connection between two existing publicly maintained streets or (ii) streets with a functional classification as collector or higher.

5. Connectivity exceptions. Where the ~~above~~ standards for waiver or modification described in this section have been met, the connectivity requirements for a network addition shall be waived or modified by the district administrator's designee. The developer shall submit any request for connectivity waiver or modification to the district administrator's designee with a copy to the local official. The district administrator's designee shall respond to requests for connectivity exceptions within 30 calendar days of receipt of a request. For projects where a scoping meeting pursuant to the Traffic Impact Analysis Regulations (24VAC30-155) will be held, requests for exceptions and supporting data should be presented and discussed.

6. In instances where there is potential for conflict between this chapter and the Access Management Regulations: Minor Arterials, Collectors, and Local Streets (24VAC30-73), the following shall apply:

a. For streets with a functional classification of collector where additional connections necessary to meet the connectivity requirements of this chapter cannot be accommodated within the applicable spacing standards and cannot otherwise be met through connections to lower order roadways or stub outs, such spacing standards shall be modified by the district administrator's designee to allow for such connection. Such connection ~~or connections~~ shall be required to meet intersection sight distance standards specified in the Road Design Manual, 2011 (VDOT).

b. For streets with a functional classification of minor arterial where additional connections necessary to meet the connectivity requirements of this chapter cannot be accommodated within the applicable spacing standards and cannot otherwise be met through connections to lower order roadways or stub outs, the district administrator's designee shall, in consultation with the developer and the local official, either modify the applicable spacing standards to allow for such connection ~~or connections~~, or modify the connectivity requirements of this chapter to account for the inability to make such connection. Such connection shall be required to meet intersection sight

distance as specified in the Road Design Manual, 2011 (VDOT).

c. For streets with a functional classification of principal arterial where additional connections necessary to meet the external connectivity requirements of this chapter cannot be accommodated within the applicable spacing standards and cannot otherwise be met through connections to lower order roadways or stub outs, the connectivity requirements shall be modified by the district administrator's designee to account for the inability to make such connection.

7. Failure to connect. If a local government approves a subdivision plat for a new development that does not connect to a stub out ~~or stub outs~~ in an adjacent development and such development's network addition or individual street would meet the applicable requirements of this chapter if it connected to a stub out ~~or stub outs~~ in the adjacent development, the network addition or individual street may or may not be accepted into the secondary system of state highways for maintenance pursuant to the authority granted to the district administrators in accordance with 24VAC30-92-100.

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, General Assembly Building, 201 North Ninth Street, Fourth Floor, Richmond, Virginia 23219.

FORMS (24VAC30-92)

Secondary Street Acceptance Requirements Exception Form (eff. 5/2024)

VA.R. Doc. No. R24-7622; Filed October 30, 2024, 8:44 a.m.

EXECUTIVE ORDER NUMBER THIRTY-NINE (2024)

**Promoting Transparency and Efficiency in Permitting and Licensing**

By virtue of the authority vested in me as Governor of the Commonwealth, I hereby issue this Executive Order to ensure our Commonwealth supports the thousands of Virginians applying for permits, licenses, certifications, registrations, and other forms of agency approval.

Importance of the Initiative

In 2022, I established the Office of Regulatory Management and the Office of Transformation to improve government efficacy and efficiency to further ensure Virginia is the best place to live, work, and raise a family. In the few years since then, much progress has been achieved through both offices.

The Office of Regulatory Management (ORM), which was created by Executive Order (EO) 19, was tasked with modernizing the regulatory and permitting processes in the Commonwealth. Since its creation in June 2022, it has made great strides both in modernizing regulations in order to alleviate burdens on Virginia citizens and promoting regulatory transparency. As part of EO 19's directive to reduce regulatory requirements by 25%, agencies have now eliminated or streamlined over 50,000 regulatory requirements and saved Virginia citizens over $1.2 billion. ORM has also implemented reforms that have created a far more transparent regulatory process. As a result of these efforts, 100% of all regulatory actions (including those that otherwise are exempt from the Administrative Process Act) and guidance document changes are now posted on the Virginia Regulatory Town Hall website and accompanied by a cost-benefit analysis.

The Office of Transformation was directed in Executive Order 5 to enable Secretariats and their agencies to deliver a great customer experience to Virginians. In less than three years, the Office of Transformation jump-started unprecedented transformation in customer service, operational streamlining and performance, and cross-agency program improvements. At the Department of Motor Vehicle (DMV) service centers, customer wait times were cut by more than 70% for the 3.5 million Virginians who annually frequent DMV from 37 to 10 minutes. At the Virginia Employment Commission (VEC), over 1.3 million unemployment work items were eliminated, and VEC went from being last and third from last in U.S. Department of Labor national timeliness rankings to top 20 in the two key metrics (first pay timeliness and timeliness payments). Through critical cross agency initiatives, the Office of Transformation enabled radical improvements in support for those with critical mental health needs (Right Help, Right Now) and those reentering society following incarceration (Stand Tall-Stay Strong-Succeed Together).

ORM and Transformation also partnered to improve Virginians' experience in another critical area. From Day 1, a major focus of my Administration has been achieving a "streamlining of the regulatory/permitting approval processes of all agencies to achieve a substantial shortening of the time required for an approval [or rejection]."[1]

Each year, Virginia agencies issue more than 400,000 permits, licenses, certifications, registrations, and other forms of agency approval ("approvals"). This includes over 600 different types of approvals. These are in addition to the almost 3 million traditional driver's licenses and gaming licenses issued annually.[2]

Issuing approvals is a critical function undertaken by our state government. These approvals implement important safeguards to protect our Commonwealth's public health, safety, and welfare. For example: restaurant permits ensure that citizens are served safe and high-quality food when dining out; environmental permits prevent land degradation and promote a safe drinking water supply; professional licenses guarantee that teachers, nurses, contractors, and other skilled practitioners possess the necessary skills to undertake their chosen occupation.

Unfortunately, too often we do not ensure Virginia businesses and residents have a great customer experience when applying for approvals. Receiving an approval in a timely manner can make the difference between success and failure. Time spent waiting for an approval is time that could otherwise be spent building houses, teaching students, or undertaking hundreds of other productive activities. In FY2024, it took on average 10 days to process completed approval applications resulting in over 11,000 years of waiting. Reducing waiting times by 10% would result in Virginians waiting 1,100 years less annually. That freed-up time includes Virginians getting to work earlier with their professional licenses, development completed earlier for housing, and major projects achieved earlier to address critical infrastructure. And it would save Virginians millions of dollars by allowing them to undertake productive activities more quickly.

In addition, the process for issuing approvals often fails to take advantage of 21st century technology. Many agencies still rely on paper processing and the approval process can often be opaque, with applicants unable to determine how long it will take to receive an approval or track the status of their application. This can stifle business development, result in lower rates of compliance, and discourage investment in our great Commonwealth.

Virginia's government owes its citizens the assurance they can receive approvals efficiently and transparently.

Preamble

In January 2022, I tasked the Department of Environmental Quality (DEQ) to pilot an innovative system for tracking its permits. The pilot system went live on December 1, 2022. Since that time, DEQ has partnered with five additional agencies and the Virginia IT Agency (VITA) to include

virtually all permits of public interest. This expanded tracking system, which is referred to as Virginia Permit Transparency (VPT), covers over 100,000 applications issued per year across six agencies (DEQ), the Department of Energy (Energy), the Marine Resources Commission (VMRC), the Department of Transportation (VDOT), the Department of Health (VDH), and the Department of Conservation and Recreation (DCR).

