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Virginia Code Commission

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

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VIRGINIA REGISTER INFORMATION PAGE

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

ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

Unless exempted by law, an agency wishing to adopt, amend, or repeal regulations must follow the procedures in the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia). Typically, this includes first publishing in the *Virginia Register* a notice of intended regulatory action; a basis, purpose, substance and issues statement; an economic impact analysis prepared by the Department of Planning and Budget; the agency's response to the economic impact analysis; a summary; a notice giving the public an opportunity to comment on the proposal; and the text of the proposed regulation.

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

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

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

The Governor may review the final regulation during this time and, if he objects, forward his objection to the Registrar and the agency. In addition to or in lieu of filing a formal objection, the Governor may suspend the effective date of a portion or all of a regulation until the end of the next regular General Assembly session by issuing a directive signed by a majority of the members of the appropriate legislative body and the Governor. The Governor's objection or suspension of the regulation, or both, will be published in the *Virginia Register*.

If the Governor finds that the final regulation contains changes made after publication of the proposed regulation that have substantial impact, he may require the agency to provide an additional 30-day public comment period on the changes. Notice of the additional public comment period required by the Governor will be published in the *Virginia Register*. Pursuant to § 2.2-4007.06 of the Code of Virginia, any person may request that the agency solicit additional public comment on certain changes made after publication of the proposed regulation. The agency shall suspend the regulatory process for 30 days upon such request from 25 or more individuals, unless the agency determines that the changes have minor or inconsequential impact.

A regulation becomes effective at the conclusion of the 30-day final adoption period, or at any other later date specified by the promulgating

agency, unless (i) a legislative objection has been filed, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the 21-day objection period; (ii) the Governor exercises his authority to require the agency to provide for additional public comment, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the period for which the Governor has provided for additional public comment; (iii) the Governor and the General Assembly exercise their authority to suspend the effective date of a regulation until the end of the next regular legislative session; or (iv) the agency suspends the regulatory process, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the 30-day public comment period and no earlier than 15 days from publication of the readopted action.

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

FAST-TRACK RULEMAKING PROCESS

Section 2.2-4012.1 of the Code of Virginia provides an alternative to the standard process set forth in the Administrative Process Act for regulations deemed by the Governor to be noncontroversial. To use this process, the Governor's concurrence is required and advance notice must be provided to certain legislative committees. Fast-track regulations become effective on the date noted in the regulatory action if fewer than 10 persons object to using the process in accordance with § 2.2-4012.1.

EMERGENCY REGULATIONS

Pursuant to § 2.2-4011 of the Code of Virginia, an agency may adopt emergency regulations if necessitated by an emergency situation or when Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or fewer from its enactment. In either situation, approval of the Governor is required. The emergency regulation is effective upon its filing with the Registrar of Regulations, unless a later date is specified per § 2.2-4012 of the Code of Virginia. Emergency regulations are limited to no more than 18 months in duration; however, may be extended for six months under the circumstances noted in § 2.2-4011 D. Emergency regulations are published as soon as possible in the *Virginia Register* and are on the Register of Regulations website at register.dls.virginia.gov.

During the time the emergency regulation is in effect, the agency may proceed with the adoption of permanent regulations in accordance with the Administrative Process Act. If the agency chooses not to adopt the regulations, the emergency status ends when the prescribed time limit expires.

STATEMENT

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

CITATION TO THE VIRGINIA REGISTER

The *Virginia Register* is cited by volume, issue, page number, and date. **34:8 VA.R. 763-832 December 11, 2017**, refers to Volume 34, Issue 8, pages 763 through 832 of the *Virginia Register* issued on December 11, 2017.

The Virginia Register of Regulations is published pursuant to Article 6 (§ 2.2-4031 et seq.) of Chapter 40 of Title 2.2 of the Code of Virginia.

Members of the Virginia Code Commission: **John S. Edwards**, Chair; **Ryan T. McDougle**; **Nicole Cheuk**; **Rita Davis**; **Leslie L. Lilley**; **Thomas M. Moncure, Jr.**; **Christopher R. Nolen**; **Don L. Scott, Jr.**; **Charles S. Sharp**; **Marcus B. Simon**; **Samuel T. Towell**; **Malfourd W. Trumbo**.

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

PUBLICATION SCHEDULE AND DEADLINES

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

July 2020 through August 2021

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
36:24	July 1, 2020	July 20, 2020
36:25	July 15, 2020	August 3, 2020
36:26	July 29, 2020	August 17, 2020
37:1	August 12, 2020	August 31, 2020
37:2	August 26, 2020	September 14, 2020
37:3	September 9, 2020	September 28, 2020
37:4	September 23, 2020	October 12, 2020
37:5	October 7, 2020	October 26, 2020
37:6	October 21, 2020	November 9, 2020
37:7	November 4, 2020	November 23, 2020
37:8	November 16, 2020 (Monday)	December 7, 2020
37:9	December 2, 2020	December 21, 2020
37:10	December 14, 2020 (Monday)	January 4, 2021
37:11	December 28, 2020 (Monday)	January 18, 2021
37:12	January 13, 2021	February 1, 2021
37:13	January 27, 2021	February 15, 2021
37:14	February 10, 2021	March 1, 2021
37:15	February 24, 2021	March 15, 2021
37:16	March 10, 2021	March 29, 2021
37:17	March 24, 2021	April 12, 2021
37:18	April 7, 2021	April 26, 2021
37:19	April 21, 2021	May 10, 2021
37:20	May 5, 2021	May 24, 2021
37:21	May 19, 2021	June 7, 2021
37:22	June 2, 2021	June 21, 2021
37:23	June 16, 2021	July 5, 2021
37:24	June 30, 2021	July 19, 2021
37:25	July 14, 2021	August 2, 2021
37:26	July 28, 2021	August 16, 2021

*Filing deadlines are Wednesdays unless otherwise specified.

PERIODIC REVIEWS AND SMALL BUSINESS IMPACT REVIEWS

TITLE 9. ENVIRONMENT

STATE AIR POLLUTION CONTROL BOARD

Agency Notice

Pursuant to Executive Order 14 (as amended July 16, 2018) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the following regulations are undergoing a periodic review and a small business impact review: **9VAC5-85, Permits for Stationary Sources of Pollutants Subject to Regulation** and **9VAC5-510, Nonmetallic Mineral Processing General Permit**. The review of these regulations will be guided by the principles in Executive Order 14 (as amended July 16, 2018).

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

Public comment period begins June 22, 2020, and ends July 13, 2020.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency.

Following the close of the public comment period, a report of findings of both reviews will be posted on the Virginia Regulatory Town Hall and published in the Virginia Register of Regulations.

Contact Information: Gary E. Graham, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 689-4103, FAX (804) 698-4178, or email gary.graham@deq.virginia.gov.

STATE WATER CONTROL BOARD

Agency Notice

Pursuant to Executive Order 14 (as amended July 16, 2018) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the following regulation is undergoing a periodic review and a small business impact review: **9VAC25-415, Policy for the Potomac River Embayments**. The review of this regulation will be guided by the principles in Executive Order 14 (as amended July 16, 2018).

The purpose of this review is to determine whether this regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any

issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

Public comment period begins June 22, 2020, and ends July 13, 2020.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency.

Following the close of the public comment period, a report of both reviews will be posted on the Virginia Regulatory Town Hall and published in the Virginia Register of Regulations.

Contact Information: Melissa Porterfield, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4238, FAX (804) 698-4178, or email melissa.porterfield@deq.virginia.gov.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF ACCOUNTANCY

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Virginia Board of Accountancy conducted a periodic review and a small business impact review of **18VAC5-22, Board of Accountancy Regulations**, and determined that this regulation should be amended to achieve consistency with new federal requirements.

The proposed regulatory action to amend 18VAC5-22, which is published in this issue of the Virginia Register, serves as the report of findings.

Contact Information: Nancy Glynn, Executive Director, Board of Accountancy, 9960 Mayland Drive, Suite 402, Richmond, VA 23233, telephone (804) 367-8540, FAX (804) 527-4409, TTY (804) 367-9753, or email nancy.glynn@boa.virginia.gov.

NOTICES OF INTENDED REGULATORY ACTION

TITLE 12. HEALTH

STATE BOARD OF HEALTH

Withdrawal of Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Board of Health has WITHDRAWN the Notice of Intended Regulatory Action for **12VAC5-412, Regulations for Licensure of Abortion Facilities**, which was published in [35:21 VA.R. 2444 June 10, 2019](#). That NOIRA stated "The purpose of the proposed action is to assess all current regulation content and determine whether it should be amended or retained in its current form." Subsequently, Chapters 898 and 899 of the 2020 Acts of Assembly repealed the statutory provision classifying a facility that performs five or more first-trimester abortions per month as a category of hospital, thereby removing such a facility from the State Board of Health's regulatory authority. Therefore, this action is withdrawn. A separate regulatory action repealing 12VAC5-412 was published in the Virginia Register of Regulations on June 8, 2020 ([36:21 VA.R. 2299 June 8, 2020](#)).

Statutory Authority: §§ 32.1-12 and 32.1-127 of the Code of Virginia.

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

VA.R. Doc. No. R19-5664; Filed June 2, 2020, 10:35 a.m.

REGULATIONS

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

Symbol Key

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

TITLE 2. AGRICULTURE

BOARD OF AGRICULTURE AND CONSUMER SERVICES

Final Regulation

Title of Regulation: **2VAC5-317. Regulations for the Enforcement of the Noxious Weeds Law (amending 2VAC5-317-10, 2VAC5-317-20).**

Statutory Authority: § 3.2-802 of the Code of Virginia.

Effective Date: July 23, 2020.

Agency Contact: David Gianino, Program Manager, Office of Plant Industry Services, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-3515, FAX (804) 371-7793, TTY (800) 828-1120, or email david.gianino@vdacs.virginia.gov.

Summary:

The amendments add six plant species to the current noxious weed list and amend the definition of "Tier 3 noxious weed" to be "any noxious weed (i) that is present in the Commonwealth, (ii) whose spread may be slowed by restrictions on its movement, and (iii) for which successful eradication or suppression is not feasible."

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

2VAC5-317-10. Definitions.

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

"Board" means the Virginia Board of Agriculture and Consumer Services.

"Business day" means a day that is not a Saturday, Sunday, or legal holiday, or a day on which state government offices are closed.

"Certificate" means a document issued or authorized by the commissioner indicating that a regulated article is not contaminated with a noxious weed.

"Commissioner" means the Commissioner of the Virginia Department of Agriculture and Consumer Services.

"Committee" means the Noxious Weeds Advisory Committee established pursuant to 2VAC5-317-100.

"Compliance agreement" means a written agreement between a person engaged in handling, receiving, or moving regulated articles and the Virginia Department of Agriculture and Consumer Services or the U.S. Department of Agriculture, or both, wherein the former agrees to fulfill the requirements of the compliance agreement and comply with the provisions of this chapter.

"Consignee" means any person to whom any regulated article is shipped for handling, sale, resale, or any other purpose.

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

"Infested" or "infestation" means the presence of a listed noxious weed or the existence of circumstances that make it reasonable to believe that life stages of a listed noxious weed are present.

"Inspector" means an employee of the Virginia Department of Agriculture and Consumer Services or other person authorized by the Commissioner of the Virginia Department of Agriculture and Consumer Services to enforce the provisions of this chapter.

"Listed noxious weed" means any plant listed in this chapter as either a Tier 1, Tier 2, or Tier 3 noxious weed.

"Move" means to ship, offer for shipment, receive for transportation, carry, or otherwise transport, move, or allow to be moved.

"Noxious weed" means the term as defined in § 3.2-800 of the Code of Virginia.

"Noxious Weeds Law" means the statute set forth in Chapter 8 (§ 3.2-800 et seq.) of Title 3.2 of the Code of Virginia.

"Permit" means a document issued by the commissioner to provide for movement of regulated articles to restricted destinations for limited handling, utilization, processing, or scientific purposes.

"Person" means the term as defined in § 1-230 of the Code of Virginia.

"Regulated article" means any listed noxious weed or any article carrying or capable of carrying a listed noxious weed.

"Tier 1 noxious weed" means any noxious weed that is not known to be present in the Commonwealth.

"Tier 2 noxious weed" means any noxious weed that is present in the Commonwealth and for which successful eradication or suppression is feasible.

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"Tier 3 noxious weed" means any noxious weed (i) that is present in the Commonwealth ~~and not listed as a Tier 1 or Tier 2 noxious weed,~~ (ii) whose spread may be slowed by restrictions on its movement, and (iii) for which successful eradication or suppression is not feasible.

"Waybill" means a document containing the details of a shipment of goods.

2VAC5-317-20. Tier 1, Tier 2, and Tier 3 noxious weeds.

A. The following plants are hereby declared Tier 1 noxious weeds:

1. *Salvinia molesta*, Giant salvinia.
2. *Solanum viarum*, Tropical soda apple.
3. *Heracleum mantegazzianum*, Giant hogweed.

B. The following plants are hereby declared Tier 2 noxious weeds:

1. *Imperata cylindrica*, Cogon grass.
2. *Lythrum salicaria*, Purple loosestrife.
3. *Ipomoea aquatica*, Water spinach.
4. *Vitex rotundifolia*, Beach vitex.
5. *Oplismenus hirtellus* spp. *undulatifolius*, Wavyleaf basketgrass.

6. *Corydalis incisa*, Incised fumewort.

~~C. No plant is hereby declared a Tier 3 noxious weed.~~ The following plants are hereby declared Tier 3 noxious weeds:

1. *Ailanthus altissima*, Tree of heaven.
2. *Ampelopsis brevipedunculata*, Porcelain berry.
3. *Celastrus orbiculatus*, Oriental bittersweet.
4. *Hydrilla verticillata*, Hydrilla.
5. *Persicaria perfoliata*, Mile-a-minute weed.

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

FORMS (2VAC5-317)

[Noxious Weed Permit Application \(eff. 6/2018\)](#)

VA.R. Doc. No. R18-5605; Filed May 27, 2020, 9:43 a.m.

TITLE 3. ALCOHOLIC BEVERAGES

ALCOHOLIC BEVERAGE CONTROL AUTHORITY

Fast-Track Regulation

Title of Regulation: **3VAC5-50. Retail Operations (amending 3VAC5-50-110).**

Statutory Authority: §§ 4.1-103 and 4.1-111 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: July 23, 2020.

Effective Date: August 8, 2020.

Agency Contact: LaTonya D. Hucks-Watkins, Legal Liaison, Virginia Alcoholic Beverage Control Authority, 2901 Hermitage Road, Richmond, VA 23220, telephone (804) 213-4698, FAX (804) 213-4574, or email latonya.hucks-watkins@abc.virginia.gov.

Basis: Section 4.1-103 of the Code of Virginia authorizes the Board of Directors of the Alcoholic Beverage Control Authority to adopt regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) and § 4.1-111 of the Code of Virginia. Section 4.1-111 provides the board with the authority to adopt reasonable regulations to carry out the provisions of the Alcoholic Beverage Control Act (§ 4.1-100 et seq. of the Code of Virginia), including the authority to promulgate regulations that require mixed beverage licensees to have food, cooked or prepared on the licensed premises, available for on-premises consumption until at least 30 minutes prior to an establishment's closing and that such food shall be available in all areas of the licensed premises in which spirits are sold or served.

Purpose: The purpose of this amendment is to be in compliance with the Code of Virginia as well as provide mixed beverage licensees with guidance as to the food availability requirements associated with their license. The amendment is essential to protect public health, safety, or welfare because it corresponds to the provisions of the Code of Virginia and reinforces the correlation between consumption of food and mitigating the intoxicating effects of alcohol as well as helping to ensure that mixed beverage licensees are meeting minimum food sales requirements.

Rationale for Using Fast-Track Rulemaking Process: The action is expected to be noncontroversial because it aligns exactly with § 4.1-111 B 22 of the Code of Virginia, which has been in force since 2018. Licensees have been complying with this standard now for some time already and therefore promulgating this regulation should not be controversial.

Substance: Subdivision D 4 is added to 3VAC5-50-110 and states that mixed beverage licensees shall have food, cooked

or prepared on the licensed premises, available for on-premises consumption until at least 30 minutes prior to an establishment's closing and that such food shall be available in all areas of the licensed premises in which spirits are sold or served.

Issues: The primary advantage to the public and to the agency of this regulation change is that it will fulfill the requirements of the legislative mandate and ensure that the regulations are consistent with statute. There are no disadvantages to the public or the Commonwealth by promulgating this regulation.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Virginia Alcoholic Beverage Control Authority Board of Directors (Board) proposes to require that mixed beverage restaurant licensees have food, cooked or prepared on the licensed premises, available for on-premises consumption until at least 30 minutes prior to an establishment's closing. Such food would have to be available in all areas of the licensed premises in which spirits are sold or served.

Background. Mixed beverage restaurant licensees must already serve food that is prepared on the premises. The proposed amendment defines when the food must be available. The proposed text is essentially identical to Chapter 744 of the 2017 Acts of Assembly, which required the Board to promulgate this regulation.¹

Estimated Benefits and Costs. Of the 5,347 restaurants in the Commonwealth that have a mixed beverage restaurant license, it is not known how many already regularly serve food cooked or prepared on the premises until at least 30 minutes prior to closing. To the degree that costs or benefits result from this regulation, they are largely attributable to the 2017 legislative mandate.

Costs. Restaurants that have a mixed beverage restaurant license and do not already serve food cooked or prepared on the premises until at least 30 minutes prior to closing would have to either pay for food preparers or cooks to work longer, or close (and stop selling alcohol) earlier. Employing food preparers or cooks longer would increase costs for the restaurants, while closing earlier would reduce revenue.

Benefits. Food consumed in close proximity to drinking can lower the peak blood alcohol concentration.² To the extent that there are licensees that do not meet the current requirement and would meet it once the rule is in effect, and to the extent that patrons choose to take advantage of the availability of food when or near when they are drinking, the proposed amendment could lead to some patrons leaving the premises and driving with a lower blood alcohol concentration than they otherwise would have. Decreasing the degree of driver impairment would be beneficial.

Businesses and Other Entities Affected. The proposed amendment affects the share of the 5,347 restaurants in the Commonwealth that have a mixed beverage restaurant license and do not already regularly serve food cooked or prepared on the premises until at least 30 minutes prior to closing. These restaurants would have to either pay for food preparers or cooks to work longer, or close (and stop selling alcohol) earlier. Since adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits of the proposal exceed the costs for all entities combined, adverse impact is indicated for this action.

Small Businesses³ Affected: Types and Estimated Number of Small Businesses Affected. As stated above, the proposed amendment affects the share of the 5,347 restaurants in the Commonwealth that have a mixed beverage restaurant license and do not already regularly serve food cooked or prepared on the premises until at least 30 minutes prior to closing. Data are not available to determine how many meet the statutory definition of a small business.⁴

Costs and Other Effects. The affected small restaurants would have to either pay for food preparers or cooks to work longer, or close (and stop selling alcohol) earlier.