Now that these permits are available online, the participating agencies can turn to tracking and improving processing times. Over the past two years, DEQ has managed to improve its permit processing time by 70% using the Permitting Enhancement and Evaluation Platform pilot program. DEQ estimates that the improved processing time saves Virginia citizens up to $40 million per year. The other five agencies are now assessing their review times and looking for ways to expedite their processes.

Also at the beginning of 2022, I instructed the Secretary of Labor and the Department of Professional and Occupational Regulation (DPOR) to resolve their critical backlog in applications. DPOR averaged 33 business days to process licensing applications, with its three main boards, Contractors, Real Estate, and Barbers and Cosmetology, experiencing even longer durations.

DPOR took a comprehensive approach to tackling this issue, by (1) establishing metrics and dashboards for tracking durations; (2) mapping each component of the application process and associated expected timelines; and (3) setting a goal of reducing average durations by 30 days by 2026. In addition, DPOR reorganized its teams to spur collaboration across license types and used a sprint structure to drive short-term deliverables enabling the overarching goal. As of July 1, 2024, DPOR reduced its average durations by 85% to five business days, with an estimated annual economic benefit to Virginia's economy of $179 million.[3] DPOR also prioritized a re-platform of its licensing system to digitize application submissions and further automate the processing of applications.

Because of these efforts and the importance of improving Virginians' experience with their state government, I also requested an inventory of all approval types across agencies, including annual volume of issued approvals and average processing times. The results of this effort highlighted the opportunity for further action.

This Executive Order builds upon these efforts in four ways:

1. It directs agencies to provide additional data on the approvals they issue by December 13, 2024.

2. It directs agencies to improve the process for issuing approvals in up to four ways:

a. Eliminating obsolete approvals;

b. Including approvals involving multiple steps on VPT;

c. Reducing approval processing times[4] through streamlining; and

d. Digitizing and enhancing the user experience for the approval application process.

3. It directs agencies to submit their improvement plans by December 13, 2024.

4. It directs agencies to report on their achievements by January 31, 2025, and then quarterly thereafter.

Directive

Accordingly, pursuant to the authority vested in me as Chief Executive Officer of the Commonwealth and pursuant to Article V of the Constitution of Virginia and the laws of the Commonwealth, I hereby direct all relevant agencies to take the following actions:

I. Report on agency approvals

Each agency shall report the following information for each type of approval it issues to its relevant Secretariat and the Office of the Governor, through the Office of Regulatory Management, by December 13, 2024:

1. The total number of applications processed annually;

2. The average processing time for each type of approval;

3. Any fees or charges associated with the approval;

4. Any involvement of other federal, state, or local government subdivisions in the approval process, including the average duration of the processing time by each such government subdivision;

5. A citation to the statute or regulation that mandates the issuance of each approval; and

6. Information on whether the application, fee payment, and relevant details for each approval can be completed online.

II. Remove obsolete and unnecessary approvals

In FY2024, there were 87 approval types that had an annual volume of only one (41) or zero (46). Such approvals may no longer be necessary.

All relevant agencies shall identify and catalog low-volume approvals and submit a report to the Office of the Governor through the Office of Regulatory Management. This report shall include (i) a recommendation as to whether each low-volume approval should be eliminated; and (ii) an indication of whether the authority for each such approval is statutory, regulatory, or administrative.

If an agency determines that a low-volume approval should be eliminated, and the authority for issuing such an approval is permissive (e.g., lacks a statutory or regulatory basis), the agency shall notify the Office of the Governor through the Office of Regulatory Management that the issuance of the approval shall cease.

In cases where eliminating a low-volume approval requires regulatory authority, the agency shall coordinate with the relevant Secretariat and the Office of Regulatory Management to initiate the regulatory reduction process as outlined in Executive Order 19.

Where a low-volume approval is required by statute, the agency shall coordinate with the relevant Secretariat and the Office of the Governor, through the Office of Regulatory Management, to identify the necessary statutory changes and any additional conditions required to eliminate the approval.

III. Publicize application, review, and approval process

Relevant agencies shall identify and catalog approvals that meet the following criteria: (i) the approval process has a target processing time of 15 or more days; and (ii) the approval involves more than one procedural step (including steps inside or outside of the relevant agency).

Agencies shall collaborate with VITA to validate identified approvals' fit with VPT and develop a work plan for incorporating those approvals into VPT by December 13, 2024. All qualifying approvals shall be incorporated into VPT no later than April 30, 2025.

IV. Improve processing times through operational streamlining

All relevant agencies shall certify to the Office of the Governor through the Office of Regulatory Management by December 13, 2024, that, for each approval under their purview, the agency has:

Assigned an agency owner or assignee responsible for each type of approval;

Mapped the process for each approval;

Implemented a system to track application durations, either through a live dashboard, such as VPT, or other tracking mechanism; and

Established a standardized intra-agency process for application review and approval.

Agencies shall submit to the Office of the Governor through the Office of Regulatory Management, by December 13. 2024, their strategy to simplify existing approvals. This strategy shall include efforts to reduce complexity by:

Reducing the number of procedural stages in the approval process; and

Converting individual permits (which involve case-by-case evaluations and more extensive procedural requirements) to general permits (which are more standardized and streamlined), where permissible by regulatory, statutory, or administrative authority.

Agencies are encouraged to prioritize these efforts for high impact approvals.

V. Improve and standardize the front-end customer experience

Agencies shall work in coordination with the Virginia Information Technology Agency (VITA) to enhance the applicant experience for all approvals by digitizing processes for (i) submitting applications, phasing out partially or wholly manual processes; (ii) processing fees digitally; and (iii) addressing incomplete or missing background information online.

Agencies are encouraged to utilize standardized technology solutions to digitize the application process and facilitate faster, more cost-effective, and sustainable processing.

VITA shall provide agencies with standardized offerings for online application submission, payment processing, and website modernization, where possible.

Agencies shall collaborate with VITA to develop a strategy and timeline to address any identified gaps in the digitization process. Such a plan shall be finalized by December 13, 2024, and submitted to the Office of the Governor through the Office of Regulatory Management.

VI. Further directive

The Office of Regulatory Management shall provide standardized forms for agencies to use in reporting the required information. Agencies shall report on their metrics and achievements by January 31, 2025, and then quarterly thereafter to the Governor.

The Office of Regulatory Management, in coordination with the relevant Secretariats, may request updated reports to ensure compliance with this Executive Order or any amendments thereto.

VII. Definitions

For purposes of this Executive Order:

"Agencies" refers to all executive branch agencies, including agencies with regulations that have a full or partial exemption from either Article 1 or Article 2 of the Administrative Process Act with the exception of institutions of higher education.

"Applicant" is the individual, entity, or any collection thereof submitting an application or seeking an approval.

"Approval" refers to a permit, license, certification, registration, or any other instrument that a regulated party must obtain from an agency prior to engaging in a particular activity.

"Average duration" means the amount of time that an agency takes to fully process any given approval application, measured as of the previous year.

"High impact approval" means any approval that either (i) has an average processing duration of ten or more days and for which more than one hundred applications are received annually or (ii) has an average processing duration exceeding forty-five days.

"Low-volume approval" means any approval issued by an agency with five or fewer issuances per year.

"Office of Regulatory Management" carries the same meaning as set forth in Executive Order 19.

"Procedural stage" means a step in the approval process where a permit or license application is transferred or reviewed by an agency owner or designee, whether within the agency, involving another state agency, or an external agency, including federal or local government subdivisions.