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

Localities⁵ Affected.⁶ The proposed amendment does not disproportionately affect any particular localities or introduce costs for local governments.

Projected Impact on Employment. The proposed amendment may moderately increase work hours for food preparers and cooks at restaurants that have a mixed beverage restaurant license and do not already serve food cooked or prepared on the premises until at least 30 minutes prior to closing.

Effects on the Use and Value of Private Property. The proposal would require affected restaurants to either pay for food preparers or cooks to work longer, or close (and stop selling alcohol) earlier. Employing food preparers or cooks longer would increase costs for the restaurants, while closing earlier would reduce revenue. Consequently, the value of these businesses may be moderately reduced. The proposed amendment does not affect real estate development costs.

¹See <http://leg1.state.va.us/cgi-bin/legp504.exe?171+sum+SB1216>

²See <https://www.bgsu.edu/recwell/wellness-connection/alcohol-education/factors-that-affect-intoxication.html>

³Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million."

⁴Ibid

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⁵"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.

⁶§ 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

Agency's Response to Economic Impact Analysis: The Virginia Alcoholic Beverage Control Authority concurs with the Department of Planning and Budget's economic impact analysis.

Summary:

Pursuant to Chapter 744 of the 2017 Acts of Assembly, the amendment adds a provision requiring a mixed beverage licensee to have food available for on-premises consumption until at least 30 minutes prior to the establishment closing.

3VAC5-50-110. Definitions and qualifications for retail on-premises and on-premises and off-premises licenses generally; mixed beverage licensee requirements; exceptions; temporary licenses.

A. The following definitions shall apply to retail licensees with on-premises consumption privileges and mixed beverage licensees where appropriate:

1. "Bona fide, full-service restaurant" means an established place of business where meals are regularly sold to persons and that has adequate facilities and sufficient employees for cooking, preparing, and serving such meals for consumption at tables in dining areas on the premises.
2. "Counter" means a long, narrow surface with stools or chairs along one side for the patrons, behind which refreshments or meals are prepared and served.
3. "Designated area" means a room or an area in which a licensee may exercise the privilege of his license, the location, equipment and facilities of which room or area have been approved by the board. The facilities shall be such that patrons may purchase food prepared on the premises for consumption on the premises at substantially all times that alcoholic beverages are offered for sale therein.
4. "Dining area" means a public room or area in which meals are regularly sold at substantially all hours that alcoholic beverages are offered for sale therein.
5. "Meal" means a selection of foods for one individual, served and eaten especially at one of the customary, regular occasions for taking food during the day, such as breakfast, lunch, or dinner, that consists of at least one main dish of meat, fish, poultry, legumes, nuts, seeds, eggs, or other protein sources, accompanied by vegetable, fruit, grain, or starch products.
6. "Table" means an article of furniture supported by one or more vertical legs or similar supports and having a flat

horizontal surface suitable for the service of meals, not immediately adjacent to the area where refreshments or meals are prepared.

B. Wine and beer. Retail on-premises or on-premises and off-premises licenses may be granted to persons operating the following types of establishments provided that meals or other foods are regularly sold at substantially all hours that wine and beer are offered for sale and the total monthly food sales for consumption in dining areas and other designated areas on the premises are not less than those shown:

1. "Boat" (on premises only). A common carrier of passengers for which a certificate as a sight-seeing carrier by boat, or a special or charter party by boat has been issued by the State Corporation Commission, habitually serving food on the boat:

Monthly sales\$2,000

2. "Restaurant." A bona fide dining establishment regularly selling meals with entrees and other foods prepared on the premises:

Monthly sales\$2,000

3. "Hotel." Any duly licensed establishment, provided with special space and accommodation, where, in consideration of payment, meals and other food prepared on the premises and lodging are habitually furnished to persons and which has four or more bedrooms:

Monthly sales\$2,000

In regard to both restaurants and hotels, at least \$1,000 of the required monthly sales must be in the form of meals.

4. "Gourmet Oyster House." Any duly licensed establishment, located on the premises of a commercial marina and permitted by the Department of Health to serve oysters and other fresh seafood for consumption on the premises, where the licensee also offers to the public events for the purpose of featuring oysters and other seafood products:

Monthly sales of oysters and other seafood.....\$1,000

C. Beer. Retail on-premises or on-premises and off-premises licenses may be granted to persons operating the following types of establishments provided that food is regularly sold at substantially all hours that beer is offered for sale and the total monthly food sales for consumption in dining areas and other designated areas on the premises are not less than those shown:

1. "Boat" (on-premises only). See subdivision B 1 of this section:

Monthly sales\$2,000

2. "Restaurant." An establishment regularly selling food prepared on the premises:

Monthly sales\$2,000

3. "Hotel." See subdivision B 3 of this section;

Monthly sales\$2,000

D. Mixed beverage licenses. Mixed beverage restaurant licenses may be granted to persons operating bona fide, full-service restaurants.

1. Service of food in a bona fide, full-service restaurant shall consist of serving the food to the table on plates or appropriate dinnerware, accompanied by appropriate tableware. The board may approve the issuance of a mixed beverage restaurant license to a buffet restaurant if (i) both alcoholic and nonalcoholic beverage service is provided at the table and (ii) actual sales show that the requirements of subdivision D 2 of this section are met.

2. Monthly sales of food prepared on the premises of a mixed beverage restaurant licensee shall not be less than \$4,000, of which at least \$2,000 shall be in the form of meals.

3. A mixed beverage restaurant licensee must have at least as many seats at tables as at counters.

4. A mixed beverage restaurant licensee shall have food, cooked or prepared on the licensed premises, available for on-premises consumption until at least 30 minutes prior to an establishment's closing. Such food shall be available in all areas of the licensed premises in which spirits are sold or served.

E. The board may grant a license to an establishment not meeting the qualifying figures in this section, provided the establishment otherwise is qualified under the applicable provisions of the Code of Virginia and this section, if it affirmatively appears that there is a substantial public demand for such an establishment and that the public convenience will be promoted by the issuance of the license.

F. Notwithstanding ~~the above~~ subsections A through E of this section, the board may issue a temporary license for any of the ~~above~~ retail operations in subsections A through E of this section. Such licenses may be issued only after application has been filed in accordance with § 4.1-230 of the Code of Virginia, and in cases where the sole objection to issuance of a license is that the establishment will not be qualified in terms of the sale of food or edible items. If a temporary license is issued, the board shall conduct an audit of the business after a reasonable period of operation not to exceed 180 days. Should the business be qualified, the license applied for may be issued. If the business is not qualified, the application will become the subject of a hearing if the applicant so desires. No further temporary license shall be issued to the applicant or to any other person with respect to the establishment for a period of one year from expiration and, once the application becomes the subject of a hearing, no temporary license may be issued.

G. An outside terrace or patio, the location, equipment, and facilities of which have been approved by the board, may be approved as a "dining area" or as a "designated area" in the discretion of the board.

H. Limited mixed beverage licenses may be granted to persons operating restaurants as defined in § 4.1-100 of the Code of Virginia, provided that food is regularly sold at substantially all hours that alcoholic beverages are offered for sale, and the total monthly food sales of food cooked or prepared on the premises for consumption in dining areas and other designated areas on the premises are not less than \$2,000.

VA.R. Doc. No. R20-6256; Filed May 22, 2020, 4:01 p.m.

Final Regulation

Title of Regulation: 3VAC5-50. Retail Operations (adding 3VAC5-50-250).

Statutory Authority: §§ 4.1-103 and 4.1-111 of the Code of Virginia.

Effective Date: July 23, 2020.

Agency Contact: LaTonya D. Hucks-Watkins, Legal Liaison, Virginia Alcoholic Beverage Control Authority, 2901 Hermitage Road, Richmond, VA 23220, telephone (804) 213-4698, FAX (804) 213-4574, or email latonya.hucks-watkins@abc.virginia.gov.

Summary:

The action implements the confectionery license created by Chapters 173 and 334 of the 2018 Acts of Assembly, which authorizes the licensee to prepare and sell confectionery on the licensed premises for off-premises consumption. The provisions require that the confectionery contain 5.0% or less alcohol by volume and that any alcohol contained in such confectionery shall not be in liquid form at the time such confectionery is sold. The regulation defines the term "confectionery" and includes labeling requirements for such confectionery.

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

3VAC5-50-250. Confectionery; definition; restrictions; labeling.

A. "Confectionery" means baked goods and candies having an alcohol content not more than 5.0% by volume.

B. Any alcohol contained in such confectionery shall not be in liquid form at the time such confectionery is sold. Such alcohol shall be fully integrated or blended into the confectionery product.

C. Any such confectionery shall only be sold to those individuals who can lawfully consume alcohol.

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D. Any establishment licensed to sell confectioneries for off-premises consumption shall properly label the product with such label including:

1. Notice that the product contains alcohol;
2. Notice that the product can only be consumed off premises; and
3. Warning that the product should not be consumed by anyone younger than 21 years of age.

VA.R. Doc. No. R18-5486; Filed May 22, 2020, 4:07 p.m.

Fast-Track Regulation

Title of Regulation: **3VAC5-70. Other Provisions (amending 3VAC5-70-220).**

Statutory Authority: §§ 4.1-103 and 4.1-111 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: July 23, 2020.

Effective Date: August 8, 2020.

Agency Contact: LaTonya D. Hucks-Watkins, Legal Liaison, Alcoholic Beverage Control Authority, 2901 Hermitage Road, Richmond, VA 23220, telephone (804) 213-4698, FAX (804) 213-4574, or email latonya.hucks-watkins@abc.virginia.gov.

Basis: Section 4.1-103 of the Code of Virginia authorizes the Board of Directors of the Alcoholic Beverage Control Authority to adopt regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) and § 4.1-111 of the Code of Virginia. Section 4.1-111 provides the board with the authority to adopt reasonable regulations to carry out the provisions of the Alcoholic Beverage Control Act (§ 4.1-100 et seq. of the Code of Virginia).

Purpose: The Alcoholic Beverage Control Authority has undertaken this action as a measure to establish regulations that will allow persons located within or outside the Commonwealth to sell and ship beer in closed containers to persons in the Commonwealth to whom beer may be lawfully sold for off-premises consumption. The amendment is essential to protect the public health, safety, or welfare because without it, there is nothing regulating Internet beer retailers as required by the Code of Virginia.

Rationale for Using Fast-Track Rulemaking Process: This rulemaking change should be noncontroversial because it is in line with established code and incorporates requirements that have already been in effect.

Substance: The substantive changes include changing the language throughout the existing regulation such that "Internet beer retailer," or a variation thereof, is added to the

text in any instance where a variation of "Internet wine retailer" appears.

Issues: The primary advantage to the public and the agency of this regulation change is that it will provide guidance for Internet beer retailer licensees. There are no disadvantages to the public or the Commonwealth by promulgating this regulation.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Virginia Alcoholic Beverage Control Board (ABC) seeks to create a new Internet beer retailer license to authorize sales and shipments of beer to consumers in Virginia. Hence, ABC proposes to amend 3VAC5-70-220 Wine or Beer Shipper's Licenses and Internet Wine Retailer Licenses; Application Process; Common Carriers; Records and Reports to insert Internet Beer Retail Licenses to the section title as well as the text of the section. As such, all provisions that currently apply to wine or beer shipper's licenses and Internet wine retail licenses would be extended to Internet beer retail licenses.

Background. The 2018 Acts of Assembly (Chapter 337) created and defined an Internet beer retail license.¹ Accordingly, § 4.1-208(A)(10) of the Code of Virginia authorizes persons licensed as Internet beer retailers and located within or outside the Commonwealth to sell and ship beer in accordance with Virginia Code § 4.1-209.1 and board regulations.² The language of § 4.1-208(A)(10) mirrors that of § 4.1-207(6) regarding the Internet wine retail license.³ In 2008, ABC amended 3 VAC 5-70-220 to incorporate Internet wine retail licenses and now proposes to incorporate Internet beer retail licenses in an identical manner.⁴

Estimated Benefits and Costs. Allowing Internet beer retailers to sell, and ship, directly to individual consumers is likely to benefit businesses engaged in beer retail as well as beer consumers by providing the flexibility to conduct their transactions online. Internet beer retailers would likely be able to earn greater revenue, and likely greater profits, from selling directly to individuals who want their product. Consumers would benefit from the convenience of purchasing beer online. Expanding the market for beer in this way would likely increase competition among beer retailers, which would in turn benefit consumers to the extent that it leads to lower prices, better quality, greater variety, or any combination thereof. On the other hand, to the extent that individual consumers substitute Internet purchases for local retail purchases, brick-and-mortar stores that have been, until now, the only source of beer for off-site consumption would likely experience decreases in revenue.

Those applying for an Internet beer license would have to pay a (statutorily set) \$150 annual licensure fee (in addition to a nonrefundable application fee of \$195) and would have to meet the same recordkeeping requirements that currently

apply to beer and wine shippers and Internet wine retail licensees. As per current regulation, these licensees "shall maintain for two years complete and accurate records of all shipments made under the privileges of such licenses, including for each shipment:

1. Number of containers shipped;
2. Volume of each container shipped;
3. Brand of each container shipped;
4. Names and addresses of recipients; and
5. Price charged."

Further, on or before the 15th of each month, licensees are also required to file a report with the Tax Management Section of ABC indicating whether any shipments were made during the month, and if so, provide all the information listed for each shipment.

Businesses and Other Entities Affected. ABC reported that since the statute came into effect in 2018, they have already granted two Internet beer licenses, although they could not clarify if these licensees had previously held a shipper's license or a retail license. The proposed amendments would benefit current and future Internet beer retail licensees.

Grocery stores, convenience stores, and other brick-and-mortar locations selling beer would likely be adversely affected if their consumers opt to make purchases on the Internet instead of buying from the stores, unless they engage in online retail and choose to obtain an Internet beer retail license.

Small Businesses⁵ Affected. Types and Estimated Number of Small Businesses Affected. Although ABC does not track its small businesses, they report that the majority of their licensees are likely to be small businesses. Virginia has 151 breweries, 71 beer and ale wholesalers, 1,308 supermarkets and grocery stores, 1,055 convenience stores, and 99 beer and wine stores that are considered small businesses.⁶ However, the effect of the proposed amendments on any particular small business would depend on their own decision, as well as the decisions made by their competitors, about the extent to which they engage in Internet beer retail. Grocery stores and convenience stores that do not currently engage in any beer retail may not be affected at all.

Costs and Other Effects. The proposed amendments would likely benefit small independent breweries and beer, wine and liquor stores by allowing them to advertise online and expand their sales in parts of the state where they do not currently ship their product. However, this benefit could be limited depending on the competitiveness of Internet beer retail. Conversely, small supermarkets, grocery stores and convenience stores that sell beer may see decreased revenues from beer sales in brick-and-mortar locations. However, brick-and-mortar locations provide consumers with the

convenience of immediate access to a wide variety of domestic and imported beers without additional shipping costs, so any adverse impact is unlikely to be substantive in nature at least in the short run.

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

Localities⁷ Affected.⁸ The proposed amendments do not disproportionately affect particular localities or introduce new costs for local governments.

Projected Impact on Employment. The proposed amendments are unlikely to affect total employment in the industry.

Effects on the Use and Value of Private Property. Real estate development costs do not appear to be affected.

¹See <http://lis.virginia.gov/cgi-bin/legp604.exe?181+ful+CHAP0337>

²See <https://law.lis.virginia.gov/vacode/title4.1/chapter2/section4.1-208/> (Beer License) and <https://law.lis.virginia.gov/vacode/title4.1/chapter2/section4.1-209.1/> (Direct shipment of wine and beer; shipper's license.)

³See <https://law.lis.virginia.gov/vacode/title4.1/chapter2/section4.1-207/> (Wine License)

⁴See <https://townhall.virginia.gov/L/ViewAction.cfm?actionid=2517>, which became effective May 1, 2008.

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

⁶Data source: Virginia Employment Commission

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

Agency's Response to Economic Impact Analysis: The Virginia Alcoholic Beverage Control Authority concurs with the Department of Planning and Budget's economic impact analysis.

Summary:

Chapter 337 of the 2018 Acts of Assembly creates an Internet beer retailer license and sets the fee for such license. This regulatory action implements Chapter 337 and establishes license requirements, including application, shipping, record keeping, and reporting.

3VAC5-70-220. Wine or beer shipper's licenses, and Internet wine retailer licenses, and Internet beer retailer licenses; application process; common carriers; records and reports.

A. Any person or entity qualified for a wine shipper's license or beer shipper's license pursuant to § 4.1-209.1 of the Code

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of Virginia, ~~or~~ an Internet wine retailer license pursuant to subdivision 6 of § 4.1-207 of the Code of Virginia, or an Internet beer retailer license pursuant to subdivision A 10 of § 4.1-208 of the Code of Virginia, must apply for such license by submitting form 805-52, Application for License. In addition to the application, each applicant shall submit as attachments a list of all brands of wine or beer sought to be shipped by the applicant, along with the board-assigned code numbers for each brand or a copy of the label approval by the appropriate federal agency for any brand not previously approved for sale in Virginia pursuant to 3VAC5-40-20 ~~or 3VAC5-40-50~~ that will be sold only through direct shipment to consumers.

If the applicant is not also the brand owner of the brands listed in the application, the applicant shall obtain and submit with the application a dated letter identifying each brand, from the brand owner or any wholesale distributor authorized to distribute the brand, addressed to the Supervisor, Tax Management Section, Virginia Department of Alcoholic Beverage Control Authority, indicating the brand owner's or wholesale distributor's consent to the applicant's shipping the brand to Virginia consumers.

The applicant shall attach (i) a photocopy of its current license as a winery, farm winery, brewery, or alcoholic beverage retailer issued by the appropriate authority for the location from which shipments will be made and (ii) evidence of the applicant's registration with the Virginia Department of Taxation for the collection of Virginia retail sales tax.

B. Any brewery, winery, or farm winery that applies for a shipper's license or consents to the application by any other person, other than a retail off-premises licensee, for a license to ship such brewery's, winery's, or farm winery's brands of wine or beer shall notify all wholesale licensees that have been authorized to distribute such brands in Virginia that an application for a shipper's license has been filed. Such notification shall be by a dated letter to each such wholesale licensee, setting forth the brands that wholesaler has been authorized to distribute in Virginia for which a shipper's license has been applied. A copy of each such letter shall be forwarded to the Supervisor, Tax Management Section, by the brewery, winery, or farm winery.

C. Any holder of a wine or beer shipper's license ~~or~~ Internet wine retailer's license, or Internet beer retailer's license may add or delete brands to be shipped by letter to the Supervisor, Tax Management Section, designating the brands to be added or deleted. Any letter adding brands shall be accompanied by any appropriate brand-owner consents or notices to wholesalers as required with an original application.

D. Any brand owner that consents to a holder of a wine shipper's license, beer shipper's license, ~~or~~ Internet wine retailer's license, or Internet beer retailer's license shipping its brands to Virginia consumers may withdraw such consent by a dated letter to the affected wine or beer shipper's licensee

~~or~~ Internet wine retailer's licensee, or Internet beer retailer's licensee. Copies of all such withdrawals shall be forwarded by the brand owner, by certified mail, return receipt requested, to the Supervisor, Tax Management Section. Withdrawals shall become effective upon receipt of the copy by the Tax Management Section, as evidenced by the postmark on the return receipt.

E. Wine shipper's licensees, beer shipper's licensees, ~~and~~ Internet wine retailer's licensees, and Internet beer retailer's licensees shall maintain for two years complete and accurate records of all shipments made under the privileges of such licenses, including for each shipment:

1. Number of containers shipped;
2. Volume of each container shipped;
3. Brand of each container shipped;
4. Names and addresses of recipients; and
5. Price charged.

The records required by this subsection shall be made available for inspection and copying by any member of the board or its special agents upon request.

F. On or before the 15th day of each month, each wine shipper's licensee, beer shipper's licensee, ~~or~~ Internet wine retailer's licensee, or Internet beer retailer's licensee shall file with the Supervisor, Tax Management Section, either in paper form or electronically as directed by the department, a report of activity for the previous calendar month. Such report shall include:

1. Whether any shipments were made during the month; and
2. If shipments were made, the following information for each shipment:
 - a. Number of containers shipped;
 - b. Volume of each container shipped;
 - c. Brand of each container shipped;
 - d. Names and addresses of recipients; and
 - e. Price charged.

Unless otherwise paid, payment of the appropriate beer or wine tax shall accompany each report.

G. All shipments by holders of wine shipper's licenses, beer shipper's licenses, ~~or~~ Internet wine retailer's licenses, or Internet beer retailer's licenses shall be by approved common carrier only. Common carriers possessing all necessary licenses or permits to operate as common carriers in Virginia may apply for approval to provide common carriage of wine or beer, or both, shipped by holders of wine shipper's licenses, beer shipper's licenses, ~~or~~ Internet wine retailer's licenses, or Internet beer retailer's licenses by dated letter to the Supervisor, Tax Management Section, requesting such

approval and agreeing to perform deliveries of beer or wine shipped, maintain records, and submit reports in accordance with the requirements of this section. The board may refuse, suspend, or revoke approval if it shall have reasonable cause to believe that a carrier does not possess all necessary licenses or permits, that a carrier has failed to comply with the regulations of the board, or that a cause exists with respect to the carrier that would authorize the board to refuse, suspend, or revoke a license pursuant to Title 4.1 of the Code of Virginia. Before refusing, suspending, or revoking such approval, the board shall follow the same administrative procedures accorded an applicant or licensee under Title 4.1 of the Code of Virginia and regulations of the board.

H. When attempting to deliver wine or beer shipped by a wine shipper's licensee, beer shipper's licensee, ~~or~~ Internet wine retailer's licensee, or Internet beer retailer's licensee, an approved common carrier shall require:

1. The recipient to demonstrate, upon delivery, that ~~he~~ the recipient is at least 21 years of age; and
2. The recipient to sign an electronic or paper form or other ~~acknowledgement~~ acknowledgment of receipt that allows the maintenance of the records required by this section.

The approved common carrier shall refuse delivery when the proposed recipient appears to be ~~under the age of~~ younger than 21 years of age and refuses to present valid identification. All licensees shipping wine or beer pursuant to this section shall affix a conspicuous notice in 16-point type or larger to the outside of each package of wine or beer shipped within or into the Commonwealth, in a conspicuous location stating: "CONTAINS ALCOHOLIC BEVERAGES; SIGNATURE OF PERSON AGED 21 YEARS OR OLDER REQUIRED FOR DELIVERY." Such notice shall also contain the wine shipper's, beer shipper's, ~~or~~ Internet wine retailer's license, or Internet beer retailer's license number of the shipping licensee. No approved common carrier shall accept for shipment any wine or beer to be shipped to anyone other than a licensee of the board unless the package bears the information required by this subsection.

I. Approved common carriers shall maintain for two years complete and accurate records of all shipments of wine or beer received from and delivered for wine or beer shipper's licensees, ~~or~~ Internet wine retailer's licensees, or Internet beer retailer's licensees, including for each shipment:

1. Date of shipment and delivery;
2. Number of items shipped and delivered;
3. Weight of items shipped and delivered;
4. Acknowledgement signed by recipient; and
5. Names and addresses of shippers and recipients.

The records required by this subsection shall be made available for inspection and copying by any member of the board or its special agents upon request.

J. On or before the 15th day of each January, April, July, and October, each approved common carrier shall file with the Supervisor, Tax Management Section, a report of activity for the previous calendar quarter. Such report shall include:

1. Whether any shipments were delivered during the quarter; and
2. If shipments were made, the following information for each shipment:
 - a. Dates of each delivery; and
 - b. Names and address of shippers and recipients for each delivery.

VA.R. Doc. No. R20-6257; Filed May 22, 2020, 3:59 p.m.

TITLE 9. ENVIRONMENT

STATE WATER CONTROL BOARD

Final Regulation

EDITOR'S NOTE: This final action makes effective changes proposed in [31:22 VA.R. 1949-2045 June 29, 2015](#), and in [34:2 VA.R. 193-236 September 18, 2017](#).

Title of Regulation: **9VAC25-260. Water Quality Standards (amending 9VAC25-260-155).**

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

Effective Date: Effective upon the filing of notice of approval by the U.S. Environmental Protection Agency with the Registrar of Regulations.

Agency Contact: David Whitehurst, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4121, FAX (804) 698-4032, or email david.whitehurst@deq.virginia.gov.

Summary:

The amendments, which originally were part of the Triennial Review of the water quality standards, update the freshwater ammonia water quality criteria for the protection of freshwater aquatic life to the latest recommendations of the U.S. Environmental Protection Agency and provide for implementation of the new criteria by regulated dischargers.

Changes to the proposed regulation include (i) prohibiting the four-day average ammonia concentration in freshwater to exceed 2.5 times the chronic criterion within a 30-day period more than once every three years on the average; and (ii) adding a phased implementation plan for regulated dischargers that meets the funding and timing

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requirements consistent with the federal Clean Water Act pursuant to Chapters 510 and 511 of the 2018 Acts of Assembly.

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

9VAC25-260-155. Ammonia surface water quality criteria.

A. The Department of Environmental Quality, after consultation with the Virginia Department of [~~Game and Inland Fisheries~~ Wildlife Resources] and the U.S. Fish and Wildlife Service, has determined that the majority of Virginia freshwaters are likely to contain, or have contained in the past, freshwater mussel species in the family Unionidae and contain early life stages of fish during most times of the year. Therefore, the ammonia criteria presented in subsections B and C of this section are designed to provide protection to these species and life stages. In an instance where it can be adequately demonstrated that either freshwater mussels or early life stages of fish are not present in a specific waterbody, potential options for alternate, site-specific criteria are presented in subsection D of this section. Acute criteria are a one-hour average concentration not to be exceeded more than once every three years¹ on the average, and chronic criteria are 30-day average concentrations not to be exceeded more than once every three years on the average.² [In addition, the four-day average concentration of total ammonia nitrogen (in mg N/L) shall not exceed 2.5 times the chronic criterion within a 30-day period more than once every three years on the average.]

[¹The default design flow for calculating steady state wasteload allocations for the acute ammonia criterion for freshwater is the 1Q10 (see 9VAC25-260-140 B footnote 6) unless statistically valid methods are employed that demonstrate compliance with the duration and return frequency of the water quality criteria.

²The default design flow for calculating steady state wasteload allocations for the chronic ammonia criterion for freshwater is the 30Q10 (see 9VAC25-260-140 B footnote 6) unless statistically valid methods are employed which demonstrate compliance with the duration and return frequency of the water quality criteria.]

B. The ~~one hour average concentration of total ammonia nitrogen (in mg N/L) in freshwater shall not exceed, more than once every three years on the average~~¹, the acute criteria

for total ammonia (in mg N/L) for freshwaters with trout absent or present are [~~below~~ in the following tables]:

**Acute Ammonia Freshwater Criteria
Total Ammonia Nitrogen (mg N/L)**

pH	Trout Present	Trout Absent
6.5	32.6	48.8
6.6	31.3	46.8
6.7	29.8	44.6
6.8	28.1	42.0
6.9	26.2	39.1
7.0	24.1	36.1
7.1	22.0	32.8
7.2	19.7	29.5
7.3	17.5	26.2
7.4	15.4	23.0
7.5	13.3	19.9
7.6	11.4	17.0
7.7	9.65	14.4
7.8	8.11	12.1
7.9	6.77	10.1
8.0	5.62	8.40
8.1	4.64	6.95
8.2	3.83	5.72
8.3	3.15	4.71
8.4	2.59	3.88
8.5	2.14	3.20
8.6	1.77	2.65
8.7	1.47	2.20
8.8	1.23	1.84
8.9	1.04	1.56
9.0	0.885	1.32

Acute Ammonia Freshwater Criteria
Total Ammonia Nitrogen (mg N/L)
TROUT ARSENIC

pH	Temperature (°C)																																					
	0-10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30																	
6.5	51	48	44	41	37	34	32	29	27	25	23	21	19	18	16	15	14	13	12	11	10	9.5	9.2	8.9	8.6	8.4	8.2	8.0	7.8	7.6	7.4	7.2	7.0	6.8	6.6	6.4	6.2	6.0
6.6	49	46	42	39	36	33	30	28	26	24	22	20	18	17	16	15	14	13	12	11	10	9.5	9.2	8.9	8.6	8.4	8.2	8.0	7.8	7.6	7.4	7.2	7.0	6.8	6.6	6.4	6.2	6.0
6.7	46	44	40	37	34	31	29	27	24	22	21	19	18	16	15	14	13	12	11	10	9.5	9.2	8.9	8.6	8.4	8.2	8.0	7.8	7.6	7.4	7.2	7.0	6.8	6.6	6.4	6.2	6.0	
6.8	44	41	38	35	32	30	27	25	23	21	20	18	17	15	14	13	12	11	10	9.5	9.2	8.9	8.6	8.4	8.2	8.0	7.8	7.6	7.4	7.2	7.0	6.8	6.6	6.4	6.2	6.0		
6.9	41	38	35	32	30	28	25	23	21	20	18	17	15	14	13	12	11	10	9.5	9.2	8.9	8.6	8.4	8.2	8.0	7.8	7.6	7.4	7.2	7.0	6.8	6.6	6.4	6.2	6.0			
7.0	38	35	33	30	28	25	23	21	20	18	17	15	14	13	12	11	10	9.5	9.2	8.9	8.6	8.4	8.2	8.0	7.8	7.6	7.4	7.2	7.0	6.8	6.6	6.4	6.2	6.0				
7.1	34	32	30	27	25	23	21	20	18	17	15	14	13	12	11	10	9.5	9.2	8.9	8.6	8.4	8.2	8.0	7.8	7.6	7.4	7.2	7.0	6.8	6.6	6.4	6.2	6.0					
7.2	31	29	27	25	23	21	19	18	16	15	14	13	12	11	10	9.5	9.2	8.9	8.6	8.4	8.2	8.0	7.8	7.6	7.4	7.2	7.0	6.8	6.6	6.4	6.2	6.0						
7.3	27	26	24	22	20	18	17	16	14	13	12	11	10	9.5	9.2	8.9	8.6	8.4	8.2	8.0	7.8	7.6	7.4	7.2	7.0	6.8	6.6	6.4	6.2	6.0								
7.4	24	22	21	19	18	16	15	14	13	12	11	10	9.5	9.2	8.9	8.6	8.4	8.2	8.0	7.8	7.6	7.4	7.2	7.0	6.8	6.6	6.4	6.2	6.0									
7.5	21	19	18	17	15	14	13	12	11	10	9.2	8.5	7.8	7.2	6.6	6.1	5.6	5.2	4.8	4.4	4.1	3.8	3.5	3.2	2.9	2.7	2.5	2.3	2.1	1.9	1.7	1.5	1.4	1.2	1.1	1.0		
7.6	18	17	15	14	13	12	11	10	9.3	8.6	7.9	7.3	6.7	6.2	5.7	5.2	4.8	4.4	4.1	3.8	3.5	3.2	2.9	2.7	2.5	2.3	2.1	1.9	1.7	1.5	1.4	1.2	1.1	1.0				
7.7	15	14	13	12	11	10	9.3	8.6	7.9	7.3	6.7	6.2	5.7	5.2	4.8	4.4	4.1	3.8	3.5	3.2	2.9	2.7	2.5	2.3	2.1	1.9	1.7	1.5	1.4	1.2	1.1	1.0						
7.8	13	12	11	10	9.3	8.6	7.9	7.2	6.7	6.1	5.6	5.2	4.8	4.4	4.0	3.7	3.4	3.1	2.9	2.6	2.4	2.2	2.0	1.8	1.7	1.5	1.4	1.2	1.1	1.0	0.96	0.92	0.88	0.84	0.80			
7.9	11	9.9	9.1	8.4	7.7	7.1	6.6	6.0	5.6	5.1	4.7	4.3	4.0	3.7	3.4	3.1	2.9	2.6	2.4	2.2	2.0	1.8	1.7	1.5	1.4	1.2	1.1	1.0	0.96	0.92	0.88	0.84	0.80					
8.0	8.8	8.2	7.6	7.0	6.4	5.9	5.4	5.0	4.6	4.2	3.9	3.6	3.3	3.0	2.8	2.6	2.4	2.2	2.0	1.8	1.7	1.5	1.4	1.2	1.1	1.0	0.96	0.92	0.88	0.84	0.80							
8.1	7.2	6.8	6.3	5.8	5.3	4.9	4.5	4.1	3.8	3.5	3.2	3.0	2.7	2.5	2.3	2.1	2.0	1.8	1.7	1.5	1.4	1.2	1.1	1.0	0.96	0.92	0.88	0.84	0.80									
8.2	6.0	5.6	5.2	4.8	4.4	4.0	3.7	3.4	3.1	2.9	2.7	2.4	2.3	2.1	1.9	1.8	1.6	1.5	1.4	1.3	1.2	1.1	1.0	0.96	0.92	0.88	0.84	0.80										
8.3	4.9	4.6	4.3	3.9	3.6	3.3	3.1	2.8	2.6	2.4	2.2	2.0	1.9	1.7	1.6	1.4	1.3	1.2	1.1	1.0	0.96	0.92	0.88	0.84	0.80													
8.4	4.1	3.8	3.5	3.2	3.0	2.7	2.5	2.3	2.1	2.0	1.8	1.7	1.5	1.4	1.3	1.2	1.1	1.0	0.98	0.90	0.83	0.77	0.71	0.65														
8.5	3.3	3.1	2.9	2.7	2.4	2.3	2.1	1.9	1.8	1.6	1.5	1.4	1.3	1.2	1.1	1.0	0.98	0.81	0.75	0.68	0.63	0.58	0.54															
8.6	2.8	2.6	2.4	2.2	2.0	1.9	1.7	1.6	1.5	1.3	1.2	1.1	1.0	0.96	0.80	0.74	0.68	0.62	0.57	0.53	0.49	0.45																
8.7	2.3	2.2	2.0	1.8	1.7	1.6	1.4	1.3	1.2	1.1	1.0	0.94	0.87	0.80	0.74	0.68	0.62	0.57	0.53	0.49	0.45																	
8.8	1.9	1.8	1.7	1.5	1.4	1.3	1.2	1.1	1.0	0.93	0.86	0.79	0.73	0.67	0.62	0.57	0.52	0.48	0.44	0.41	0.37																	
8.9	1.6	1.5	1.4	1.3	1.2	1.1	1.0	0.93	0.86	0.79	0.72	0.67	0.61	0.56	0.52	0.48	0.44	0.41	0.37	0.34	0.32																	
9.0	1.4	1.3	1.2	1.1	1.0	0.93	0.86	0.79	0.73	0.67	0.62	0.57	0.52	0.48	0.44	0.41	0.37	0.34	0.32	0.28	0.27																	

Total Ammonia Nitrogen (mg N/L)																													
TROUT PRESENT																													
Temperature (°C)																													
pH	0-14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30												
6.5	3.3	3.2	3.2	2.8	2.7	2.5	2.3	2.1	1.9	1.8	1.6	1.5	1.4	1.3	1.2	1.1	0.9												
6.6	3.1	3.0	3.0	2.8	2.6	2.4	2.2	2.0	1.8	1.7	1.6	1.4	1.3	1.2	1.1	1.0	0.8												
6.7	3.0	2.9	2.9	2.7	2.4	2.2	2.1	1.9	1.8	1.6	1.5	1.4	1.3	1.2	1.1	0.9	0.8												
6.8	2.8	2.8	2.7	2.5	2.3	2.1	2.0	1.8	1.7	1.5	1.4	1.3	1.2	1.1	1.0	0.8	0.7												
6.9	2.6	2.6	2.5	2.3	2.1	2.0	1.8	1.7	1.5	1.4	1.3	1.2	1.1	1.0	0.9	0.7	0.6												
7.0	2.4	2.4	2.3	2.1	2.0	1.8	1.7	1.5	1.4	1.3	1.2	1.1	1.0	0.9	0.8	0.6	0.5												
7.1	2.2	2.2	2.1	2.0	1.8	1.7	1.5	1.4	1.3	1.2	1.1	1.0	0.9	0.8	0.7	0.5	0.4												
7.2	2.0	2.0	1.9	1.8	1.6	1.5	1.4	1.3	1.2	1.1	0.9	0.8	0.7	0.6	0.5	0.4	0.3												
7.3	1.8	1.8	1.7	1.6	1.4	1.3	1.2	1.1	1.0	0.9	0.7	0.6	0.5	0.4	0.3	0.2	0.2												
7.4	1.5	1.5	1.5	1.4	1.3	1.2	1.1	0.9	0.8	0.7	0.6	0.5	0.4	0.3	0.2	0.1	0.1												
7.5	1.3	1.3	1.3	1.2	1.1	1.0	0.9	0.8	0.7	0.6	0.5	0.4	0.3	0.2	0.1	0.1	0.1												
7.6	1.1	1.1	1.1	1.0	0.9	0.8	0.7	0.6	0.5	0.4	0.3	0.2	0.1	0.1	0.1	0.1	0.1												
7.7	0.9	0.9	0.9	0.8	0.7	0.6	0.5	0.4	0.3	0.2	0.1	0.1	0.1	0.1	0.1	0.1	0.1												
7.8	0.8	0.8	0.8	0.7	0.6	0.5	0.4	0.3	0.2	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1												
7.9	0.8	0.8	0.8	0.6	0.6	0.5	0.4	0.3	0.2	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1												
8.0	0.6	0.6	0.6	0.5	0.4	0.4	0.3	0.2	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1												
8.1	0.6	0.6	0.5	0.4	0.3	0.3	0.2	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1												
8.2	0.5	0.5	0.4	0.3	0.3	0.2	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1												
8.3	0.4	0.4	0.3	0.2	0.2	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1												
8.4	0.3	0.3	0.2	0.2	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1												
8.5	0.2	0.2	0.2	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1												
8.6	0.2	0.2	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1												
8.7	0.2	0.2	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1												
8.8	0.2	0.2	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1												
8.9	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1												
9.0	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1												

The acute criteria for trout present shall apply to all Class V-Stockable Trout Waters and Class VI-Natural Trout Waters as listed in 9VAC25-260-390 through 9VAC25-260-540. The acute criteria for trout absent apply to all other fresh waters.