Effective Date

This Executive Order shall be effective upon its signing and shall remain in force and effect unless amended or rescinded by further executive order or directive. Given under my hand and under the Seal of the Commonwealth of Virginia this 18th day of October, 2024.

/s/ Glenn Youngkin, Governor

---

[1] See Executive Order 19.

[2] This figure included 1.7 million DMV licenses and identification cards and 1.1 million hunting and fishing licenses.

[3] Each business day provides around $200/day in additional income generated based on average income data. Multiplying $200/day by 32,000 approvals in FY24 by the 28-day reduction in processing times results in $179 million.

[4] Processing time defined as the time after application for approval submitted.

EXECUTIVE ORDER NUMBER FORTY (2024)

## Enhancing Coordination and Communication and Bolstering Wildfire Incident Command Operations

By virtue of the authority vested in me as Governor of the Commonwealth, I hereby issue this Executive Order to enhance collaboration and emergency preparedness between state agencies who work to keep all Virginians safe against the threat of wildfires around the Commonwealth.

Importance of the Initiative

The Commonwealth of Virginia is committed to ensuring the safety and protection of its citizens, natural resources, and property from the threat of wildfires. Effective communication and coordination between state agencies are crucial to responding to and managing wildfire incidents. To enhance the Commonwealth's preparedness and response coordination, it is essential that one state agency serves as lead for wildfire response and incident command operations, ensuring that all relevant information is centralized and communicated effectively. This Order provides guidance specifically related to managing significant wildfire activity to augment the operational plans outlined in the Commonwealth of Virginia Emergency Operations Plan (COVEOP).

Forests cover nearly two-thirds of the lands of Virginia, over 16 million acres. These forests provide a wide range of critical services and environmental benefits including protecting water quality, increasing ground water recharge, improving air quality, providing wildlife habitats, and allowing open space for recreation and scenic beauty that make Virginia a beautiful place to live, work, and raise a family. These same forests also provide the raw materials for Virginia's third largest industry, which employs over 108,000 people.

Virginia's forests have historically been associated with fire. Fire was a tool used extensively by native peoples to manage the landscape. Since colonial times, intentional and unintentional fires significantly impacted the forest. Modern wildland firefighting has significantly decreased the extent of the forest burned each year. The lack of natural or historic fire regimes leaves forests more at risk from wildfires.

Reintroducing beneficial fires to the forest is an important strategy to restore healthy ecosystems and reduce the amount of fuel available for wildfires. Land managers today emphasize the use of prescribed fire, for the multiple benefits "good fire" brings to the forest. Prescribed fire—setting intentional, controlled fires with a specific goal—is a necessary and useful tool to prevent dangerous wildfires and manage landscapes for long-term ecological health. Prescribed fire is used to promote many benefits, including maintaining oak and pine savannas, restoring wildlife habitat, controlling pests and invasive plants, and clearing forest brush, leaves and debris—also known as "fuel"—that can promote larger and more destructive wildfires.

Wildfires have the potential to harm property, livelihoods, and human health. Unfortunately, fire-related threats are only increasing, as more people live in and near forests and other natural areas. At the same time, the number of homes being built within or near forests has greatly increased. The Virginia Department of Forestry (DOF) has identified 5,385 woodland home communities that are potentially at risk from wildfire.

Annual wildfire suppression efforts are credited with protecting an average of more than 2,800 homes and other buildings with a total value protected of over $179 million each year. Virginia has a proud tradition of safe and aggressive initial attack in response to wildfire. Because of the coordinated efforts of DOF and the over 600 local fire departments across Virginia, most people are unaware of the hundreds of wildfires that occur every year in the Commonwealth.

Over the past 20 years, on average, DOF suppressed 779 fires that burned 10,686 acres annually. These fires damaged or destroyed an average of 91 structures per year with a total estimated loss of $1.96 million annually.

This year, DOF has responded to 352 fires, with 92% containment in the first 24-hour period. There are many more fires—perhaps five times as many fires—handled by local fire

departments, showing Virginia's network of DOF full-time and part-time firefighters working closely with local fire departments has been able to effectively handle initial attack in most cases.

Two-and-a-half million acres of Virginia's forests fall under the management of federal agencies including the U.S. Department of Agriculture Forest Service, National Park Service, and the U.S. Fish and Wildlife Service. The DOF maintains an active cooperative agreement with each of these agencies to allow for enhanced cooperation on all wildfires impacting the Commonwealth. Through this agreement, all wildland fire suppression agencies in Virginia share resources and respond in a cross-boundary approach, with a mutual purpose of suppressing wildfires as efficiently as possible, to protect life and infrastructure.

Drought conditions during the fall of 2023 and a significant wind event during the spring of 2024 resulted in significant wildfire activity that burned 44,348 acres. This is more acres burned in Virginia in a six-month period than at any time in the last 30 years, almost five times more than the 20-year average for the same period.

The need to protect life and property must be balanced with the need to provide for firefighter safety. Firefighters are driven by duty to protect lives and property and are often forced to put their own lives at risk to do so. The increasing prevalence of woodland homes that lack adequate preventative measures to withstand wildfire puts more firefighters in peril. Aggressive initial attacks help to reduce overall firefighter risk by keeping fires small so that fewer resources are needed.

During significant wildfire activity, fire size and complexity can result in the need for greater resources and greater coordination. This level of response is managed through the Incident Management Team (IMT) approach. This organizational system that is now used for any large-scale event, was developed in response to the complexity of managing large wildfires. For this reason, forestry agencies like the DOF employ the greatest number of trained IMT staff.

Directive

Accordingly, pursuant to the authority vested in me as the Chief Executive Officer of the Commonwealth, and pursuant to Article V, §§ 1 and 7 of the Constitution of Virginia and the laws of the Commonwealth, I hereby direct my administration to implement the following measures to enhance our state's preparedness and response capabilities in responding to wildfires here in the Commonwealth of Virginia. This Order establishes a necessary plan for the included state agencies to successfully accomplish their COVEOP assigned responsibilities, as outlined in COVEOP Item Six, "Planning Assumptions."

1. Designation of Lead Agency:

The Virginia Department of Forestry (DOF) is hereby designated as the lead agency for incident command operations in all wildfire-related emergencies within the Commonwealth of Virginia.

Va. Code § 10.1-1136 designates DOF forest wardens to serve as forest fire incident commander and perform other duties as needed in the management and suppression of forest fire incidents.

DOF has a long history of working in Unified Incident Command with local fire services and with the state and federal land-holding agencies.

DOF shall continue to support and engage in the cooperative agreement with the U.S. Department of Agriculture Forest Service, National Park Service, and the U.S. Fish and Wildlife Service to ensure prompt initial response while respecting jurisdictional authorities.

2. Enhanced Communication During Significant Wildfire Activity:

DOF shall enhance its communication strategy during significant wildfire activity by implementing the following measures:

Routine Updates: DOF shall commit to providing three scheduled updates per day, including morning and evening briefings, and an additional midday update to relay the status of the wildfire, resources on scene, requested resources, and forecasts for containment.

Simplified Reporting: DOF shall develop a new, simplified method for describing fire status, transitioning from traditional metrics such as percentage contained or controlled, and focusing instead on key factors such as resource deployment and expected containment timelines.

Public and Citizen Safety Communications: DOF shall ensure that all impacted citizens and the general public receive timely updates and safety messages. This will be achieved by dedicating additional staff and providing specialized training for public information roles.

Elected Officials Liaison: DOF shall designate a communications liaison for local and state elected officials, ensuring they receive accurate and timely information directly from the Unified Incident Command.