To calculate total ammonia nitrogen acute criteria values in freshwater at different pH values than those listed in this subsection, use the following formulas equations and round the result to two significant digits:

Where trout are ~~present~~ absent:

Acute Criterion Concentration (mg N/L) =

$\frac{0.275}{(1 + 10^{7.204 - \text{pH}})}$	+	$\frac{39.0}{(1 + 10^{\text{pH} - 7.204})}$
----------------------------------------------	---	---------------------------------------------

$$0.7249 \times \left(\frac{0.0114}{1 + 10^{7.204 - \text{pH}}} \pm \frac{1.6181}{1 + 10^{\text{pH} - 7.204}} \right) \times \text{MIN}$$

Where MIN = 51.93 or $23.12 \times 10^{0.036 \times (20 - T)}$, whichever is less

T = Temperature in °C

Or where trout are ~~absent~~ present, whichever of the [~~below~~ following] calculation results is less:

Acute Criterion Concentration (mg N/L) =

$$\frac{0.411}{(1 + 10^{7.204 - \text{pH}})} + \frac{58.4}{(1 + 10^{\text{pH} - 7.204})}$$

~~*The default design flow for calculating steady state waste load allocations for the acute ammonia criterion is the 1Q10 (see 9VAC25-260-140 B footnote 10) unless statistically valid methods are employed which demonstrate compliance with the duration and return frequency of the water quality criteria.~~

$$\left(\frac{0.275}{1 + 10^{7.204 - \text{pH}}} \pm \frac{39.0}{1 + 10^{\text{pH} - 7.204}} \right)$$

or

$$0.7249 \times \left(\frac{0.0114}{1 + 10^{7.204 - \text{pH}}} \pm \frac{1.6181}{1 + 10^{\text{pH} - 7.204}} \right) \times (23.12 \times 10^{0.036 \times (20 - T)})$$

T = Temperature in °C

~~B. C. The 30 day average concentration of chronic criteria for total ammonia nitrogen (in mg N/L) where freshwater mussels and early life stages of fish are present in freshwater shall not exceed, more than once every three years on the average², the chronic criteria are [below in the following table]:~~

Chronic Ammonia Freshwater Criteria
Early Life Stages of Fish Present
Total Ammonia Nitrogen (mg N/L)

pH	Temperature (°C)									
	0	14	16	18	20	22	24	26	28	30
6.5	6.67	6.67	6.06	5.33	4.68	4.12	3.62	3.18	2.80	2.46
6.6	6.57	6.57	5.97	5.25	4.61	4.05	3.56	3.13	2.75	2.42
6.7	6.44	6.44	5.86	5.15	4.52	3.98	3.50	3.07	2.70	2.37
6.8	6.29	6.29	5.72	5.03	4.42	3.89	3.42	3.00	2.64	2.32
6.9	6.12	6.12	5.56	4.89	4.30	3.78	3.32	2.92	2.57	2.25

Regulations

7.0	5.91	5.91	5.37	4.72	4.15	3.65	3.21	2.82	2.48	2.18
7.1	5.67	5.67	5.15	4.53	3.98	3.50	3.08	2.70	2.38	2.09
7.2	5.39	5.39	4.90	4.31	3.78	3.33	2.92	2.57	2.26	1.99
7.3	5.08	5.08	4.61	4.06	3.57	3.13	2.76	2.42	2.13	1.87
7.4	4.73	4.73	4.30	3.78	3.32	2.92	2.57	2.26	1.98	1.74
7.5	4.36	4.36	3.97	3.49	3.06	2.69	2.37	2.08	1.83	1.61
7.6	3.98	3.98	3.61	3.18	2.79	2.45	2.16	1.90	1.67	1.47
7.7	3.58	3.58	3.25	2.86	2.51	2.21	1.94	1.71	1.50	1.32
7.8	3.18	3.18	2.89	2.54	2.23	1.96	1.73	1.52	1.33	1.17
7.9	2.80	2.80	2.54	2.24	1.96	1.73	1.52	1.33	1.17	1.03
8.0	2.43	2.43	2.21	1.94	1.71	1.50	1.32	1.16	1.02	0.897
8.1	2.10	2.10	1.91	1.68	1.47	1.29	1.14	1.00	0.879	0.773
8.2	1.79	1.79	1.63	1.43	1.26	1.11	0.973	0.855	0.752	0.661
8.3	1.52	1.52	1.39	1.22	1.07	0.941	0.827	0.727	0.639	0.562
8.4	1.29	1.29	1.17	1.03	0.906	0.796	0.700	0.615	0.541	0.475
8.5	1.09	1.09	0.990	0.870	0.765	0.672	0.591	0.520	0.457	0.401
8.6	0.920	0.920	0.836	0.735	0.646	0.568	0.499	0.439	0.386	0.339
8.7	0.778	0.778	0.707	0.622	0.547	0.480	0.422	0.371	0.326	0.287
8.8	0.661	0.661	0.601	0.528	0.464	0.408	0.359	0.315	0.277	0.244
8.9	0.565	0.565	0.513	0.451	0.397	0.349	0.306	0.269	0.237	0.208
9.0	0.486	0.486	0.442	0.389	0.342	0.300	0.264	0.232	0.204	0.179

Chicago Ammonia Encumbering Control
 Minimum Final 100-Stories of High-Rise
 Total Ammonia Nitrogen (ton NH₃)

	Temperature (°C)																												
6.1	6.2	6.3	6.4	6.5	6.6	6.7	6.8	6.9	7.0	7.1	7.2	7.3	7.4	7.5	7.6	7.7	7.8	7.9	8.0	8.1	8.2	8.3	8.4	8.5	8.6	8.7	8.8	8.9	9.0
4.6	4.5	4.3	4.1	3.8	3.8	3.9	3.8	3.6	3.5	3.4	3.2	3.0	2.8	2.7	2.5	2.4	2.2	2.1	2.0	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.1	1.0	0.98
4.5	4.3	4.0	3.7	3.5	3.4	3.2	3.0	2.8	2.7	2.5	2.3	2.2	2.1	2.0	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.1	1.0	0.98	0.96	0.94	0.92	0.90	0.88
4.4	4.1	3.8	3.5	3.2	3.0	2.8	2.7	2.5	2.4	2.2	2.1	2.0	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.1	1.0	0.98	0.96	0.94	0.92	0.90	0.88	0.86	0.84
4.1	3.8	3.5	3.2	3.0	2.8	2.7	2.5	2.4	2.2	2.1	2.0	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.1	1.0	0.98	0.96	0.94	0.92	0.90	0.88	0.86	0.84	0.82
3.7	3.5	3.3	3.1	2.9	2.7	2.5	2.4	2.2	2.1	2.0	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.1	1.0	0.98	0.96	0.94	0.92	0.90	0.88	0.86	0.84	0.82	0.80
3.5	3.3	3.1	2.9	2.7	2.5	2.4	2.2	2.1	2.0	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.1	1.0	0.98	0.96	0.94	0.92	0.90	0.88	0.86	0.84	0.82	0.80	0.78
3.3	3.1	2.9	2.7	2.5	2.4	2.2	2.1	2.0	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.1	1.0	0.98	0.96	0.94	0.92	0.90	0.88	0.86	0.84	0.82	0.80	0.78	0.76
3.1	2.9	2.7	2.5	2.4	2.2	2.1	2.0	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.1	1.0	0.98	0.96	0.94	0.92	0.90	0.88	0.86	0.84	0.82	0.80	0.78	0.76	0.74
2.8	2.7	2.5	2.4	2.2	2.1	2.0	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.1	1.0	0.98	0.96	0.94	0.92	0.90	0.88	0.86	0.84	0.82	0.80	0.78	0.76	0.74	0.72
2.7	2.5	2.4	2.2	2.1	2.0	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.1	1.0	0.98	0.96	0.94	0.92	0.90	0.88	0.86	0.84	0.82	0.80	0.78	0.76	0.74	0.72	0.70
2.5	2.4	2.2	2.1	2.0	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.1	1.0	0.98	0.96	0.94	0.92	0.90	0.88	0.86	0.84	0.82	0.80	0.78	0.76	0.74	0.72	0.70	0.68
2.3	2.1	2.0	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.1	1.0	0.98	0.96	0.94	0.92	0.90	0.88	0.86	0.84	0.82	0.80	0.78	0.76	0.74	0.72	0.70	0.68	0.66	0.64
2.1	2.0	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.1	1.0	0.98	0.96	0.94	0.92	0.90	0.88	0.86	0.84	0.82	0.80	0.78	0.76	0.74	0.72	0.70	0.68	0.66	0.64	0.62
1.9	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.1	1.0	0.98	0.96	0.94	0.92	0.90	0.88	0.86	0.84	0.82	0.80	0.78	0.76	0.74	0.72	0.70	0.68	0.66	0.64	0.62	0.60
1.7	1.6	1.5	1.4	1.3	1.2	1.1	1.0	0.98	0.96	0.94	0.92	0.90	0.88	0.86	0.84	0.82	0.80	0.78	0.76	0.74	0.72	0.70	0.68	0.66	0.64	0.62	0.60	0.58	0.56
1.5	1.4	1.3	1.2	1.1	1.0	0.98	0.96	0.94	0.92	0.90	0.88	0.86	0.84	0.82	0.80	0.78	0.76	0.74	0.72	0.70	0.68	0.66	0.64	0.62	0.60	0.58	0.56	0.54	0.52
1.2	1.1	1.0	0.98	0.96	0.94	0.92	0.90	0.88	0.86	0.84	0.82	0.80	0.78	0.76	0.74	0.72	0.70	0.68	0.66	0.64	0.62	0.60	0.58	0.56	0.54	0.52	0.50	0.48	0.46
1.1	0.98	0.96	0.94	0.92	0.90	0.88	0.86	0.84	0.82	0.80	0.78	0.76	0.74	0.72	0.70	0.68	0.66	0.64	0.62	0.60	0.58	0.56	0.54	0.52	0.50	0.48	0.46	0.44	0.42
0.98	0.96	0.94	0.92	0.90	0.88	0.86	0.84	0.82	0.80	0.78	0.76	0.74	0.72	0.70	0.68	0.66	0.64	0.62	0.60	0.58	0.56	0.54	0.52	0.50	0.48	0.46	0.44	0.42	0.40
0.94	0.92	0.90	0.88	0.86	0.84	0.82	0.80	0.78	0.76	0.74	0.72	0.70	0.68	0.66	0.64	0.62	0.60	0.58	0.56	0.54	0.52	0.50	0.48	0.46	0.44	0.42	0.40	0.38	0.36
0.75	0.71	0.67	0.62	0.58	0.55	0.51	0.48	0.45	0.42	0.40	0.37	0.35	0.33	0.31	0.29	0.28	0.26	0.24	0.23	0.21	0.20	0.19	0.18	0.17	0.16	0.15	0.14	0.13	0.12
0.64	0.60	0.56	0.53	0.49	0.46	0.43	0.41	0.38	0.36	0.33	0.31	0.29	0.28	0.26	0.24	0.23	0.21	0.20	0.19	0.18	0.17	0.16	0.15	0.14	0.13	0.12	0.11	0.10	0.09
0.54	0.51	0.47	0.44	0.42	0.39	0.37	0.34	0.32	0.30	0.28	0.27	0.25	0.23	0.21	0.20	0.19	0.18	0.17	0.16	0.15	0.14	0.13	0.12	0.11	0.10	0.09	0.08	0.07	0.06
0.46	0.43	0.40	0.38	0.35	0.33	0.31	0.29	0.27	0.25	0.23	0.21	0.20	0.19	0.18	0.17	0.16	0.15	0.14	0.13	0.12	0.11	0.10	0.09	0.08	0.07	0.06	0.05	0.04	0.03
0.38	0.34	0.31	0.29	0.27	0.25	0.23	0.21	0.20	0.19	0.18	0.17	0.16	0.15	0.14	0.13	0.12	0.11	0.10	0.09	0.08	0.07	0.06	0.05	0.04	0.03	0.02	0.01	0.00	0.00
0.28	0.24	0.21	0.19	0.18	0.17	0.16	0.15	0.14	0.13	0.12	0.11	0.10	0.09	0.08	0.07	0.06	0.05	0.04	0.03	0.02	0.01	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00

Regulations

To calculate total ammonia nitrogen chronic criteria values in freshwater when ~~fish~~ freshwater mussels and early life stages of fish are present at different pH and temperature values than those listed in this subsection, use the following ~~formulas~~ equation and round the result to two significant digits:

Chronic Criteria Concentration =

$$\left(\frac{0.0577}{(1 + 10^{7.688 - \text{pH}})} + \frac{2.487}{(1 + 10^{\text{pH} - 7.688})} \right) \times \text{MIN}$$

Where MIN = 2.85 or $1.45 \times 10^{0.028(25 - T)}$, whichever is less.

$$0.8876 \times \left(\frac{0.0278}{1 + 10^{7.688 - \text{pH}}} \pm \frac{1.1994}{1 + 10^{\text{pH} - 7.688}} \right) \times (2.126 \times 10^{0.028 \times (20 - \text{MAX}(T, 7))})$$

Where MAX = 7 or temperature in degrees Celsius, whichever is greater

T = temperature in °C

~~²The default design flow for calculating steady state waste load allocations for the chronic ammonia criterion where early life stages of fish are present is the 30Q10 (see 9VAC25-260-140 B footnote 10) unless statistically valid methods are employed which demonstrate compliance with the duration and return frequency of the water quality criteria.~~

D. Site-specific considerations and alternate criteria. If it can be adequately demonstrated that freshwater mussels or early life stages of fish are not present at a site, then alternate site-specific criteria can be considered using the information provided in this subsection. Recalculated site-specific criteria shall provide for the attainment and maintenance of the water quality standards of downstream waters.

1. Site-specific modifications to the ambient water quality criteria for ammonia to account for the absence of freshwater mussels or early life stages of fish shall be conducted in accordance with the procedures contained in this subdivision. Because the department presumes that most state waterbodies have freshwater mussels and early life stages of fish present during most times of the year, the criteria shall be calculated assuming freshwater mussels and early life stages of fish are present using subsections B and C of this section unless the following demonstration that freshwater mussels or early life stages of fish are absent is successfully completed. Determination of the absence of freshwater mussels requires special field survey methods. This determination must be made after an adequate survey of the waterbody is conducted by an individual certified by the Virginia Department of [~~Game and Inland Fisheries (DGIF)~~ Wildlife Resources] for freshwater mussel identification and surveys. Determination of absence of freshwater mussels will be done in consultation with the [~~DGIF~~ Department of Wildlife Resources]. Early life stages of fish are defined in subdivision 2 of this subsection. Modifications to the ambient water quality criteria for ammonia based on the presence or absence of early life stages of fish shall only apply at temperatures below 15°C.

a. During the review of any new or existing activity that has a potential to discharge ammonia in amounts that may cause or contribute to a violation of the ammonia criteria contained in subsection B of this section, the department may examine data from the following approved sources in subdivisions 1 a (1) through (5) of this subsection or may require the gathering of data in accordance with subdivisions 1 a (1) through (5) on the presence or absence of early life stages of fish in the affected waterbody.

(1) Species and distribution data contained in the Virginia Department of [~~Game and Inland Fisheries~~ Wildlife Resources] Wildlife Information System database.

(2) Species and distribution data contained in Freshwater Fishes of Virginia, 1994.

(3) Data and fish species distribution maps contained in Handbook for Fishery Biology, Volume 3, 1997.

(4) Field data collected in accordance with U.S. EPA's Rapid Bioassessment Protocols for Use in Streams and Wadeable Rivers, Second Edition, EPA 841-B-99-002. Field data must comply with all quality assurance and quality control criteria.

(5) The American Society for Testing and Materials (ASTM) Standard E-1241-88, Standard Guide for Conducting Early Life-Stage Toxicity Tests with Fishes.

b. If data or information from sources other than subdivisions 1 a (1) through (5) of this subsection are considered, then any resulting site-specific criteria modifications shall be reviewed and adopted in accordance with the site-specific criteria provisions in 9VAC25-260-140 D and submitted to EPA for review and approval.

c. If the department determines that the data and information obtained from subdivisions 1 a (1) through (5) of this subsection demonstrate that there are periods of each year when no early life stages are expected to be present for any species of fish that occur at the site, the department shall issue a notice to the public and make available for public comment the supporting data and analysis along with the department's preliminary decision to authorize the site-specific modification to the ammonia criteria. Such information shall include, at a minimum:

(1) Sources of data and information.

(2) List of fish species that occur at the site as defined in subdivision 3 of this subsection.

(3) Definition of the site. Definition of a "site" can vary in geographic size from a stream segment to a watershed to an entire eco-region.

(4) Duration of early life stage for each species in subdivision 1 c (2) of this subsection.

(5) Dates when early life stages of fish are expected to be present for each species in subdivision 1 c (2) of this subsection.

(6) Based on subdivision 1 c (5) of this subsection, identify the dates (beginning date, ending date), if any, where no early life stages are expected to be present for any of the species identified in subdivision 1 c (2) of this subsection.

d. If, after reviewing the public comments received in subdivision 1 c of this subsection and supporting data and information, the department determines that there are times of the year [~~where~~ when] no early life stages are expected to be present for any fish species that occur at the site, then the applicable ambient water quality criteria for ammonia for those time periods shall be calculated using the table in this subsection, or the formula for calculating the chronic criterion concentration for ammonia when early life stages of fish are absent.

e. The department shall maintain a comprehensive list of all sites where the department has determined that early life stages of fish are absent. For each site the list will identify the waterbodies affected and the corresponding times of the year that early life stages of fish are absent. This list is available either upon request from the Office of Water Quality Programs at [629 1111] East Main Street, [Suite 1400] Richmond, VA 23219, or from the department website at <http://www.deq.virginia.gov/programs/water/waterqualityinformationtmdls/waterqualitystandards.aspx>.

2. The duration of the "early life stages" extends from the beginning of spawning through the end of the early life stages. The early life stages include the pre-hatch embryonic period, the post-hatch free embryo or yolk-sac fry, and the larval period, during which the organism feeds. Juvenile fish, which are anatomically similar to adults, are not considered an early life stage. The duration of early life stages can vary according to fish species. The department considers the sources of information in subdivisions 1 a (1) through (5) of this subsection to be the only acceptable sources of information for determining the duration of early life stages of fish under this procedure.