3. Communication and Coordination:

The Virginia Department of Emergency Management (VDEM), the Virginia Department of Fire Programs (VDFP), and other relevant state and local agencies shall coordinate closely with Virginia Department of Forestry (DOF) in all wildfire incident responses.

All information regarding wildfire incidents, including situational reports, resource needs, and operational updates, shall be communicated to and through DOF before any request for additional resources is made.

DOF shall ensure that there is effective communication between the Unified Incident Command and local officials and emergency operations staff regarding fire status, potential community impacts, and resource needs.

4. Incident Command Structure:

DOF shall establish and maintain a clear and effective incident command structure for wildfire emergencies, ensuring that all participating agencies understand their roles and responsibilities.

To ensure consistency and accuracy in public and internal communications, all Commonwealth entities must utilize the information generated by the Unified Incident Command as the sole source for official updates.

5. Resource Allocation:

All resource requests related to wildfire management must originate from the Unified Incident Command, which includes DOF, local fire departments, the Virginia Department of Fire Programs (VDFP), and where applicable, federal agencies.

VDEM shall ensure that any wildfire resource requests submitted through the WebEOC, or changes to resource orders, originate from or are approved by the Unified Incident Command. This includes requests for logistical, operational and communications assistance as well as for critical wildfire resources such as trained wildland firefighters, brush trucks, and aircraft.

DOF shall coordinate with VDEM for requests involving the Virginia National Guard or other logistical needs such as fuel or food, when appropriate.

6. Development of a Memorandum of Understanding (MOU) to bolster firefighting capacity:

DOF and VDFP are directed to create and formalize a Memorandum of Understanding (MOU) based on the following guidelines:

The MOU shall establish and maintain a cooperative agreement to provide personnel and incident management resources in support of emergency incidents, with a focus on wildfire management.

The MOU shall recognize DOF's statutory responsibility to prevent and extinguish forest fires and VDFP's role in providing technical expertise and support to Virginia's fire services.

The agreement shall outline national level training, credentialing, resource sharing, and reimbursement processes necessary to support DOF during periods of elevated wildfire occurrence or other emergencies.

Both agencies shall ensure that information flow, situational awareness, and logistical support are enhanced through this cooperative agreement, with clear roles and responsibilities defined for each agency to assist in coordination and preparedness efforts.

7. Development of a Wildfire Annex for the Commonwealth of Virginia Emergency Operations Plan:

VDEM, DOF, and VDFP shall create and formalize a Wildfire Annex addendum to the COVEOP within the next six months.

Effective Date

This Executive Order shall be effective upon its signing and shall remain in force and effect unless amended or rescinded by further executive order or directive. Given under my hand and under the Seal of the Commonwealth of Virginia, this 21st day of October 2024.

/s/ Glenn Youngkin, Governor

EXECUTIVE ORDER NUMBER FORTY-ONE (2024)

## Launching the Net Level Partnership to Combat Gangs and Gang Violence Across the Commonwealth

By virtue of the authority vested in me as Governor of the Commonwealth, I hereby issue this Executive Order to build on our Administration's successful efforts to combat the crisis of gang activity within the Commonwealth of Virginia by establishing a statewide gang and community violence prevention partnership and enforcement strategy to confront gang violence, drug trafficking, human trafficking, and violence committed with firearms, and to provide support to communities and victims.

Importance of the Initiative

National and International Criminal Organizations Drive Gang Violence, Drug Trafficking, Human Trafficking, and Violence Committed with Guns in Virginia

Criminal street gangs are responsible for an alarming percentage of violent crimes committed throughout Virginia. There are approximately 33,000 gangs in the United States with over one million gang members. Gangs in the U.S. are responsible for approximately half of the violent crimes in most jurisdictions.[1] National and transnational gangs extend their reach to nearly every corner of the Commonwealth including jails, prisons, and even juvenile facilities. Gangs are linked to assaults, homicides, brutal robberies, drive-by shootings, extortion, drug trafficking, prostitution, and human trafficking, accounting for some of the most significant threats to public safety in this state. Virginia law enforcement agencies are currently combating over 650[2] identified criminal street gangs and criminal organizations with local, national, and international reach. These organizations touch almost every jurisdiction in the Commonwealth and leave lasting, devastating impacts.

While these statistics are alarming, large national gangs such as MS-13, the Pagans, and associations of the Bloods and Crips have established a strong presence. Law enforcement is now dealing with the influx of Tren de Aragua, a dangerous gang

that originated in Venezuela and terrorized South American countries for several years. Tren de Aragua is known for murder, drug trafficking, sex crimes, extortion, and other violent acts.

National-level gangs pose a significant threat to suburban areas because of increased connections with transnational criminal organizations and Drug Trafficking Organizations (DTOs). These relationships provide gangs with access to international sources of supply for illicit drugs that they commonly distribute in urban, suburban, and rural communities. Federal law enforcement officials have documented connections between transnational DTOs and 11 national-level street gangs, six national-level prison gangs, four national-level Organized Motorcycle Gangs, two regional-level street gangs, one regional-level prison gang, and three local prison gangs.

Mexican DTOs, according to law enforcement reporting, are strengthening their relationships with U.S.-based street gangs, prison gangs, and Organized Motorcycle Gangs, involving them in their drug trafficking operations. Mexican DTOs routinely use gangs to smuggle and distribute drugs, collect illicit proceeds, and serve as enforcers. In addition, Mexican DTOs often use gang members as retail-level drug distributors, creating an additional layer of protection between DTO members and law enforcement. Law enforcement officials report that Mexican drug traffickers affiliated with the Federation, the Gulf Cartel, the Judrez Cartel, and the Tijuana Cartel maintain working relationships with at least 20 street gangs, prison gangs, and Organized Motorcycle Gangs.[3]

Gangs are continuing to grow and spread their violence by recruiting new members. Often, these recruits are from the most vulnerable groups in our society who are lured into the gang with the promise of family and protection. Gang recruitment increasingly occurs at a young age, sometimes as young as 10 years old.

While, overall, there has been a decrease in inmates housed with the Department of Corrections since 2019, there has been an increase in confirmed gang members within the Department, from 12.8% in December 2019 to 17.6% in August 2024. During that period, of these inmates who were gang members, approximately 75% of them had violent, serious offenses, with recent numbers jumping to nearly 80%. Likewise, the number of gang members on probation or parole having a violent offense history increased to 56% of the current probation or parole population.[4]

Fighting Back with Operation Bold Blue Line, Operation Ceasefire, Operation FREE Virginia, and the VSP Human Trafficking Task Force

Operation Bold Blue Line, starting in 2022, has helped Virginia establish a foothold in our joint efforts to combat gangs and the violence and drugs they bring to the Commonwealth. Investments, including Operation Ceasefire and other gang violence intervention funds, were made in concert with comprehensive law enforcement, prosecutorial, and community-based initiatives. The Virginia State Police has been working collaboratively with local law enforcement, prosecutors, and the community.

Since these initiatives began, there has been a 34% decrease in murders and a 12% decrease in violent crimes in participating cities.[5] Combined with Operation Free Virginia, these initiatives have helped remove over 2,000 pounds of illegal narcotics that would have a street value of $2.143 billion, including approximately 415 pounds of fentanyl. Additionally, more than $2.7 million is tied to the seizure of assets tied to illicit activity.[6] Finally, these efforts have produced approximately 2,100 arrests thus far in 2024. While these efforts are a successful start, we have, by no means completed the mission.