3. "Occur at the site" includes the species, genera, families, orders, classes, and phyla that are usually present at the site; are present at the site only seasonally due to migration; are present intermittently because they periodically return to or extend their ranges into the site; or were present at the site in the past or are present in nearby bodies of water, but are not currently present at the site due to degraded conditions, and are expected to return to the site when conditions improve. "Occur at the site" does not include taxa that were once present at the site but cannot exist at the site now due to permanent physical alteration of the habitat at the site.

4. Any modifications to ambient water quality criteria for ammonia in subdivision 1 of this subsection shall not likely jeopardize the continued existence of any federal or state listed, threatened, or endangered species or result in the destruction or adverse modification of such species' critical habitats.

5. Site-specific modifications to the ambient water quality criteria for ammonia to account for the absence of freshwater mussels shall be conducted in accordance with the procedures contained in this [~~subdivision~~ subsection]. Because the department presumes that most state waterbodies have freshwater mussel species, the criteria shall be calculated assuming mussels are present using subsections B and C of this section unless the demonstration that freshwater mussels are absent is successfully completed and accepted by DEQ and [~~DGR~~ the Department of Wildlife Resources].

6. Equations for calculating ammonia criteria for four different site-specific scenarios are provided [~~below~~ in subdivisions 6 a through d of this subsection] as follows: (i) acute criteria when mussels are absent but trout are present, (ii) acute criteria when mussels and trout are absent, (iii) chronic criteria when mussels are absent and early life stages of fish are present, and (iv) chronic criteria when mussels and early life stages of fish are absent. Additional information regarding site-specific criteria can be reviewed in appendix N (pages 225-242) of the EPA Aquatic Life Ambient Water Quality Criteria to Ammonia--Freshwater 2013 (EPA 822-R-13-001).

Regulations

a. Acute criteria: freshwater mussels absent and trout present. To calculate total ammonia nitrogen acute criteria values (in mg N/L) in freshwater with freshwater mussels absent (procedures for making this determination are in subdivisions 1 through 5 of this subsection) and trout present, use the [following] equations [below]. The acute criterion is the lesser of the [following] calculation results [below]. Round the result to two significant digits.

$$\left(\frac{0.275}{1 + 10^{7.204 - \text{pH}}} \pm \frac{39}{1 + 10^{\text{pH} - 7.204}} \right)$$

or

$$0.7249 \times \left(\frac{0.0114}{1 + 10^{7.204 - \text{pH}}} \pm \frac{1.6181}{1 + 10^{\text{pH} - 7.204}} \right) \times (62.15 \times 10^{0.036 \times (20 - T)})$$

b. Acute criteria: freshwater mussels absent and trout absent. To calculate total ammonia nitrogen acute criteria values (in mg N/L) in freshwater where freshwater mussels are absent and trout are absent, use the following equation. Round the result to two significant digits.

$$0.7249 \times \left(\frac{0.0114}{1 + 10^{7.204 - \text{pH}}} \pm \frac{1.6181}{1 + 10^{\text{pH} - 7.204}} \right) \times \text{MIN}$$

Where MIN = 51.93 or $62.15 \times 10^{0.036 \times (20 - T)}$, whichever is less

T = Temperature in °C

~~c. The 30-day average concentration of~~ c. Chronic criteria: freshwater mussels absent and early life stages of fish present. The chronic criteria for total ammonia nitrogen (in mg N/L) where ~~early life stages of fish~~ freshwater mussels are absent (procedures for making this determination are in subdivisions 1 through 4 ~~5~~ of this subsection) in freshwater shall not exceed, ~~more than once every three years on the average~~³, the chronic criteria [below:] concentration values calculated using the [following] equation. Round the result to two significant digits.

**Chronic Ammonia Freshwater Criteria
Early Life Stages of Fish Absent
Total Ammonia Nitrogen (mg N/L)**

pH	Temperature (°C)									
	0-7	8	9	10	11	12	13	14	15	16
6.5	10.8	10.1	9.51	8.92	8.36	7.84	7.35	6.89	6.46	6.06
6.6	10.7	9.99	9.37	8.79	8.24	7.72	7.24	6.79	6.36	5.97
6.7	10.5	9.81	9.20	8.62	8.08	7.58	7.11	6.66	6.25	5.86
6.8	10.2	9.58	8.98	8.42	7.90	7.40	6.94	6.51	6.10	5.72
6.9	9.93	9.31	8.73	8.19	7.68	7.20	6.75	6.33	5.93	5.56
7.0	9.60	9.00	8.43	7.91	7.41	6.95	6.52	6.11	5.73	5.37
7.1	9.20	8.63	8.09	7.58	7.11	6.67	6.25	5.86	5.49	5.15
7.2	8.75	8.20	7.69	7.21	6.76	6.34	5.94	5.57	5.22	4.90
7.3	8.24	7.73	7.25	6.79	6.37	5.97	5.60	5.25	4.92	4.61
7.4	7.69	7.21	6.76	6.33	5.94	5.57	5.22	4.89	4.59	4.30
7.5	7.09	6.64	6.23	5.84	5.48	5.13	4.81	4.51	4.23	3.97
7.6	6.46	6.05	5.67	5.32	4.99	4.68	4.38	4.11	3.85	3.61
7.7	5.81	5.45	5.11	4.79	4.49	4.21	3.95	3.70	3.47	3.25
7.8	5.17	4.84	4.54	4.26	3.99	3.74	3.51	3.29	3.09	2.89

7.9	4.54	4.26	3.99	3.74	3.51	3.29	3.09	2.89	2.71	2.54
8.0	3.95	3.70	3.47	3.26	3.05	2.86	2.68	2.52	2.36	2.21
8.1	3.41	3.19	2.99	2.81	2.63	2.47	2.31	2.17	2.03	1.91
8.2	2.91	2.73	2.56	2.40	2.25	2.11	1.98	1.85	1.74	1.63
8.3	2.47	2.32	2.18	2.04	1.91	1.79	1.68	1.58	1.48	1.39
8.4	2.09	1.96	1.84	1.73	1.62	1.52	1.42	1.33	1.25	1.17
8.5	1.77	1.66	1.55	1.46	1.37	1.28	1.20	1.13	1.06	0.990
8.6	1.49	1.40	1.31	1.23	1.15	1.08	1.01	0.951	0.892	0.836
8.7	1.26	1.18	1.11	1.04	0.976	0.915	0.858	0.805	0.754	0.707
8.8	1.07	1.01	0.944	0.885	0.829	0.778	0.729	0.684	0.641	0.601
8.9	0.917	0.860	0.806	0.756	0.709	0.664	0.623	0.584	0.548	0.513
9.0	0.790	0.740	0.694	0.651	0.610	0.572	0.536	0.503	0.471	0.442

At 15°C and above, the criterion for fish early life stages absent is the same as the criterion for fish early life stages present.

To calculate total ammonia nitrogen chronic criteria values in freshwater when fish early life stages are absent at different pH and temperature values than those listed in this subsection, use the following formulas:

Chronic Criteria Concentration =

$$\left(\frac{0.0577}{(1 + 10^{7.688 - \text{pH}})} + \frac{2.487}{(1 + 10^{\text{pH} - 7.688})} \right) \times 1.45(10^{0.028(25 - \text{MAX})})$$

MAX = temperature in °C or 7, whichever is greater.

³The default design flow for calculating steady state waste load allocations for the chronic ammonia criterion where early life stages of fish are absent is the 30Q10 (see 9VAC25-260-140 B footnote 10) unless statistically valid methods are employed that demonstrate compliance with the duration and return frequency of the water quality criteria.

1. Site-specific modifications to the ambient water quality criteria for ammonia to account for the absence of early life stages of fish shall be conducted in accordance with the procedures contained in this subdivision. Because the department presumes that most state waterbodies have early life stages of fish present during most times of the year, the criteria shall be calculated assuming early life stages of fish are present using subsection B of this section unless the following demonstration that early life stages are absent is successfully completed. Early life stages of fish are defined in subdivision 2 of this subsection. Modifications to the ambient water quality criteria for ammonia based on the presence or absence of early life stages of fish shall only apply at temperatures below 15°C.

a. During the review of any new or existing activity that has a potential to discharge ammonia in amounts that may cause or contribute to a violation of the ammonia criteria contained in subsection B of this section, the department may examine data from the following approved sources in subdivisions 1 a (1) through (5) of this subsection or may require the gathering of data in accordance with subdivisions 1 a (1) through (5) on the presence or absence of early life stages of fish in the affected waterbody.

(1) Species and distribution data contained in the Virginia Department of Game and Inland Fisheries Wildlife Information System database.

(2) Species and distribution data contained in *Freshwater Fishes of Virginia*, 1994.

(3) Data and fish species distribution maps contained in *Handbook for Fishery Biology*, Volume 3, 1997.

(4) Field data collected in accordance with U.S. EPA's *Rapid Bioassessment Protocols for Use in Streams and Wadeable Rivers*, Second Edition, EPA 841-B-99-002. Field data must comply with all quality assurance/quality control criteria.

(5) The American Society for Testing and Materials (ASTM) Standard E-1241-88, *Standard Guide for Conducting Early Life-Stage Toxicity Tests with Fishes*.

Regulations

b. If data or information from sources other than subdivisions 1 a (1) through (5) of this subsection are considered, then any resulting site specific criteria modifications shall be reviewed and adopted in accordance with the site specific criteria provisions in 9VAC25-260-140 D, and submitted to EPA for review and approval.

c. If the department determines that the data and information obtained from subdivisions 1 a (1) through (5) of this subsection demonstrate that there are periods of each year when no early life stages are expected to be present for any species of fish that occur at the site, the department shall issue a notice to the public and make available for public comment the supporting data and analysis along with the department's preliminary decision to authorize the site specific modification to the ammonia criteria. Such information shall include, at a minimum:

(1) Sources of data and information.

(2) List of fish species that occur at the site as defined by subdivision 3 of this subsection.

(3) Definition of the site. Definition of a "site" can vary in geographic size from a stream segment to a watershed to an entire eco region.

(4) Duration of early life stage for each species in subdivision 1 c (2) of this subsection.

(5) Dates when early life stages of fish are expected to be present for each species in subdivision 1 c (2) of this subsection.

(6) Based on subdivision 1 c (5) of this subsection, identify the dates (beginning date, ending date), if any, where no early life stages are expected to be present for any of the species identified in subdivision 1 c (2) of this subsection.

d. If, after reviewing the public comments received in subdivision 1 c of this subsection and supporting data and information, the department determines that there are times of the year where no early life stages are expected to be present for any fish species that occur at the site, then the applicable ambient water quality criteria for ammonia for those time periods shall be calculated using the table in this subsection, or the formula for calculating the chronic criterion concentration for ammonia when fish early life stages are absent.

e. The department shall maintain a comprehensive list of all sites where the department has determined that early life stages of fish are absent. For each site the list will identify the waterbodies affected and the corresponding times of the year that early life stages are absent. This list is available either upon request from the Office of Water Quality Programs at P.O. Box 1105, Richmond, Virginia 23218 or from the department website <http://www.deq.virginia.gov/wqs>.

2. The duration of the "early life stages" extends from the beginning of spawning through the end of the early life stages. The early life stages include the prehatch embryonic period, the post hatch free embryo or yolk sac fry, and the larval period, during which the organism feeds. Juvenile fish, which are anatomically similar to adults, are not considered an early life stage. The duration of early life stages can vary according to fish species. The department considers the sources of information in subdivisions 1 a (1) through (5) of this subsection to be the only acceptable sources of information for determining the duration of early life stages of fish under this procedure.

3. "Occur at the site" includes the species, genera, families, orders, classes, and phyla that: are usually present at the site; are present at the site only seasonally due to migration; are present intermittently because they periodically return to or extend their ranges into the site; were present at the site in the past or are present in nearby bodies of water, but are not currently present at the site due to degraded conditions, and are expected to return to the site when conditions improve. "Occur at the site" does not include taxa that were once present at the site but cannot exist at the site now due to permanent physical alteration of the habitat at the site.

4. Any modifications to ambient water quality criteria for ammonia in subdivision 1 of this subsection shall not likely jeopardize the continued existence of any federal or state listed, threatened or endangered species or result in the destruction or adverse modification of such species' critical habitat.

$$0.9405 X \left(\frac{0.0278}{1 + 10^{7.688 - \text{pH}}} \pm \frac{1.1994}{1 + 10^{\text{pH} - 7.688}} \right) X \text{MIN}$$

Where MIN = 6.920 or 7.547 X 10^{0.028 x (20 - T)} whichever is less

T = temperature in °C

d. Chronic criteria: freshwater mussels absent and early life stages of fish absent. The chronic criteria for total ammonia nitrogen (in mg N/L) where freshwater mussels are absent and early life stages of fish are absent (procedures for making

this determination are in subdivisions 1 through 5 of this subsection) in freshwater shall not exceed concentration values calculated using the [following] equation [below]. Round the result to two significant digits.

$$0.9405 \times \left(\frac{0.0278}{1 + 10^{7.688 - \text{pH}}} \pm \frac{1.1994}{1 + 10^{\text{pH} - 7.688}} \right) \times (7.547 \times 10^{0.028 \times (20 - \text{MAX}(T,7))})$$

Where MAX = 7 or temperature in degrees Celsius, whichever is greater

T = temperature in °C

~~D.~~ E. The one-hour average concentration of total ammonia nitrogen (in mg N/L) in saltwater shall not exceed, more than once every three years on the average, the acute criteria [below in the following table]:

Acute Ammonia Saltwater Criteria Total Ammonia Nitrogen (mg N/L) Salinity = 10 g/kg								
pH	Temperature °C							
	0	5	10	15	20	25	30	35
7.00	231.9	159.8	110.1	75.88	52.31	36.08	24.91	17.21
7.20	146.4	100.9	69.54	47.95	33.08	22.84	15.79	10.93
7.40	92.45	63.73	43.94	30.32	20.94	14.48	10.03	6.97
7.60	58.40	40.28	27.80	19.20	13.28	9.21	6.40	4.47
7.80	36.92	25.48	17.61	12.19	8.45	5.88	4.11	2.89
8.00	23.37	16.15	11.18	7.76	5.40	3.78	2.66	1.89
8.20	14.81	10.26	7.13	4.97	3.48	2.46	1.75	1.27
8.40	9.42	6.54	4.57	3.20	2.27	1.62	1.18	0.87
8.60	6.01	4.20	2.95	2.09	1.50	1.09	0.81	0.62
8.80	3.86	2.72	1.93	1.39	1.02	0.76	0.58	0.46
9.00	2.51	1.79	1.29	0.95	0.71	0.55	0.44	0.36

Salinity = 20 g/kg

pH	Temperature °C							
	0	5	10	15	20	25	30	35
7.00	247.6	170.5	117.5	80.98	55.83	38.51	26.58	18.36
7.20	156.3	107.7	74.21	51.17	35.30	24.37	16.84	11.66
7.40	98.67	68.01	46.90	32.35	22.34	15.44	10.70	7.43
7.60	62.33	42.98	29.66	20.48	14.17	9.82	6.82	4.76
7.80	39.40	27.19	18.78	13.00	9.01	6.26	4.37	3.07
8.00	24.93	17.23	11.92	8.27	5.76	4.02	2.83	2.01
8.20	15.80	10.94	7.59	5.29	3.70	2.61	1.86	1.34
8.40	10.04	6.97	4.86	3.41	2.41	1.72	1.24	0.91
8.60	6.41	4.47	3.14	2.22	1.59	1.15	0.85	0.65
8.80	4.11	2.89	2.05	1.47	1.07	0.80	0.61	0.48
9.00	2.67	1.90	1.36	1.00	0.75	0.57	0.46	0.37

Regulations

Salinity = 30 g/kg

pH	Temperature °C							
	0	5	10	15	20	25	30	35
7.00	264.6	182.3	125.6	86.55	59.66	41.15	28.39	19.61
7.20	167.0	115.1	79.31	54.68	37.71	26.03	17.99	12.45
7.40	105.5	72.68	50.11	34.57	23.87	16.50	11.42	7.92
7.60	66.61	45.93	31.69	21.88	15.13	10.48	7.28	5.07
7.80	42.10	29.05	20.07	13.88	9.62	6.68	4.66	3.27
8.00	26.63	18.40	12.73	8.83	6.14	4.29	3.01	2.13
8.20	16.88	11.68	8.10	5.64	3.94	2.78	1.97	1.42
8.40	10.72	7.44	5.18	3.63	2.56	1.82	1.31	0.96
8.60	6.83	4.77	3.34	2.36	1.69	1.22	0.90	0.68
8.80	4.38	3.08	2.18	1.56	1.13	0.84	0.64	0.50
9.00	2.84	2.01	1.45	1.06	0.79	0.60	0.47	0.39

To calculate total ammonia nitrogen acute criteria values in saltwater at different pH and temperature values than those listed in this subsection, use the following formulas:

$$I = \frac{19.9273S}{(1000 - 1.005109S)}$$

Where I = molal ionic strength of water

S = Salinity ppt (g/kg)

The regression model used to relate I to pKa (negative log of the ionization constant) is

$$pKa = 9.245 + 0.138(I)$$

pKa as defined by these equations is at 298 degrees Kelvin (25°C).

$$T \text{ °Kelvin} = \text{°C} + 273$$

To correct for other temperatures:

$$pKa^S_T = pKa^S_{298} + 0.0324(298 - T \text{ °Kelvin})$$

The unionized ammonia fraction (UIA) is given by:

$$UIA = \frac{1}{1 + 10^{(pKa^S_T - pH)}}$$

The acute ammonia criterion in saltwater is given by:

$$\text{Acute} = \frac{0.233}{UIA}$$

Multiply the acute value by 0.822 to get the ammonia-N acute criterion.

~~E. F.~~ The 30-day average concentration of total ammonia nitrogen (in mg N/L) in saltwater shall not exceed, more than once every three years on the average, the chronic criteria [~~below~~ in the following table]:

Chronic Ammonia Saltwater Criteria Total Ammonia Nitrogen (mg N/L) Salinity = 10 g/kg								
pH	Temperature °C							
	0	5	10	15	20	25	30	35
7.00	34.84	24.00	16.54	11.40	7.86	5.42	3.74	2.59
7.20	21.99	15.15	10.45	7.20	4.97	3.43	2.37	1.64
7.40	13.89	9.57	6.60	4.55	3.15	2.18	1.51	1.05
7.60	8.77	6.05	4.18	2.88	2.00	1.38	0.96	0.67
7.80	5.55	3.83	2.65	1.83	1.27	0.88	0.62	0.43
8.00	3.51	2.43	1.68	1.17	0.81	0.57	0.40	0.28
8.20	2.23	1.54	1.07	0.75	0.52	0.37	0.26	0.19
8.40	1.41	0.98	0.69	0.48	0.34	0.24	0.18	0.13
8.60	0.90	0.63	0.44	0.31	0.23	0.16	0.12	0.09
8.80	0.58	0.41	0.29	0.21	0.15	0.11	0.09	0.07
9.00	0.38	0.27	0.19	0.14	0.11	0.08	0.07	0.05

Salinity = 20 g/kg

pH	Temperature °C							
	0	5	10	15	20	25	30	35
7.00	37.19	25.62	17.65	12.16	8.39	5.78	3.99	2.76
7.20	23.47	16.17	11.15	7.69	5.30	3.66	2.53	1.75
7.40	14.82	10.22	7.04	4.86	3.36	2.32	1.61	1.12
7.60	9.36	6.46	4.46	3.08	2.13	1.47	1.02	0.71
7.80	5.92	4.08	2.82	1.95	1.35	0.94	0.66	0.46
8.00	3.74	2.59	1.79	1.24	0.86	0.60	0.43	0.30
8.20	2.37	1.64	1.14	0.79	0.56	0.39	0.28	0.20
8.40	1.51	1.05	0.73	0.51	0.36	0.26	0.19	0.14
8.60	0.96	0.67	0.47	0.33	0.24	0.17	0.13	0.10
8.80	0.62	0.43	0.31	0.22	0.16	0.12	0.09	0.07
9.00	0.40	0.28	0.20	0.15	0.11	0.09	0.07	0.06

Salinity = 30 g/kg

pH	Temperature °C							
	0	5	10	15	20	25	30	35
7.00	39.75	27.38	18.87	13.00	8.96	6.18	4.27	2.95
7.20	25.09	17.29	11.91	8.21	5.67	3.91	2.70	1.87
7.40	15.84	10.92	7.53	5.19	3.59	2.48	1.72	1.19

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7.60	10.01	6.90	4.76	3.29	2.27	1.57	1.09	0.76
7.80	6.32	4.36	3.01	2.08	1.44	1.00	0.70	0.49
8.00	4.00	2.76	1.91	1.33	0.92	0.64	0.45	0.32
8.20	2.53	1.75	1.22	0.85	0.59	0.42	0.30	0.21
8.40	1.61	1.12	0.78	0.55	0.38	0.27	0.20	0.14
8.60	1.03	0.72	0.50	0.35	0.25	0.18	0.14	0.10
8.80	0.66	0.46	0.33	0.23	0.17	0.13	0.10	0.08
9.00	0.43	0.30	0.22	0.16	0.12	0.09	0.07	0.06

To calculate total ammonia nitrogen chronic criteria values in saltwater at different pH and temperature values than those listed in this subsection, use the following formulas:

$$I = \frac{19.9273S}{(1000 - 1.005109S)}$$

Where I = molal ionic strength of water

S = Salinity ppt (g/kg)

The regression model used to relate I to pKa (negative log of the ionization constant) is

$$pKa = 9.245 + 0.138(I)$$

pKa as defined by these equations is at 298 degrees Kelvin (25°C).

$$T \text{ °Kelvin} = \text{°C} + 273$$

To correct for other temperatures:

$$pKa^S_T = pKa^S_{298} + 0.0324(298 - T \text{ °Kelvin})$$

The unionized ammonia fraction (UIA) is given by:

$$UIA = \frac{1}{1 + 10^{(pKa^S_T - pH)}}$$

The chronic ammonia criterion in saltwater is given by:

$$\text{Chronic} = \frac{0.035}{UIA}$$

Multiply the chronic value by 0.822 to get the ammonia-N chronic criterion.

~~[¹The default design flow for calculating steady state wasteload allocations for the acute ammonia criterion for freshwater is the 1Q10 (see 9VAC25-260-140 B footnote 10 unless statistically valid methods are employed which demonstrate compliance with the duration and return frequency of the water quality criteria.~~

~~²The default design flow for calculating steady state wasteload allocations for the chronic ammonia criterion for freshwater is the 30Q10 (see 9VAC25-260-140 B footnote 10 unless statistically valid methods are employed which demonstrate compliance with the duration and return frequency of the water quality criteria.]~~

~~G. [Implementation of ammonia criteria through Virginia Pollutant Discharge Elimination System (VPDES) Permits. The ammonia criteria in subsections A, B, and C of this section shall be addressed during individual VPDES permit reissuance for existing dischargers subject to new or more restrictive water quality based ammonia effluent limits in accordance with the department's standard permitting practices except as follows:~~

~~1. Notwithstanding any other regulatory requirement, a compliance schedule may be established that exceeds the term of the permit, subject to a demonstration by the permittee that a longer period is necessary to allow a reasonable opportunity to attain compliance with the new or more restrictive ammonia discharge requirements. The department's consideration for such~~

a demonstration shall be made on a case-by-case basis and shall require compliance as soon as possible, but not later than the applicable statutory deadline under the Clean Water Act.

2. Information to be provided under subdivision 1 of this subsection may include such factors as (i) opportunities to minimize costs to the public or facility owners by phasing in the implementation of multiple projects, (ii) time needed for freshwater mussel habitat determinations, and (iii) other relevant factors.

3. If a permit establishes a schedule of compliance that exceeds the term of the permit, the compliance schedule shall set forth interim requirements and the dates for their achievement.

a. The time between interim dates shall not exceed one year.

b. If the time necessary for completion of any interim requirement is more than one year and is not readily divisible into stages for completion, the permit shall specify interim dates for the submission of reports of progress toward completion of the interim requirements and indicate a projected completion date.

c. The permit shall be written to require that no later than 14 days following each interim date and the final date of compliance, the permittee shall notify the department in writing of its compliance or noncompliance with the interim or final requirements, or submit progress reports if subdivision 3 b of this subsection is applicable.

d. Any change to an interim compliance date in the schedule of compliance will be deemed to be a minor modification of the permit, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date requirement.

Implementation of freshwater ammonia water quality criteria in subsections B and C of this section through VPDES permits issued pursuant to Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (9VAC25-31).

1. The criteria in subsections B and C of this section shall be implemented in VPDES permits that are being reissued to facilities in accordance with the following schedule:

a. Major municipal facilities with design flows greater than or equal to five million gallons per day and major industrial facilities - 12 months following the Water Quality Standards effective date.

b. Municipal facilities with design flows greater than or equal to 500,000 gallons per day and less than five million gallons per day and all minor industrial facilities - 24 months following the Water Quality Standards effective date.

c. Minor municipal facilities with design flows that are less than 500,000 gallons per day - 36 months following the Water Quality Standards effective date.

2. VPDES permits shall not be revoked and reissued to avoid or delay being subject to the freshwater ammonia water quality criteria in subsections B and C of this section in accordance with the schedule in subdivision G 1 of this section.

3. The provisions of 9VAC25-31-250 A 3 notwithstanding, a permittee may request and the board may authorize, as appropriate, an extended schedule of compliance, which exceeds the term of the VPDES permit and may include multiple permit cycles to achieve effluent limits based on the freshwater ammonia water quality criteria in subsections B and C of this section.

a. Any extended schedule of compliance necessary for the implementation of the freshwater ammonia water quality criteria shall require compliance as soon as possible in accordance with 9VAC25-31-250 A 1. The board may consider the following factors on a case-by-case basis, relying on information provided by the permittee, in making a determination of the timeframe that meets the standard of "as soon as possible":

(1) The relative priority of freshwater ammonia water quality criteria and other water quality and water infrastructure needs of the local community or permittee;

(2) Availability of grant funding pursuant to § 10.1-2131 of the Code of Virginia and other treatment facility expansion and upgrade plans;

(3) Whether an extended schedule of compliance is appropriate for facilities or classes of facilities; and

(4) Appropriate mechanisms to address affordability limitations and financial hardship situations remaining notwithstanding subdivisions G 1 a, G 1 b, and G 1 c of this section.

b. Any request by the permittee for an extended schedule of compliance shall include at the time of permit application at a minimum the following information:

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(1) Documentation of other water quality and water infrastructure projects that are in the planning, design, or construction process and the relative priority of the projects in relation to compliance with the freshwater ammonia water quality criteria.

(2) A preliminary engineering analysis of treatment facility upgrade or source reduction alternatives necessary to meet the freshwater ammonia criteria. The analysis may include any additional upgrade or expansion plans currently under consideration. The analysis shall be prepared by a professional engineer registered in Virginia and shall include an estimation of the capital and operations and maintenance costs.

(3) An assessment of project affordability and identification of all potential sources of funding for enhanced ammonia treatment. In the case of publicly owned treatment works, include an evaluation of the required sewer use fees versus median household income.

(4) Documentation that demonstrates the minimum estimated time required and schedule to design, fund, and construct the selected treatment or source reduction alternative.

(5) An evaluation prepared by a professional engineer registered in Virginia of the highest achievable condition (HAC) regarding nitrification capabilities of the existing treatment facility under the influent loading conditions expected during the term of the VPDES permit as well as under design loading conditions.

c. Any VPDES permit that authorizes an extended schedule of compliance for meeting the freshwater ammonia water quality criteria that exceeds the permit term shall include interim effluent limitations based on the HAC attainable during the term of the permit, final effluent limitations, and a final compliance date.

d. New dischargers defined in 9VAC25-31 are not eligible for extended schedules of compliance under this section; however, they remain eligible for schedules of compliance consistent with 9VAC25-31-250.

A permittee may seek a site-specific modification or variance to the freshwater ammonia water quality criteria under 9VAC25-260-140 D or E as applicable.]

VA.R. Doc. No. R20-5530; Filed June 2, 2020, 8:30 a.m.

Withdrawal of Forms Action

Titles of Regulations: 9VAC25-210. Virginia Water Protection Permit Program Regulation.

9VAC25-660. Virginia Water Protection General Permit for Impacts Less Than One-Half Acre.

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.

9VAC25-680. Virginia Water Protection General Permit for Linear Transportation Projects.

9VAC25-690. Virginia Water Protection General Permit for Impacts from Development and Certain Mining Activities.

The State Water Control Board has WITHDRAWN the Forms revision action that was published in [36:21 VA.R. 2298 June 8, 2020](#). This action would have amended two forms. The action is being withdrawn because the State Water Control Board will be updating additional forms for these chapters and incorporating the updated forms from this action into that future consolidated Forms revision action.

Contact Information: Gary Graham, Regulatory Analyst, Department of Environmental Quality, 1111 East Main

Street, Suite 1400, Richmond, VA 23219, telephone (804) 698-4103, or email gary.graham@deq.virginia.gov.

VA.R. Doc. No. R20-6373; Filed June 3, 2020, 11:05 a.m.



TITLE 12. HEALTH

STATE BOARD OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

Final Regulation

Title of Regulation: **12VAC35-105. Rules and Regulations for Licensing Providers by the Department of Behavioral Health and Developmental Services (amending 12VAC35-105-20, 12VAC35-105-30, 12VAC35-105-50, 12VAC35-105-120, 12VAC35-105-150, 12VAC35-105-155, 12VAC35-105-160, 12VAC35-105-170, 12VAC35-105-320, 12VAC35-105-330, 12VAC35-105-400, 12VAC35-105-440, 12VAC35-105-450, 12VAC35-105-460, 12VAC35-105-500, 12VAC35-105-520, 12VAC35-105-530, 12VAC35-105-580, 12VAC35-105-590, 12VAC35-105-620, 12VAC35-105-650, 12VAC35-105-660, 12VAC35-105-665, 12VAC35-105-675, 12VAC35-105-691, 12VAC35-105-800, 12VAC35-105-830, 12VAC35-105-1140, 12VAC35-105-1250, 12VAC35-105-1360; adding 12VAC35-105-1245).**

Statutory Authority: §§ 37.2-302 and 37.2-400 of the Code of Virginia.

Effective Date: August 1, 2020.

Agency Contact: Emily Bowles, Legal Coordinator, Office of Licensing, Department of Behavioral Health and Developmental Services, 1220 Bank Street, P.O. Box 1797, Richmond, VA 23218, telephone (804) 225-3281, FAX (804) 692-0066, TTY (804) 371-8977, or email emily.bowles@dbhds.virginia.gov.

Summary:

This regulatory action addresses several items necessary for compliance with the U.S. Department of Justice's Settlement Agreement with Virginia, including facilitating the submission of necessary information by providers after a serious incident occurs, establishing the required quality and risk management processes, and strengthening case management services.

The amendments to provider provisions include requiring (i) the person leading risk management activities to have certain training and experience in investigations, root cause analysis, and data analysis; (ii) annual risk assessments, to include review of the environment, staff competence, seclusion and restraint, serious incidents, and risk triggers and thresholds; (iii) policies and procedures for a quality improvement program that includes a quality improvement plan reviewed and updated at least annually; (iv) a root cause analysis of serious incidents that occur during the provision of a service or on the provider's premises; and (v) case management direct assessments. The amendments also establish three levels of patient incidents to improve reporting of serious incidents.

Changes to the proposed regulation were made for consistency, clarification purposes, and for improved organization.

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

Article 2
Definitions

12VAC35-105-20. Definitions.

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

"Abuse" (~~§ 37.2-400 of the Code of Virginia~~) means any act or failure to act by an employee or other person responsible for the care of an individual in a facility or program operated, licensed, or funded by the department, excluding those operated by the Virginia Department of Corrections, that was performed or was failed to be performed knowingly,

recklessly, or intentionally, and that caused or might have caused physical or psychological harm, injury, or death to a ~~person~~ an individual receiving care or treatment for mental illness, ~~mental retardation (intellectual disability)~~ developmental disabilities, or substance abuse (~~substance use disorders~~). Examples of abuse include acts such as:

1. Rape, sexual assault, or other criminal sexual behavior;
2. Assault or battery;
3. Use of language that demeans, threatens, intimidates, or humiliates the ~~person~~ individual;
4. Misuse or misappropriation of the ~~person's~~ individual's assets, goods, or property;
5. Use of excessive force when placing a ~~person~~ an individual in physical or mechanical restraint;
6. Use of physical or mechanical restraints on a ~~person~~ an individual that is not in compliance with federal and state laws, regulations, and policies, professional accepted standards of practice, or ~~the person's~~ his individualized services plan; ~~or~~
7. Use of more restrictive or intensive services or denial of services to punish ~~the person~~ an individual or that is not consistent with ~~the person's~~ his individualized services plan.

"Activities of daily living" or "ADLs" means personal care activities and includes bathing, dressing, transferring, toileting, grooming, hygiene, feeding, and eating. An individual's degree of independence in performing these activities is part of determining the appropriate level of care and services.

"Admission" means the process of acceptance into a service as defined by the provider's policies.

"Authorized representative" means a person permitted by law or 12VAC35-115 to authorize the disclosure of information or consent to treatment and services or participation in human research.

"Behavior intervention" means those principles and methods employed by a provider to help an individual receiving services to achieve a positive outcome and to address challenging behavior in a constructive and safe manner. Behavior intervention principles and methods ~~must~~ shall be employed in accordance with the individualized services plan and written policies and procedures governing service expectations, treatment goals, safety, and security.

"Behavioral treatment plan," "functional plan," or "behavioral support plan" means any set of documented procedures that are an integral part of the individualized services plan and are developed on the basis of a systematic data collection, such as a functional assessment, for the purpose of assisting individuals to achieve the following:

Regulations

1. Improved behavioral functioning and effectiveness;
2. Alleviation of symptoms of psychopathology; or
3. Reduction of challenging behaviors.

"Brain injury" means any injury to the brain that occurs after birth, but before age 65, that is acquired through traumatic or nontraumatic insults. Nontraumatic insults may include anoxia, hypoxia, aneurysm, toxic exposure, encephalopathy, surgical interventions, tumor, and stroke. Brain injury does not include hereditary, congenital, or degenerative brain disorders or injuries induced by birth trauma.

~~"Care" or "treatment"~~ "Care," "treatment," or "support" means the individually planned therapeutic interventions that conform to current acceptable professional practice and that are intended to improve or maintain functioning of an individual receiving services delivered by a provider.

"Case management service" or "support coordination service" means services that can include assistance to individuals and their family members in ~~assessing~~ accessing needed services that are responsive to the ~~person's individual~~ individual's needs. Case management services include identifying potential users of the service; assessing needs and planning services; linking the individual to services and supports; assisting the individual directly to locate, develop, or obtain needed services and resources; coordinating services with other providers; enhancing community integration; making collateral contacts; monitoring service delivery; discharge planning; and advocating for individuals in response to their changing needs. "Case management service" does not include assistance in which the only function is maintaining service waiting lists or periodically contacting or tracking individuals to determine potential service needs.

"Clinical experience" means providing direct services to individuals with mental illness or the provision of direct geriatric services or special education services. Experience may include supervised internships, practicums, and field experience.

"Commissioner" means the Commissioner of the Department of Behavioral Health and Developmental Services.

"Community gero-psychiatric residential services" means 24-hour care provided to individuals with mental illness, behavioral problems, and concomitant health problems who are usually age 65 or older in a geriatric setting that is less intensive than a psychiatric hospital but more intensive than a nursing home or group home. Services include assessment and individualized services planning by an interdisciplinary services team, intense supervision, psychiatric care, behavioral treatment planning and behavior interventions, nursing, and other health related services.

~~"Community intermediate care facility/mental retardation"~~ or "ICF/MR" means a residential facility in which care is

~~provided to individuals who have mental retardation (intellectual disability) or a developmental disability who need more intensive training and supervision than may be available in an assisted living facility or group home. Such facilities shall comply with Title XIX of the Social Security Act standards and federal certification requirements, provide health or rehabilitative services, and provide active treatment to individuals receiving services toward the achievement of a more independent level of functioning or an improved quality of life.~~

"Complaint" means an allegation of a violation of this chapter or a provider's policies and procedures related to this chapter.

"Co-occurring disorders" means the presence of more than one and often several of the following disorders that are identified independently of one another and are not simply a cluster of symptoms resulting from a single disorder: mental illness, ~~mental retardation (intellectual disability) or developmental disability,~~ developmental disability, or substance abuse (substance use disorders); ~~or brain injury; or developmental disability.~~

"Co-occurring services" means individually planned therapeutic treatment that addresses in an integrated concurrent manner the service needs of individuals who have co-occurring disorders.

"Corrective action plan" means the provider's pledged corrective action in response to cited areas of noncompliance documented by the regulatory authority. ~~A corrective action plan must be completed within a specified time.~~

"Correctional facility" means a facility operated under the management and control of the Virginia Department of Corrections.

"Crisis" means a deteriorating or unstable situation often developing suddenly or rapidly that produces acute, heightened, emotional, mental, physical, medical, or behavioral distress ~~or any situation or circumstance in which the individual perceives or experiences a sudden loss of the individual's ability to use effective problem solving and coping skills.~~

"Crisis stabilization" means direct, intensive nonresidential or residential direct care and treatment to nonhospitalized individuals experiencing an acute crisis that may jeopardize their current community living situation. Crisis stabilization is intended to avert hospitalization or rehospitalization; provide normative environments with a high assurance of safety and security for crisis intervention; stabilize individuals in crisis; and mobilize the resources of the community support system, family members, and others for ongoing rehabilitation and recovery.

"Day support service" means structured programs of ~~activity or training services~~ training, assistance, and specialized supervision in the acquisition, retention, or improvement of

self-help, socialization, and adaptive skills for adults with ~~an intellectual disability or a developmental disability, generally in clusters of two or more continuous hours per day~~ provided to groups or individuals in nonresidential community-based settings. Day support services may provide opportunities for peer interaction and community integration and are designed to enhance the following: self-care and hygiene, eating, toileting, task learning, community resource utilization, environmental and behavioral skills, social skills, medication management, prevocational skills, and transportation skills. The term "day support service" does not include services in which the primary function is to provide employment-related services, general educational services, or general recreational services.