Executive Order Seven (2022), Establishing the Commission on Human Trafficking Prevention and Survivor Support, drove the establishment of the VSP's special unit on human trafficking. Since May 1, 2022, Virginia has opened 503 human trafficking cases and arrested 52 individuals charged with 71 felonies related to human trafficking. Multiple anti-human trafficking task forces have been created across the Commonwealth, combining state, local, tribal and federal resources to target human traffickers and those who exploit others.

Protecting Young Virginians from Gang Recruitment

In 2022, the Department of Juvenile Justice began a process of bolstering the identification and intervention methods for youth who were gang-involved. The Department implemented statewide standardized procedures and training, and increased communication with local law enforcement and members of the community. These changes allowed for a significant increase in the identification of gang-involved youth. Compared to previous years, there has been over an 800% increase in identified gang affiliation or membership. Of those with gang affiliation or membership, 70% committed a felony against a person. Identification is critical in preventing further violence as well as providing specific services to the youth.

Breaking the Prison-Gang Membership Cycle with Stand Tall Initiative

For inmates in the Department of Corrections, inmates in local and regional jails, and probationers, the Stand Tall — Stay Strong — Stay Connected initiative continues gang intervention and prevention efforts by providing pathways to successful re-entry, avoiding a return to a life of crime. Stand Tall is centered on the creation of a first in the nation, dynamic, proactive approach to supporting reentry success by measuring and acting on six key reentry success metrics: (1) gainful employment; (2) stable housing; (3) healthcare insurance coverage; (4) appropriate supervision levels; (5) necessary mental health treatment; and (6) necessary substance abuse treatment. Since April 2023, the Stand Tall initiative has

resulted in 3,100 more returning citizens gaining employment, 7,100 enrolled in health care, 5,500 having appropriate supervision level, and 600 fewer probationers absconding (the first drop in 12 years).

Taking Our Fight Against Gangs to the Next-Level

The next-level of combating gangs brings together law enforcement from local, state, tribal, and federal jurisdictions with community partners in a coordinated, intelligence-driven, common-sense approach to deal with these criminal enterprises that threaten the safety and security of our citizens. Gangs must never again be allowed to operate under the cover of darkness in Virginia.

The conviction of dangerous gang members, restitution for their victims, and other assistance for victims and communities has been a top public safety priority for the Commonwealth. We must continue to ensure the dedicated people who work tirelessly to combat criminal street gang activity are equipped with the tools necessary to win this fight. Today, I propose a comprehensive plan that will support the following priorities:

Train criminal justice personnel on the identification and interdiction of gangs;

Deter criminal gang activity, trafficking, and violence committed with firearms through investigation, arrest, and enhanced prosecution;

Establish the Virginia State Police as the centralized data repository/warehouse for all Commonwealth gang related data;

Establish a Gang Intelligence Task Force composed of sworn investigators and intelligence analysts from localities around the Commonwealth. The Task Force will work to identify, document, investigate and eradicate the gangs operating in the Commonwealth. The Task Force will collect and analyze statewide criminal gang and gun violence data, trends, and intelligence to produce strategic intelligence/investigative leads which will be shared with the localities to target the gang activity in their respective areas;

Enhance anti-gang and gun awareness training for communities and schools; and

Enhance support for youth intervention, prevention, community partnerships and mentoring programs to reduce criminal street gang, trafficking, and associated violence in Virginia communities.

The initiatives created in this Order establish significant steps to make Virginia communities safer. Through this comprehensive approach we will enhance the already successful efforts in place across Virginia with structural coordination to drive partnership, data sharing, enforcement, education, prevention, and communication.

My Administration, in partnership with the Office of the Attorney General and with support of federal, state, tribal, and local law enforcement, is committed to doing everything within our power to eliminate criminal gang and associated violence in our communities.

Directive

Accordingly, pursuant to the authority vested in me as the Chief Executive Officer of the Commonwealth, and pursuant to Article V of the Constitution and the laws of the Commonwealth, I hereby order the Secretary of Public Safety & Homeland Security to establish the Commonwealth Gang Prevention Partnership between the Virginia State Police, Department of Corrections, Department of Juvenile Justice, and Department of Criminal Justice Services, in collaboration with the Virginia Office of the Attorney General, and any other relevant stakeholders as identified by the initiative partners to carry out the following actions:

Launching the Next-Level Partnership to Combat Gangs and Gang Violence in Virginia

1. The Secretary of Public Safety & Homeland Security, in coordination with the Virginia State Police and the Department of Criminal Justice Services, shall establish a Statewide Gang and Violence Prevention and Enforcement Program to be housed in the Virginia State Police Special Investigations and Programs Division. The program administrator shall work with the Office of the Attorney General, the Department of Criminal Justice Services, the Department of Corrections, the Department of Juvenile Justice and the Virginia State Police to build the Statewide Gang and Violence Prevention and Enforcement Program. Participation of federal, local, tribal, and campus law enforcement agencies shall be solicited and encouraged to foster communication across jurisdictions.

2. The Statewide Gang and Violence Prevention and Enforcement Program shall support existing gang, trafficking and violent crime task forces and intelligence groups, cover current gaps and reduce duplication of efforts, as well as provide intelligence support to the Governor's Gang Intelligence Task Force.

3. The Secretary of Public Safety & Homeland Security shall designate a liaison responsible for executive level oversight of the established cross-agency partnerships. This executive liaison will be designated from one of the agencies making up the Gang Governance Board and will rotate every two years.

Establishment of the Governor's Gang Intelligence Task Force

1. I direct the Secretary of Public Safety & Homeland Security to establish a Gang Intelligence Task Force to be comprised of all State and Local Law Enforcement agencies and the Virginia State Police, Department of Corrections, Department of Juvenile Justice, the Office of the Attorney General and campus law enforcement agencies. Participation of Federal law enforcement agencies shall be solicited and encouraged to foster communication and interdiction across jurisdictions.

2. I direct the Gang Intelligence Task Force to work with local and federal authorities to support ongoing investigations aimed at identifying and combating criminal street gangs in Virginia.

3. I direct the Gang Intelligence Task Force, in collaboration with the Office of the Attorney General, to leverage all available funding to meet local investigative and operational needs to combat gang violence and recruitment.

Data Collection and Dissemination

1. The Statewide Gang and Violence Prevention and Enforcement Program shall leverage all available funding and resources to expand and further develop statewide gang intelligence collection and reporting through the Virginia Fusion Center to enhance intervention, enforcement, and prosecution efforts. All available technology shall be leveraged for streamlining, uniformity, and compliance and for data gathering and dissemination.

2, The Virginia State Police will serve as the centralized data repository/warehouse for all Commonwealth gang related data. The Virginia State Police, along with the Gang Governance Board, shall identify the data fields required to identify and track gang intelligence and related data. Local law enforcement agencies are required to send their gang related data to the Virginia State Police monthly. All information collected and disseminated shall be governed in accordance with established Virginia Criminal Information Network (VCIN) and National Crime Information Center (NCIC) policies, and Va. Code § 52-48. The Department of Criminal Justice Services will track this data with the Virginia State Police reporting from all localities.

3. The Department of Criminal Justice Services, Department of Juvenile Justice, Department of Corrections, the Virginia State Police, the Office of the Attorney General, and the Office of the Secretary of Public Safety and Homeland Security are the initial members of the Gang Governance Board. Others to be added as necessary.

4. The Department of Criminal Justice Services, in conjunction with the Gang Governance Board, shall establish and promulgate guidance for uniform documentation and data collection in the investigation of security threat groups and criminal gangs.