"Department" means the Virginia Department of Behavioral Health and Developmental Services.

~~"Developmental disabilities" disability" means autism or a severe, chronic disability that meets all of the following conditions identified in 42 CFR 435.1009: 1. Attributable to cerebral palsy, epilepsy, or any other condition, other than mental illness, that is found to be closely related to mental retardation (intellectual disability) because this condition results in impairment of general intellectual functioning or adaptive behavior similar to behavior of individuals with mental retardation (intellectual disability) and requires treatment or services similar to those required for these individuals; 2. Manifested before the individual reaches age 18; 3. Likely to continue indefinitely; and 4. Results in substantial functional limitations in three or more of the following areas of major life activity: a. Self care; b. Understanding and use of language; c. Learning; d. Mobility; e. Self direction; or f. Capacity for independent living of an individual that (i) is attributable to a mental or physical impairment or a combination of mental and physical impairments other than a sole diagnosis of mental illness; (ii) is manifested before the individual reaches 22 years of age; (iii) is likely to continue indefinitely; (iv) results in substantial functional limitations in three or more of the following areas of major life activity: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, or economic self-sufficiency; and (v) reflects the individual's need for a combination and sequence of special interdisciplinary or generic services, individualized supports, or other forms of assistance that are of lifelong or extended duration and are individually planned and coordinated. An individual from birth to nine years of age, inclusive, who has a substantial developmental delay or specific congenital or acquired condition may be considered to have a developmental disability without meeting three or more of the criteria described in clauses (i) through (v) if the individual without services and supports has a high probability of meeting those criteria later in life.~~

"Developmental services" means planned, individualized, and person-centered services and supports provided to

individuals with developmental disabilities for the purpose of enabling these individuals to increase their self-determination and independence, obtain employment, participate fully in all aspects of community life, advocate for themselves, and achieve their fullest potential to the greatest extent possible.

"Direct care position" means any position that includes responsibility for (i) treatment, case management, health, safety, development, or well-being of an individual receiving services or (ii) immediately supervising a person in a position with this responsibility.

"Discharge" means the process by which the individual's active involvement with a service is terminated by the provider, individual, or authorized representative.

"Discharge plan" means the written plan that establishes the criteria for an individual's discharge from a service and identifies and coordinates delivery of any services needed after discharge.

"Dispense" means to deliver a drug to an ultimate user by or pursuant to the lawful order of a practitioner, including the prescribing and administering, packaging, labeling, or compounding necessary to prepare the substance for that delivery (§ 54.1-3400 et seq. of the Code of Virginia).

"Emergency service" means unscheduled and sometimes scheduled crisis intervention, stabilization, and referral assistance provided over the telephone or face-to-face, if indicated, available 24 hours a day and seven days per week. Emergency services also may include walk-ins, home visits, jail interventions, and preadmission screening activities associated with the judicial process.

"Group home or community residential service" means a congregate service providing 24-hour supervision in a community-based home having eight or fewer residents. Services include supervision, supports, counseling, and training in activities of daily living for individuals whose individualized services plan identifies the need for the specific types of services available in this setting.

"HCBS Waiver" means a Medicaid Home and Community Based Services Waiver.

"Home and noncenter based" means that a service is provided in the individual's home or other noncenter-based setting. This includes noncenter-based day support, supportive in-home, and intensive in-home services.

~~"IFDDS Waiver" means the Individual and Family Developmental Disabilities Support Waiver.~~

"Individual" or "individual receiving services" means ~~a person receiving services that are licensed under this chapter whether that person is referred to as a patient, consumer, client, resident, student, individual, recipient, family member, relative, or other term~~ current direct recipient of public or private mental health, developmental, or substance abuse

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treatment, rehabilitation, or habilitation services and includes the terms "consumer," "patient," "resident," "recipient," or "client". When the term is used in this chapter, the requirement applies to every individual receiving licensed services from the provider.

"Individualized services plan" or "ISP" means a comprehensive and regularly updated written plan that describes the individual's needs, the measurable goals and objectives to address those needs, and strategies to reach the individual's goals. An ISP is person-centered, empowers the individual, and is designed to meet the needs and preferences of the individual. The ISP is developed through a partnership between the individual and the provider and includes an individual's treatment plan, habilitation plan, person-centered plan, or plan of care, which are all considered individualized service plans.

"Informed choice" means a decision made after considering options based on adequate and accurate information and knowledge. These options are developed through collaboration with the individual and his authorized representative, as applicable, and the provider with the intent of empowering the individual and his authorized representative to make decisions that will lead to positive service outcomes.

"Informed consent" means the voluntary written agreement of an individual, or that individual's authorized representative, to surgery, electroconvulsive treatment, use of psychotropic medications, or any other treatment or service that poses a risk of harm greater than that ordinarily encountered in daily life or for participation in human research. To be voluntary, informed consent must be given freely and without undue inducement; any element of force, fraud, deceit, or duress; or any form of constraint or coercion.

"Initial assessment" means an assessment conducted prior to or at admission to determine whether the individual meets the service's admission criteria; what the individual's immediate service, health, and safety needs are; and whether the provider has the capability and staffing to provide the needed services.

"Inpatient psychiatric service" means intensive 24-hour medical, nursing, and treatment services provided to individuals with mental illness or substance abuse (substance use disorders) in a hospital as defined in § 32.1-123 of the Code of Virginia or in a special unit of such a hospital.

"Instrumental activities of daily living" or "IADLs" means meal preparation, housekeeping, laundry, and managing money. A person's degree of independence in performing these activities is part of determining appropriate level of care and services.

"Intellectual disability" means a disability originating before 18 years of age, characterized concurrently by (i) significant subaverage intellectual functioning as demonstrated by performance on a standardized measure of intellectual

functioning administered in conformity with accepted professional practice that is at least two standard deviations below the mean and (ii) significant limitations in adaptive behavior as expressed in conceptual, social, and practical adaptive skills.

"Intensive community treatment service" or "ICT" means a self-contained interdisciplinary team of at least five full-time equivalent clinical staff, a program assistant, and a full-time psychiatrist that:

1. Assumes responsibility for directly providing needed treatment, rehabilitation, and support services to identified individuals with severe and persistent mental illness, especially those who have severe symptoms that are not effectively remedied by available treatments or who because of reasons related to their mental illness resist or avoid involvement with mental health services;
2. Minimally refers individuals to outside service providers;
3. Provides services on a long-term care basis with continuity of caregivers over time;
4. Delivers 75% or more of the services outside program offices; and
5. Emphasizes outreach, relationship building, and individualization of services.

"Intensive in-home service" means family preservation interventions for children and adolescents who have or are at-risk of serious emotional disturbance, including individuals who also have a diagnosis of ~~mental retardation (intellectual disability)~~ developmental disability. Intensive in-home service is usually time-limited and is provided typically in the residence of an individual who is at risk of being moved to out-of-home placement or who is being transitioned back home from an out-of-home placement. The service includes 24-hour per day emergency response; crisis treatment; individual and family counseling; life, parenting, and communication skills; and case management and coordination with other services.

"Intermediate care facility/individuals with intellectual disability" or "ICF/IID" means a facility or distinct part of a facility certified by the Virginia Department of Health as meeting the federal certification regulations for an intermediate care facility for individuals with intellectual disability and persons with related conditions and that addresses the total needs of the residents, which include physical, intellectual, social, emotional, and habilitation, providing active treatment as defined in 42 CFR 435.1010 and 42 CFR 483.440.

"Investigation" means a detailed inquiry or systematic examination of the operations of a provider or its services regarding an alleged violation of regulations or law. An investigation may be undertaken as a result of a complaint, an

incident report, or other information that comes to the attention of the department.

"Licensed mental health professional" or "LMHP" means a physician, licensed clinical psychologist, licensed professional counselor, licensed clinical social worker, licensed substance abuse treatment practitioner, licensed marriage and family therapist, certified psychiatric clinical nurse specialist, licensed behavior analyst, or licensed psychiatric/mental health nurse practitioner.

"Location" means a place where services are or could be provided.

"Medically managed withdrawal services" means detoxification services to eliminate or reduce the effects of alcohol or other drugs in the individual's body.

"Mandatory outpatient treatment order" means an order issued by a court pursuant to § 37.2-817 of the Code of Virginia.

"Medical detoxification" means a service provided in a hospital or other 24-hour care facility under the supervision of medical personnel using medication to systematically eliminate or reduce effects of alcohol or other drugs in the individual's body.

"Medical evaluation" means the process of assessing an individual's health status that includes a medical history and a physical examination of an individual conducted by a licensed medical practitioner operating within the scope of his license.

"Medication" means prescribed or over-the-counter drugs or both.

"Medication administration" means the direct application of medications by injection, inhalation, ingestion, or any other means to an individual receiving services by (i) persons legally permitted to administer medications or (ii) the individual at the direction and in the presence of persons legally permitted to administer medications.

"Medication assisted treatment (Opioid treatment service)" means an intervention strategy that combines outpatient treatment with the administering or dispensing of synthetic narcotics, such as methadone or buprenorphine (suboxone), approved by the federal Food and Drug Administration for the purpose of replacing the use of and reducing the craving for opioid substances, such as heroin or other narcotic drugs.

"Medication error" means an error in administering a medication to an individual and includes when any of the following occur: (i) the wrong medication is given to an individual, (ii) the wrong individual is given the medication, (iii) the wrong dosage is given to an individual, (iv) medication is given to an individual at the wrong time or not at all, or (v) the wrong method is used to give the medication to the individual.

"Medication storage" means any area where medications are maintained by the provider, including a locked cabinet, locked room, or locked box.

"Mental Health Community Support Service (~~MHCSS~~)" or "MCHSS" means the provision of recovery-oriented services to individuals with long-term, severe mental illness. MHCSS includes skills training and assistance in accessing and effectively utilizing services and supports that are essential to meeting the needs identified in the individualized services plan and development of environmental supports necessary to sustain active community living as independently as possible. MHCSS may be provided in any setting in which the individual's needs can be addressed, skills training applied, and recovery experienced.

"Mental illness" means a disorder of thought, mood, emotion, perception, or orientation that significantly impairs judgment, behavior, capacity to recognize reality, or ability to address basic life necessities and requires care and treatment for the health, safety, or recovery of the individual or for the safety of others.

~~"Mental retardation (intellectual disability)" means a disability originating before the age of 18 years characterized concurrently by (i) significantly subaverage intellectual functioning as demonstrated by performance on a standardized measure of intellectual functioning administered in conformity with accepted professional practice that is at least two standard deviations below the mean; and (ii) significant limitations in adaptive behavior as expressed in conceptual, social, and practical adaptive skills (§ 37.2-100 of the Code of Virginia).~~

"Missing" means a circumstance in which an individual is not physically present when and where he should be and his absence cannot be accounted for or explained by his supervision needs or pattern of behavior.

"Neglect" means the failure by ~~an individual~~ a person, or a program or facility operated, licensed, or funded by the department, excluding those operated by the Department of Corrections, responsible for providing services to do so, including nourishment, treatment, care, goods, or services necessary to the health, safety, or welfare of ~~a person~~ an individual receiving care or treatment for mental illness, ~~mental retardation (intellectual disability)~~ developmental disabilities, or substance abuse (~~substance use disorders~~).

"Neurobehavioral services" means the assessment, evaluation, and treatment of cognitive, perceptual, behavioral, and other impairments caused by brain injury that affect an individual's ability to function successfully in the community.

"Outpatient service" means treatment provided to individuals on an hourly schedule, on an individual, group, or family basis, and usually in a clinic or similar facility or in another location. Outpatient services may include diagnosis and evaluation, screening and intake, counseling,

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psychotherapy, behavior management, psychological testing and assessment, laboratory and other ancillary services, medical services, and medication services. "Outpatient service" specifically includes:

1. Services operated by a community services board or a behavioral health authority established pursuant to Chapter 5 (§ 37.2-500 et seq.) or Chapter 6 (§ 37.2-600 et seq.) of Title 37.2 of the Code of Virginia;
2. Services contracted by a community services board or a behavioral health authority established pursuant to Chapter 5 (§ 37.2-500 et seq.) or Chapter 6 (§ 37.2-600 et seq.) of Title 37.2 of the Code of Virginia; or
3. Services that are owned, operated, or controlled by a corporation organized pursuant to the provisions of either Chapter 9 (§ 13.1-601 et seq.) or Chapter 10 (§ 13.1-801 et seq.) of Title 13.1 of the Code of Virginia.

"Partial hospitalization service" means time-limited active treatment interventions that are more intensive than outpatient services, designed to stabilize and ameliorate acute symptoms, and serve as an alternative to inpatient hospitalization or to reduce the length of a hospital stay. Partial hospitalization is focused on individuals with serious mental illness, substance abuse (substance use disorders), or co-occurring disorders at risk of hospitalization or who have been recently discharged from an inpatient setting.

"Person-centered" means focusing on the needs and preferences of the individual; empowering and supporting the individual in defining the direction for his life; and promoting self-determination, community involvement, and recovery.

"Program of assertive community treatment service" or "PACT" means a self-contained interdisciplinary team of at least 10 full-time equivalent clinical staff, a program assistant, and a ~~full-~~ full-time or part-time psychiatrist that:

1. Assumes responsibility for directly providing needed treatment, rehabilitation, and support services to identified individuals with severe and persistent mental illnesses, including those who have severe symptoms that are not effectively remedied by available treatments or who because of reasons related to their mental illness resist or avoid involvement with mental health services;
2. Minimally refers individuals to outside service providers;
3. Provides services on a long-term care basis with continuity of caregivers over time;
4. Delivers 75% or more of the services outside program offices; and
5. Emphasizes outreach, relationship building, and individualization of services.

"Provider" means any person, entity, or organization, excluding an agency of the federal government by whatever name or designation, that delivers (i) services to individuals with mental illness, ~~mental retardation (intellectual disability) developmental disabilities,~~ or substance abuse (substance use disorders); ~~or (ii) services to individuals who receive day support, in-home support, or crisis stabilization services funded through the IFDDS Waiver, or (iii) residential services for individuals with brain injury.~~ The person, entity, or organization shall include a hospital as defined in § 32.1-123 of the Code of Virginia, community services board, behavioral health authority, private provider, and any other similar or related person, entity, or organization. It shall not include any individual practitioner who holds a license issued by a health regulatory board of the Department of Health Professions or who is exempt from licensing pursuant to §§ 54.1-2901, 54.1-3001, 54.1-3501, 54.1-3601, and 54.1-3701 of the Code of Virginia.

"Psychosocial rehabilitation service" means a program of two or more consecutive hours per day provided to groups of adults in a nonresidential setting. Individuals must demonstrate a clinical need for the service arising from a condition due to mental, behavioral, or emotional illness that results in significant functional impairments in major life activities. This service provides education to teach the individual about mental illness, substance abuse, and appropriate medication to avoid complication and relapse and opportunities to learn and use independent skills and to enhance social and interpersonal skills within a consistent program structure and environment. Psychosocial rehabilitation includes skills training, peer support, vocational rehabilitation, and community resource development oriented toward empowerment, recovery, and competency.

"Qualified developmental disability professional" or "QDDP" means a person who possesses at least one year of documented experience working directly with individuals who have a developmental disability and who possesses one of the following credentials: (i) a doctor of medicine or osteopathy licensed in Virginia, (ii) a registered nurse licensed in Virginia, (iii) a licensed occupational therapist, or (iv) completion of at least a bachelor's degree in a human services field, including sociology, social work, special education, rehabilitation counseling, or psychology.

[~~"Quality improvement plan" means a detailed work plan developed by a provider that defines steps the provider will take to review the quality of services it provides and to manage initiatives to improve quality. A quality improvement plan consists of systematic and continuous actions that lead to measurable improvement in the services, supports, and health status of the individuals receiving services.]~~

"Qualified mental health professional" or "QMHP" means a person who by education and experience is professionally qualified and registered by the Board of Counseling in

accordance with 18VAC115-80 to provide collaborative mental health services for adults or children. A QMHP shall not engage in independent or autonomous practice. A QMHP shall provide such services as an employee or independent contractor of the department or a provider licensed by the department.

"Qualified mental health professional-adult" or "QMHP-A" means a person who by education and experience is professionally qualified and registered with the Board of Counseling in accordance with 18VAC115-80 to provide collaborative mental health services for adults. A QMHP-A shall provide such services as an employee or independent contractor of the department or a provider licensed by the department. A QMHP-A may be an occupational therapist who by education and experience is professionally qualified and registered with the Board of Counseling in accordance with 18VAC115-80.

"Qualified mental health professional-child" or "QMHP-C" means a person who by education and experience is professionally qualified and registered with the Board of Counseling in accordance with 18VAC115-80 to provide collaborative mental health services for children. A QMHP-C shall provide such services as an employee or independent contractor of the department or a provider licensed by the department. A QMHP-C may be an occupational therapist who by education and experience is professionally qualified and registered with the Board of Counseling in accordance with 18VAC115-80.

"Qualified mental health professional-eligible" or "QMHP-E" means a person receiving supervised training in order to qualify as a QMHP in accordance with 18VAC115-80 and who is registered with the Board of Counseling.

"Qualified paraprofessional in mental health" or "QPPMH" means a person who must meet at least one of the following criteria: (i) registered with the United States Psychiatric Association (USPRA) as an Associate Psychiatric Rehabilitation Provider (APRP); (ii) has an associate's degree in a related field (social work, psychology, psychiatric rehabilitation, sociology, counseling, vocational rehabilitation, human services counseling) and at least one year of experience providing direct services to individuals with a diagnosis of mental illness; (iii) licensed as an occupational therapy assistant, and supervised by a licensed occupational therapist, with at least one year of experience providing direct services to individuals with a diagnosis of mental illness; or (iv) has a minimum of 90 hours classroom training and 12 weeks of experience under the direct personal supervision of a QMHP-A providing services to individuals with mental illness and at least one year of experience (including the 12 weeks of supervised experience).

["Quality improvement plan" means a detailed work plan developed by a provider that defines steps the provider will take to review the quality of services it provides and to

manage initiatives to improve quality. A quality improvement plan consists of systematic and continuous actions that lead to measurable improvement in the services, supports, and health status of the individuals receiving services.]

"Recovery" means a journey of healing and transformation enabling an individual with a mental illness to live a meaningful life in a community of his choice while striving to achieve his full potential. For individuals with substance abuse (substance use disorders), recovery is an incremental process leading to positive social change and a full return to biological, psychological, and social functioning. For individuals with ~~mental retardation (intellectual disability)~~ a developmental disability, the concept of recovery does not apply in the sense that individuals with ~~mental retardation (intellectual disability)~~ a developmental disability will need supports throughout their entire lives although these may change over time. With supports, individuals with ~~mental retardation (intellectual disability)~~ a developmental disability are capable of living lives that are fulfilling and satisfying and that bring meaning to themselves and others whom they know.