5, The Commonwealth's Attorneys' Services Council shall disseminate information to all Commonwealth's Attorneys' Offices and the Virginia Association of Chiefs of Police and the Virginia Sheriffs Association, information regarding the victim witness programs across the Commonwealth. In addition, they will distribute information about the Witness Protection Grant Program offered by the Department of Criminal Justice Services, which includes a provision for translators and translated materials, to increase encouragement and support of witnesses during the prosecution of gang related crimes.

Prioritization of Program Resources

1. The Statewide Gang and Violence Prevention and Enforcement Program and the Department of Criminal Justice Services, in collaboration with the Office of the Attorney General, shall leverage all available funding for law enforcement support, technology, or investigative and operational needs to combat gangs, human trafficking and violence committed with firearms in participating jurisdictions. Areas actively supporting this initiative who show an increasing presence of gang activity or risk shall have priority for available funding.

2. The Department of Criminal Justice Services shall facilitate access to all available federal and state funding, available for localities, faith-based organizations, or non-profit community mentoring programs who desire to participate in the development and provision of gang violence interventions for youth.

Education

1. The Department of Corrections, the Department of Juvenile Justice, and the Department of Criminal Justice Services, to include the Office of Safer Communities, shall leverage all resources for education, employment and workforce development to communities that are highly impacted by gangs, human trafficking and violence.

2. The Statewide Gang and Violence Prevention and Enforcement Program shall leverage all resources available to provide specialized and uniform gang training and expert certification classes for local, state, and federal law enforcement and corrections agencies on the investigation and documentation of evidence of Security Threat Groups and Criminal Street Gangs.

3. The Department of Corrections and the Department of Juvenile Justice shall make gang, human trafficking and gun violence intervention programs available to incarcerated individuals and individuals returning to the community to provide exit or avoidance strategies and support.

Prevention

1. The Secretary of Public Safety & Homeland Security in conjunction with the Office of the Attorney General shall meet with community leaders across the Commonwealth to identify, prioritize, and incorporate identified community needs and response plans.

2. The Statewide Gang and Violence Prevention and Enforcement Program, the Department of Criminal Justice Services, the Virginia State Police, and the Gang Intelligence Task Force shall increase community awareness training through the "See Something Say Something" initiative to increase violence prevention and recognition in the community.

3. The Department of Criminal Justice Services shall provide gang awareness and victimization training to victim service

providers, including those serving victims of human trafficking.

Gang Violence Education and Prevention for Youth

1. The Department of Criminal Justice Services and the Department of Social Services shall collaborate and explore options for the safe and appropriate handling of youth identified as possible victims of gangs, human trafficking, or violence committed with guns.

2. The Department of Criminal Justice Services and the Department of Juvenile Justice shall work collaboratively with the Office of the Attorney General to develop and implement a public awareness and media campaign aimed at preventing youth gang involvement, human trafficking, and violence committed with guns.

3. The Virginia Center for School and Campus Safety, in collaboration with the Office of the Attorney General's Virginia Rules Program and the Secretary of Education, shall develop age-appropriate K-12 curriculum and training on personal safety and violence prevention in schools and the community.

Human Trafficking

1. The Department of Criminal Justice Services shall develop protocols for Human Trafficking Response Teams, standards and guidelines for treatment programs for victims and maintain a list of available treatment programs and specialized services for victims of sex and human trafficking. The Department of Criminal Justice Services will work with the Office of the Attorney General to establish these protocols, standards and guidelines.

Effective Date

This Executive Order shall be effective upon its signing and shall be in effect unless amended or rescinded by further executive order or directive. Given under my hand and under the Seal of the Commonwealth of Virginia, this 23rd day of October 2024.

/s/ Glenn Youngkin, Governor

---

[1] See World Population Review, Gangs by State 2024, available at https://worldpopulationreview.com/state-rankings/gangs-by-state; https://storymaps.arcgis.com/stories/000d265de2a74cadala21f555b6dd3e.

[2] Department of Juvenile Justice Behavioral Investigations Unit.

[3] See National-Level Gang-Drug Trafficking Organization Corrections — Attorney General's Report to Congress on the Growth of Violent Street Gangs in Suburban Areas, available at https:/www.justice.gov/archive/ndic/pubs27/27612/national.htm; see also Drug Enforcement Administration, DEA Operation Last Mile Tracks Down Sinaloa and Jalisco Cartel Associates Operating Within the United States, May 5, 2023, available at https://www.dea.gov/press-releases/2023/05/05/dea-operation-last-mile-tracks-down-sinaloa-and-jalisco-cartel-associates.

[4] SR Inmates & Probationers/Parolees with Confirmed Gang Affiliations CY2019-CY2023, VADOC Research Unit, January 2024.

[5] Bold Blue Line/Ceasefire Virginia Programs Successful in Getting Violent Repeat Criminals Off Streets, The Roanoke Star, Oct. 18, 2024, available at https://www.theroanokestar.com/2024/10/18/bald-blue-line-ceasefire-virginia-programs-successful-in-getting-violent-repeat-criminals-off-streets/.

[6] Operation FREE Virginia data as of October 21, 2024.

# GUIDANCE DOCUMENTS

## PUBLIC COMMENT OPPORTUNITY

Pursuant to § 2.2-4002.1 of the Code of Virginia, a certified guidance document is subject to a 30-day public comment period after publication in the Virginia Register of Regulations and prior to the guidance document's effective date. During the public comment period, comments may be made through the Virginia Regulatory Town Hall website (http://www.townhall.virginia.gov) or sent to the agency contact. Under subsection C of § 2.2-4002.1, the effective date of the guidance document may be delayed for an additional period. The guidance document may also be withdrawn.

The following guidance documents have been submitted for publication by the listed agencies for a public comment period. Online users of this issue of the Virginia Register of Regulations may click on the name of a guidance document to access it. Guidance documents are also available on the Virginia Regulatory Town Hall (http://www.townhall.virginia.gov) or from the agency contact or may be viewed at the Office of the Registrar of Regulations, General Assembly Building, 201 North Ninth Street, Fourth Floor, Richmond, Virginia 23219.

## DEPARTMENT FOR AGING AND REHABILITATIVE SERVICES

Titles of Documents: Adult Protective Services Manual Chapter 7.

Policies and Procedures for the Protection of Human Subjects.

Public Comment Deadline: December 18, 2024.

Effective Date: December 19, 2024.

Agency Contact: Charlotte Arbogast, Senior Policy Analyst and Regulatory Coordinator, Department for Aging and Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, VA 23229, telephone (804) 662-7093, or email charlotte.arbogast@dars.virginia.gov.

## BOARD OF AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY

## BOARD OF COUNSELING

## BOARD OF DENTISTRY

## BOARD OF FUNERAL DIRECTORS AND EMBALMERS

## BOARD OF HEALTH PROFESSIONS

## DEPARTMENT OF HEALTH PROFESSIONS

## BOARD OF LONG-TERM CARE ADMINISTRATORS

## BOARD OF MEDICINE

## BOARD OF NURSING

## BOARD OF OPTOMETRY

## BOARD OF PHARMACY

## BOARD OF PHYSICAL THERAPY

## BOARD OF PSYCHOLOGY

## BOARD OF SOCIAL WORK

## BOARD OF VETERINARY MEDICINE

Title of Document: Reporting by Hospitals and Other Health Care Institutions to Report Disciplinary Actions.

Public Comment Deadline: December 18, 2024.

Effective Date: December 19, 2024.

Agency Contact: Erin Barrett, Director of Legislative and Regulatory Affairs, Department of Health Professions, Perimeter Center, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 750-3912, or email erin.barrett@dhp.virginia.gov.

## STATE BOARD OF LOCAL AND REGIONAL JAIL

Title of Document: Supervision of Inmates.

Public Comment Deadline: December 18, 2024.

Effective Date: December 19, 2024.

Agency Contact: Brian Flaherty, Executive Director, State Board of Local and Regional Jails, 6900 Atmore Drive, P.O. Box 26963, Richmond, VA 23261-6963, telephone (804) 762-3207, or email brian.flaherty@vadoc.virginia.gov.

## DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Title of Document: Brain Injury Services Case Management Supplement.

Public Comment Deadline: December 18, 2024.

Effective Date: December 19, 2024.

Agency Contact: Syreeta Stewart, Regulatory Coordinator, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 298-3863, or email syreeta.stewart@dmas.virginia.gov.

* * *

Title of Document: Federally Qualified Health Center Change in Scope Policy.

Public Comment Deadline: December 18, 2024.

Effective Date: December 19, 2024.

Agency Contact: Emily McClellan, Policy Division Director, Department of Medical Assistance Services, 600 East Broad Street, Richmond, VA 23219, telephone (804) 371-4300, or email emily.mcclellan@dmas.virginia.gov.

## DEPARTMENT OF MOTOR VEHICLES

Titles of Documents: Tariffs for Common Carriers over Irregular Routes.

Tariffs and Time Schedules for Common Carriers over Regular Routes.

Tariffs for Household Goods Carriers.

Public Comment Deadline: December 18, 2024.

Effective Date: December 19, 2024.

Agency Contact: Nicholas Megibow, Senior Policy Analyst, Department of Motor Vehicles, 2300 West Broad Street, Richmond, VA 23220, telephone (804) 367-6701, or email nicholas.megibow@dmv.virginia.gov.

## DEPARTMENT OF SOCIAL SERVICES

Title of Document: Supplemental Nutrition Assistance Program Manual - Volume V.

Public Comment Deadline: December 18, 2024.

Effective Date: December 19, 2024.

Agency Contact: Michele Thomas, Supplemental Nutrition Assistance Program Manager, Department of Social Services, 5600 Cox Road, Glen Allen, VA 23060, telephone (804) 726-7866, or email michele.thomas@dss.virginia.gov.

## STATE WATER CONTROL BOARD

Title of Document: Virginia Water Protection VWP Permit Program Manual Supplemental Guidance.

Public Comment Deadline: December 18, 2024.

Effective Date: December 19, 2024.

Agency Contact: Dave Davis, Manager, Office of Wetland and Stream Protection, Department of Environmental Quality, P.O. Box 1105, 1111 East Main Street, Suite 1400, Richmond, VA 23218, telephone (804) 698-4105, or email vwppublicnotices@deq.virginia.gov.

The following guidance documents have been submitted for deletion and the listed agencies have opened up a 30-day public comment period. The listed agencies had previously identified these documents as certified guidance documents, pursuant to § 2.2-4002.1 of the Code of Virginia. Online users of this issue of the Virginia Register of Regulations may click on the name of a guidance document to view the deleted document and comment. This information is also available on the Virginia Regulatory Town Hall (http://www.townhall.virginia.gov) or from the agency contact.

## STATE BOARD OF LOCAL AND REGIONAL JAILS

Titles of Documents: Board of Local and Regional Jails Policy Process.

Board of Local and Regional Jails Regulations.

Cost of Maintenance of Jails.

Furlough, Work, Educational, and Rehabilitative Releases from Local Correctional Facilities.

Local Correctional Facility Standards.

Offender Co-Payment Program for Health Care Services.

Offender Health Records.

Public Comment Deadline: December 18, 2024.

Effective Date: December 19, 2024.

Agency Contact: Brian Flaherty, Executive Director, Board of Local and Regional Jails, 6900 Atmore Drive, Richmond, VA 23225, telephone (804) 762-3207, or email brian.flaherty@vadoc.virginia.gov.

## SAFETY AND HEALTH CODES BOARD

Titles of Documents: A Professional Development Training Program for VOSH Compliance and Consultation Personnel.

Amendment to Bylaws of the Safety and Health Codes Board.

Citation Policy for Paperwork and Written Program Requirement Violations.

CSHO Inspector Medical Examination Program.

Employer Responsibilities and Courses of Action Following a VOSH Inspection.

Expedited Informal Settlement Agreement Program.

Exposure Control Plan for VOSH Personnel with Occupational Exposure to Bloodborne Pathogens.

Guidance for Employers to Mitigate the Risk of COVID-19 to Workers.

Information Dissemination System for Ergonomic Inspections and Consultative Visits Resulting in Significant Benefits.

Job Safety and Health Protection Poster.

Job Safety and Health Protection Poster - Spanish.

Local Emphasis Programs - Development and Approval of Special Targeting Activities.

OSHA Occupational Chemical Database, formerly Chemical Information Manual.

OSHA Support of NIOSH "FACE" Program.

OSHA Technical Manual OTM.

Partnership Programs.

Permanent Variance From §1910.178n7iii; Virginia Precast Corporation.

Program Directive Development, Classification, and Numbering System for VOSH.

Public Participation Guidelines for the Safety and Health Codes Board.

Recordkeeping Policies and Procedures Manual RKM.

Respiratory Protection Manual.

Responsibilities of the Central and Regional Office Directors and Managers.

State Emphasis Programs - Development, Approval, Adoption, and Evaluation.

State Plan Policies and Procedures Manual through CH-5.

State Program Requirements for Statistical Information on the Incidence of Occupational Injuries and Illnesses by Industry; on the Injured or Ill Worker; and on the Circumstances of the Injuries or Illnesses.

Statewide Settlement Agreements.

Temporary Policy Revisions to VOSH's Voluntary Protection Programs VPP during the COVID-19 Pandemic.

Virginia BEST Policies and Procedures Manual.

Virginia BUILT Policies and Procedures Manual.

Virginia Voluntary Protection Program Policy and Procedures Manual.

VOSH Closing Conference Guide - English.

VOSH Closing Conference Guide - Spanish.

VOSH - VADOC Challenge Pilot Policies and Procedures Manual.

VOSH VPP Challenge Policies and Procedures Manual.

VOSH Whistleblower Investigation Manual.

Public Comment Deadline: December 18, 2024.

Effective Date: December 19, 2024.

Agency Contact: Cristin Bernhardt, Regulatory Coordinator, Hearing Legal Services Office, Department of Labor and Industry, 6606 West Broad Street, Suite 500, Richmond, VA 23230, telephone (804) 786-2392, or email cristin.bernhardt@doli.virginia.gov.

## STATE BOARD OF SOCIAL SERVICES

Titles of Documents: Supplemental Nutrition Assistance Program Manual.

Supplemental Nutrition Assistance Program Volume I.

Supplemental Nutrition Assistance Program Manual Volume V.

Supplemental Nutrition Assistance Program Manual - Volume V Updates.

Public Comment Deadline: December 18, 2024.

Effective Date: December 19, 2024.

Agency Contact: Michele Thomas, Supplemental Nutrition Assistance Program Manager, Department of Social Services, 5600 Cox Road, Glen Allen, VA 23060, telephone (804) 726-7866, or email michele.thomas@dss.virginia.gov.

## DEPARTMENT OF STATE POLICE

Titles of Documents: Procedure Manual for Firearms Dealers - March 2022.

VCheck User's Guide.

Public Comment Deadline: December 18, 2024.

Effective Date: December 19, 2024.

Agency Contact: Keenon Hook, Director, Bureau of Strategic Governance, Virginia State Police, 7700 Midlothian Turnpike, North Chesterfield, VA 23235, telephone (804) 674-2081, or email keenon.hook@vsp.virginia.gov.

# GENERAL NOTICES

## DEPARTMENT OF ENERGY

### Public Comment Opportunity for Performance-Based Regulation Tools for Investor-Owned Electric Utilities

Pursuant to House Joint Resolution 30 and Senate Joint Resolution 47 approved by the 2024 Session of the Virginia General Assembly, the State Corporation Commission (SCC), in collaboration with the Virginia Department of Energy, shall conduct a study of performance-based regulation and alternative regulatory tools for investor-owned electric utilities.

The study shall (i) evaluate the potential of performance-based regulatory tools and alternative regulatory tools to modernize the legal or regulatory framework, (ii) consider the long-term financial stability of investor-owned utilities, and (iii) balance the interests of all stakeholders for the benefit of the Commonwealth.

Pursuant to the Order Establishing Proceeding for Case No. PUR-2024-00152 issued by the SCC on September 24, 2024, any interested person or entity wishing to participate in the stakeholder process may submit a comment for consideration on or before December 2, 2024. The notification shall include the name, address, email address, and telephone number of the interested person or entity. Comments may be submitted to the contact listed.

Contact Information: Jonika Rathi, Research Analyst, Department of Energy, 1100 Bank Street, Eighth Floor, Richmond, VA 23219-3402, telephone (804) 692-3207, or email jonika.rathi@energy.virginia.gov.

## DEPARTMENT OF ENVIRONMENTAL QUALITY

### Proposed Enforcement Action for Chesapeake Airport Authority

The Virginia Department of Environmental Quality (DEQ) is proposing an enforcement action for Chesapeake Airport Authority for violations of the State Water Control Law and regulations in Chesapeake, Virginia. The proposed order is available from the DEQ contact listed or at https://www.deq.virginia.gov/permits/public-notices/enforcement-actions. The DEQ contact will accept comments by email or postal mail from November 18, 2024, through December 18, 2024.

Contact Information: Russell Deppe, Enforcement Specialist, Department of Environmental Quality, 5636 Southern Boulevard, Virginia Beach, VA 23462, telephone (757) 647-8060, or email russell.deppe@deq.virginia.gov.

### Proposed Enforcement Action for DEPCOM Power Inc.

The Virginia Department of Environmental Quality (DEQ) is proposing an enforcement action for DEPCOM Power Inc. for violations of the State Water Control Law and regulations in Westmoreland County, Virginia. The proposed order is available from the DEQ contact listed or at https://www.deq.virginia.gov/permits/public-notices/enforcement-actions. The DEQ contact will accept comments by email or postal mail from November 18, 2024, through December 18, 2024.

Contact Information: Matt Richardson, Enforcement Specialist, Department of Environmental Quality, Piedmont Regional Office, 4949A Cox Road, Glen Allen, VA 23060, telephone 804-659-2696, or email matthew.richardson@deq.virginia.gov.

### Proposed Enforcement Action for Emerald Construction Company

The Virginia Department of Environmental Quality (DEQ) is proposing an enforcement action for Emerald Construction Company for violations of the State Water Control Law and regulations in New Kent County, Virginia. The proposed order is available from the DEQ contact listed or at https://www.deq.virginia.gov/permits/public-notices/enforcement-actions. The DEQ contact will accept comments by email or postal mail from October 7, 2024, through November 6, 2024.

Contact Information: Matt Richardson, Enforcement Specialist, Department of Environmental Quality, Piedmont Regional Office, 4949A Cox Road, Glen Allen, VA 23060, telephone 804-659-2696, or email matthew.richardson@deq.virginia.gov.

### Proposed Enforcement Action for Sentara Princess Anne Hospital

The Virginia Department of Environmental Quality (DEQ) is proposing an enforcement action for Sentara Princess Anne Hospital for violations of the State Water Control Law and regulations in Virginia Beach, Virginia. The proposed order is available from the DEQ contact listed or at https://www.deq.virginia.gov/permits/public-notices/enforcement-actions. The DEQ contact will accept comments by email or postal mail from November 18, 2024, through December 18, 2024.

Contact Information: Russell Deppe, Enforcement Specialist, Department of Environmental Quality, 5636 Southern Boulevard, Virginia Beach, VA 23462, telephone (757) 647-8060, or email russell.deppe@deq.virginia.gov.

### Mountain Pine Arvonia I and II Solar Project Notice of Intent for a Small Renewable Energy Project (Solar) - Buckingham County

Mountain Pine Arvonia LLC and Mountain Pine Arvonia II LLC provided the Department of Environmental Quality a notice of intent to submit the necessary documents for a permit by rule for a small renewable energy project (solar) in Buckingham County, Virginia, pursuant to 9VAC15-60. The project developer is Hodson Energy. The DEQ project number is RE0000332.

The project will encompass 572 acres of a 1,065-acre parcel between CG Woodson Road and North James Madison Highway with a geographic information system (GIS) centroid of Latitude 37.669167, Longitude -78.316011. As proposed, the project will have up to a rated capacity of 80 megawatts alternating current and use approximately 192,000 photovoltaic panels.

Contact Information: Matthew Snow, Small Renewable Energy Permit by Rule Program Specialist, Department of Environmental Quality, 1111 East Main Street, Suite 1400, Richmond, VA 23219, telephone (804) 718-9569, or email matthew.a.snow@deq.virginia.gov.

### Oral Oaks Road Solar LLC Notice of Intent for a Small Renewable Energy Project (Solar) - Lunenberg County

Oral Oaks Road Solar LLC provided the Department of Environmental Quality a notice of intent to submit the necessary documents for a permit by rule for a small renewable energy project (solar) in Lunenberg County, Virginia, pursuant to 9VAC15-60. The project developer is VHB Mid-Atlantic Energy. The DEQ project number is RE0000333.

The project will encompass approximately 50 acres of a 128.24-acre parcel on the east side of Oral Oaks Road with a geographic information system (GIS) centroid of Latitude 36.881518719, Longitude -78.202794408. The project as proposed will have up to a rated capacity of 12 megawatts alternating current and use approximately 27,072 photovoltaic modules.

Contact Information: Matthew Snow, Small Renewable Energy Permit by Rule Program Specialist, Department of Environmental Quality, 1111 East Main Street, Suite 1400, Richmond, VA 23219, telephone (804) 718-9569, or email matthew.a.snow@deq.virginia.gov.

## VIRGINIA CODE COMMISSION

### Notice to State Agencies

**Contact Information:** *Mailing Address:* Virginia Code Commission, Pocahontas Building, 900 East Main Street, 8th Floor, Richmond, VA 23219; *Telephone:* (804) 698-1810; *Email:* varegs@dls.virginia.gov.

**Meeting Notices:** Section 2.2-3707 C of the Code of Virginia requires state agencies to post meeting notices on their websites and on the Commonwealth Calendar at https://commonwealthcalendar.virginia.gov.

**Cumulative Table of Virginia Administrative Code Sections Adopted, Amended, or Repealed:** A table listing regulation sections that have been amended, added, or repealed in the *Virginia Register of Regulations* since the regulations were originally published or last supplemented in the print version of the Virginia Administrative Code is available at http://register.dls.virginia.gov/documents/cumultab.pdf.

**Filing Material for Publication in the *Virginia Register of Regulations:*** Agencies use the Regulation Information System (RIS) to file regulations and related items for publication in the *Virginia Register of Regulations*. The Registrar's office works closely with the Department of Planning and Budget (DPB) to coordinate the system with the Virginia Regulatory Town Hall. RIS and Town Hall complement and enhance one another by sharing pertinent regulatory information.