"Referral" means the process of directing an applicant or an individual to a provider or service that is designed to provide the assistance needed.

"Residential crisis stabilization service" means (i) providing short-term, intensive treatment to nonhospitalized individuals who require multidisciplinary treatment in order to stabilize acute psychiatric symptoms and prevent admission to a psychiatric inpatient unit; (ii) providing normative environments with a high assurance of safety and security for crisis intervention; and (iii) mobilizing the resources of the community support system, family members, and others for ongoing rehabilitation and recovery.

"Residential service" means providing 24-hour support in conjunction with care and treatment or a training program in a setting other than a hospital or training center. Residential services provide a range of living arrangements from highly structured and intensively supervised to relatively independent requiring a modest amount of staff support and monitoring. Residential services include residential treatment, group ~~or community~~ homes, supervised living, residential crisis stabilization, community gero-psychiatric residential, ~~community intermediate care facility-MR ICF/IID~~, sponsored residential homes, medical and social detoxification, neurobehavioral services, and substance abuse residential treatment for women and children.

"Residential treatment service" means providing an intensive and highly structured mental health, substance abuse, or neurobehavioral service, or services for co-occurring disorders in a residential setting, other than an inpatient service.

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"Respite care service" means providing for a short-term, ~~time limited~~ time-limited period of care of an individual for the purpose of providing relief to the individual's family, guardian, or regular care giver. Persons providing respite care are recruited, trained, and supervised by a licensed provider. These services may be provided in a variety of settings including residential, day support, in-home, or a sponsored residential home.

"Restraint" means the use of a mechanical device, medication, physical intervention, or hands-on hold to prevent an individual receiving services from moving his body to engage in a behavior that places him or others at imminent risk. There are three kinds of restraints:

1. Mechanical restraint means the use of a mechanical device that cannot be removed by the individual to restrict the individual's freedom of movement or functioning of a limb or portion of an individual's body when that behavior places him or others at imminent risk.
2. Pharmacological restraint means the use of a medication that is administered involuntarily for the emergency control of an individual's behavior when that individual's behavior places him or others at imminent risk and the administered medication is not a standard treatment for the individual's medical or psychiatric condition.
3. Physical restraint, also referred to as manual hold, means the use of a physical intervention or hands-on hold to prevent an individual from moving his body when that individual's behavior places him or others at imminent risk.

"Restraints for behavioral purposes" means using a physical hold, medication, or a mechanical device to control behavior or involuntary restrict the freedom of movement of an individual in an instance when all of the following conditions are met: (i) there is an emergency; (ii) nonphysical interventions are not viable; and (iii) safety issues require an immediate response.

"Restraints for medical purposes" means using a physical hold, medication, or mechanical device to limit the mobility of an individual for medical, diagnostic, or surgical purposes, such as routine dental care or radiological procedures and related post-procedure care processes, when use of the restraint is not the accepted clinical practice for treating the individual's condition.

"Restraints for protective purposes" means using a mechanical device to compensate for a physical or cognitive deficit when the individual does not have the option to remove the device. The device may limit an individual's movement, for example, bed rails or a gerichair, and prevent possible harm to the individual or it may create a passive barrier, such as a helmet to protect the individual.

"Restriction" means anything that limits or prevents an individual from freely exercising his rights and privileges.

"Risk management" means an integrated system-wide program to ensure the safety of individuals, employees, visitors, and others through identification, mitigation, early detection, monitoring, evaluation, and control of risks.

"Root cause analysis" means a method of problem solving designed to identify the underlying causes of a problem. The focus of a root cause analysis is on systems, processes, and outcomes that require change to reduce the risk of harm.

"Screening" means the process or procedure for determining whether the individual meets the minimum criteria for admission.

"Seclusion" means the involuntary placement of an individual alone in an area secured by a door that is locked or held shut by a staff person, by physically blocking the door, or by any other physical means so that the individual cannot leave it.

"Serious incident" means any event or circumstance that causes or could cause harm to the health, safety, or well-being of an individual. The term "serious incident" includes death and serious injury.

"Level I serious incident" means a serious incident that occurs or originates during the provision of a service or on the premises of the provider and does not meet the definition of a Level II or Level III serious incident. Level I serious incidents do not result in significant harm to individuals, but may include events that result in minor injuries that do not require medical attention or events that have the potential to cause serious injury, even when no injury occurs. "Level II serious incident" means a serious incident that occurs or originates during the provision of a service or on the premises of the provider that results in a significant harm or threat to the health and safety of an individual that does not meet the definition of a Level III serious incident.

"Level II serious incident" includes a significant harm or threat to the health or safety of others caused by an individual. Level II serious incidents include:

1. A serious injury;
2. An individual who is or was missing;
3. An emergency room visit;
4. An unplanned psychiatric or unplanned medical hospital admission of an individual receiving services other than licensed emergency services [, except that a psychiatric admission in accordance with the individual's Wellness Recovery Action Plan shall not constitute an unplanned admission for the purposes of this chapter];
5. Choking incidents that require direct physical intervention by another person;
6. Ingestion of any hazardous material; or

7. A diagnosis of:

a. A decubitus ulcer or an increase in severity of level of previously diagnosed decubitus ulcer;

b. A bowel obstruction; or

c. Aspiration pneumonia.

"Level III serious incident" means a serious incident whether or not the incident occurs while in the provision of a service or on the provider's premises and results in:

1. Any death of an individual;

2. A sexual assault of an individual; or

3. A suicide attempt by an individual admitted for services, other than licensed emergency services, that results in a hospital admission.

"Serious injury" means any injury resulting in bodily hurt, damage, harm, or loss that requires medical attention by a licensed physician, doctor of osteopathic medicine, physician assistant, or nurse practitioner ~~while the individual is supervised by or involved in services, such as attempted suicides, medication overdoses, or reactions from medications administered or prescribed by the service.~~

"Service" means (i) planned individualized interventions intended to reduce or ameliorate mental illness, ~~mental retardation (intellectual disability)~~ developmental disabilities, or substance abuse (substance use disorders) through care, treatment, training, habilitation, or other supports that are delivered by a provider to individuals with mental illness, ~~mental retardation (intellectual disability)~~ developmental disabilities, or substance abuse (substance use disorders). Services include outpatient services, intensive in-home services, opioid treatment services, inpatient psychiatric hospitalization, community gero-psychiatric residential services, assertive community treatment and other clinical services; day support, day treatment, partial hospitalization, psychosocial rehabilitation, and habilitation services; case management services; and supportive residential, special school, halfway house, in-home services, crisis stabilization, and other residential services; and (ii) ~~day support, in-home support, and crisis stabilization services provided to individuals under the IFDDS Waiver;~~ and (iii) planned individualized interventions intended to reduce or ameliorate the effects of brain injury through care, treatment, or other supports ~~or provided~~ in residential services for persons with brain injury.

"Shall" means an obligation to act is imposed.

"Shall not" means an obligation not to act is imposed.

"Skills training" means systematic skill building through curriculum-based psychoeducational and cognitive-behavioral interventions. These interventions break down complex objectives for role performance into simpler components,

including basic cognitive skills such as attention, to facilitate learning and competency.

"Social detoxification service" means providing nonmedical supervised care for the individual's natural process of withdrawal from use of alcohol or other drugs.

"Sponsored residential home" means a service where providers arrange for, supervise, and provide programmatic, financial, and service support to families or persons (sponsors) providing care or treatment in their own homes for individuals receiving services.

"State board" means the State Board of Behavioral Health and Developmental Services. The board has statutory responsibility for adopting regulations that may be necessary to carry out the provisions of Title 37.2 of the Code of Virginia and other laws of the Commonwealth administered by the commissioner or the department.

"State methadone authority" means the Virginia Department of Behavioral Health and Developmental Services that is authorized by the federal Center for Substance Abuse Treatment to exercise the responsibility and authority for governing the treatment of opiate addiction with an opioid drug.

"Substance abuse (substance use disorders)" means the use of drugs enumerated in the Virginia Drug Control Act (§ 54.1-3400 et seq.) without a compelling medical reason or alcohol that (i) results in psychological or physiological dependence or danger to self or others as a function of continued and compulsive use or (ii) results in mental, emotional, or physical impairment that causes socially dysfunctional or socially disordering behavior; and (iii), because of such substance abuse, requires care and treatment for the health of the individual. This care and treatment may include counseling, rehabilitation, or medical or psychiatric care.

"Substance abuse intensive outpatient service" means treatment provided in a concentrated manner for two or more consecutive hours per day to groups of individuals in a nonresidential setting. This service is provided over a period of time for individuals requiring more intensive services than an outpatient service can provide. Substance abuse intensive outpatient services include multiple group therapy sessions during the week, individual and family therapy, individual monitoring, and case management.

"Substance abuse residential treatment for women with children service" means a 24-hour residential service providing an intensive and highly structured substance abuse service for women with children who live in the same facility.

"Suicide attempt" means a nonfatal, self-directed, potentially injurious behavior with an intent to die as a result of the behavior regardless of whether it results in injury.

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"Supervised living residential service" means the provision of significant direct supervision and community support services to individuals living in apartments or other residential settings. These services differ from supportive in-home service because the provider assumes responsibility for management of the physical environment of the residence, and staff supervision and monitoring are daily and available on a 24-hour basis. Services are provided based on the needs of the individual in areas such as food preparation, housekeeping, medication administration, personal hygiene, treatment, counseling, and budgeting.

"Supportive in-home service" (formerly supportive residential) means the provision of community support services and other structured services to assist individuals, to strengthen individual skills, and that provide environmental supports necessary to attain and sustain independent community residential living. Services include drop-in or friendly-visitor support and counseling to more intensive support, monitoring, training, in-home support, respite care, and family support services. Services are based on the needs of the individual and include training and assistance. These services normally do not involve overnight care by the provider; however, due to the flexible nature of these services, overnight care may be provided on an occasional basis.

"Systemic deficiency" means violations of regulations documented by the department that demonstrate multiple or repeat defects in the operation of one or more services.

"Therapeutic day treatment for children and adolescents" means a treatment program that serves (i) children and adolescents from birth through ~~age~~ 17 years of age and under certain circumstances up to 21 years of age with serious emotional disturbances, substance use, or co-occurring disorders or (ii) children from birth through ~~age~~ seven years of age who are at risk of serious emotional disturbance, in order to combine psychotherapeutic interventions with education and mental health or substance abuse treatment. Services include: evaluation; medication education and management; opportunities to learn and use daily living skills and to enhance social and interpersonal skills; and individual, group, and family counseling.

"Time out" means the involuntary removal of an individual by a staff person from a source of reinforcement to a different, open location for a specified period of time or until the problem behavior has subsided to discontinue or reduce the frequency of problematic behavior.

"Volunteer" means a person who, without financial remuneration, provides services to individuals on behalf of the provider.

Part II Licensing Process

12VAC35-105-30. Licenses.

A. Licenses are issued to providers who offer services to individuals who have mental illness, ~~mental retardation (intellectual disability)~~ a developmental disability, or substance abuse (substance use disorders); ~~have developmental disability and are served under the IFDDS Waiver~~; or have brain injury and are receiving residential services.

B. Providers shall be licensed to provide specific services as defined in this chapter or as determined by the commissioner. These services include:

1. Case management;
2. Community gero-psychiatric residential;
3. ~~Community intermediate care facility MR ICF/IID~~;
4. Residential crisis stabilization;
5. Nonresidential crisis stabilization;
6. Day support;
7. Day treatment, includes therapeutic day treatment for children and adolescents;
8. Group home and community residential;
9. Inpatient psychiatric;
10. Intensive ~~Community Treatment~~ community treatment (ICT);
11. Intensive in-home;
12. Managed withdrawal, including medical detoxification and social detoxification;
13. Mental health community support;
14. Opioid treatment/medication assisted treatment;
15. Emergency;
16. Outpatient;
17. Partial hospitalization;
18. Program of assertive community treatment (PACT);
19. Psychosocial rehabilitation;
20. Residential treatment;
21. Respite care;
22. Sponsored residential home;
23. Substance abuse residential treatment for women with children;
24. Substance abuse intensive outpatient;

- 25. Supervised living residential; and
- 26. Supportive in-home.

C. A license addendum shall describe the services licensed, the disabilities of individuals who may be served, the specific locations where services are to be provided or administered, and the terms and conditions for each service offered by a licensed provider. For residential and inpatient services, the license identifies the number of individuals each residential location may serve at a given time.

12VAC35-105-50. Issuance of licenses.

A. The commissioner may issue the following types of licenses:

1. A conditional license ~~shall~~ may be issued to a new provider for services that demonstrates compliance with administrative and policy regulations but has not demonstrated compliance with all the regulations.

- a. A conditional license shall not exceed six months.
- b. A conditional license may be renewed if the provider is not able to demonstrate compliance with all the regulations at the end of the license period. A conditional license and any renewals shall not exceed 12 successive months for all conditional licenses and renewals combined.
- c. A provider holding a conditional license for a service shall demonstrate progress toward compliance.
- d. A provider holding a conditional license shall not add services or locations during the conditional period.
- e. A group home or community residential service provider shall be limited to providing services in a single location, serving no more than four individuals during the conditional period.

2. A provisional license may be issued to a provider for a service that has demonstrated an inability to maintain compliance with all applicable regulations, including this chapter and 12VAC35-115, has violations of human rights or licensing regulations that pose a threat to the health or safety of individuals ~~being served~~ receiving services, has multiple violations of human rights or licensing regulations, or has failed to comply with a previous corrective action plan.

- a. A provisional license may be issued at any time.
- b. The term of a provisional license shall not exceed six months.
- c. A provisional license may be renewed; but a provisional license and any renewals shall not exceed 12 successive months for all provisional licenses and renewals combined.

d. A provider holding a provisional license for a service shall demonstrate progress toward compliance.

e. A provider holding a provisional license for a service shall not increase its services or locations or expand the capacity of the service.

f. A provisional license for a service shall be noted as a stipulation on the provider license. The stipulation shall also indicate the violations to be corrected and the expiration date of the provisional license.

3. A full license shall be issued after a provider or service demonstrates compliance with all the applicable regulations.

a. A full license may be granted to a provider for service for up to three years. The length of the license shall be in the sole discretion of the commissioner.

b. If a full license is granted for three years, it shall be referred to as a triennial license. A triennial license shall be granted to providers for services that have demonstrated full compliance with ~~the all applicable~~ regulations. The commissioner may issue a triennial license to a provider for service that had violations during the previous license period if those violations did not pose a threat to the health or safety of individuals ~~being served~~ receiving services, and the provider or service has demonstrated consistent compliance for more than a year and has a process in place that provides sufficient oversight to maintain compliance.

c. If a full license is granted for one year, it shall be referred to as an annual license.

d. The term of the first full renewal license after the expiration of a conditional or provisional license shall not exceed one year.

B. The commissioner may add stipulations on a license issued to a provider that may place limits on the provider or to impose additional requirements on the provider.

C. A license shall not be transferred or assigned to another provider. A new application shall be made and a new license issued when there is a change in ownership.

~~D. A license shall not be issued or renewed unless the provider is affiliated with a local human rights committee.~~

~~E. D.~~ No service shall be issued a license with an expiration date that is after the expiration date of the provider license.

~~F. E.~~ A license shall continue in effect after the expiration date if the provider has submitted a renewal application before the date of expiration and there are no grounds to deny the application. The department shall issue a letter stating the provider or service license shall be effective for six additional months if the renewed license is not issued before the date of expiration.

Regulations

12VAC35-105-120. Variances.

The commissioner may grant a variance to a specific regulation if he determines that such a variance will not jeopardize the health, safety, or welfare of individuals ~~and upon demonstration by the provider requesting. A provider shall submit a request for such variance in writing to the commissioner. The request shall demonstrate that complying with the regulation would be a hardship unique to the provider and that the variance will not jeopardize the health, safety, or welfare of individuals. The department may limit the length of time a variance will be effective. A provider shall submit a request for a variance in writing to the commissioner. A variance may be time limited or have other conditions attached to it. The department must approve a variance prior to implementation. The provider shall not implement a variance until it has been approved in writing by the commissioner.~~

12VAC35-105-150. Compliance with applicable laws, regulations and policies.

The provider including its employees, contractors, students, and volunteers shall comply with:

1. ~~These regulations~~ This chapter;
2. The terms and stipulations of the license;
3. All applicable federal, state, or local laws and regulations including:
 - a. Laws regarding employment practices including the Equal Employment Opportunity Act;
 - b. The Americans with Disabilities Act and the Virginians with Disabilities Act;
 - c. For home and community-based services waiver settings subject to this chapter, 42 CFR 441.301(c)(1) through (4) [~~contents of request for a waiver~~];
 - d. Occupational Safety and Health Administration regulations;
 - ~~d.~~ e. Virginia Department of Health regulations;
 - ~~e.~~ f. Laws and regulations of the Virginia Department of Health Professions regulations;
 - ~~f.~~ g. Virginia Department of Medical Assistance Services regulations;
 - ~~g.~~ h. Uniform Statewide Building Code; and
 - ~~h.~~ i. Uniform Statewide Fire Prevention Code.
4. Section 37.2-400 of the Code of Virginia and related human rights regulations adopted by the state board; and
5. The provider's own policies. All required policies shall be in writing.

12VAC35-105-155. Preadmission screening, discharge planning, involuntary commitment, and mandatory outpatient treatment orders.

A. Providers responsible for complying with §§ 37.2-505 and 37.2-606 of the Code of Virginia regarding community ~~service services~~ board and behavioral health authority preadmission screening and discharge planning shall implement policies and procedures that include:

1. Identification, qualification, training, and responsibilities of employees responsible for preadmission screening and discharge planning.
2. Completion of a discharge plan prior to an individual's discharge in consultation with the state facility that:
 - a. Involves the individual or his authorized representative and reflects the individual's preferences to the greatest extent possible consistent with the individual's needs.
 - b. Involves mental health, ~~mental retardation (intellectual disability)~~ developmental disability, substance abuse, social, educational, medical, employment, housing, legal, advocacy, transportation, and other services that the individual will need upon discharge into the community and identifies the public or private agencies or persons that have agreed to provide them.

B. Any provider who serves individuals through an emergency custody order, temporary detention order, or mandatory outpatient treatment order shall implement policies and procedures to comply with §§ 37.2-800 through 37.2-817 of the Code of Virginia.

12VAC35-105-160. Reviews by the department; requests for information; required reporting.

A. The provider shall permit representatives from the department to conduct reviews to:

1. Verify application information;
2. Assure compliance with this chapter; and
3. Investigate complaints.

B. The provider shall cooperate fully with inspections and investigations and shall provide all information requested ~~to assist representatives from~~ by the department who conduct inspections.

C. The provider shall collect, maintain, and review at least quarterly all serious incidents, including Level I serious incidents, as part of the quality improvement program in accordance with 12VAC35-105-620 to include an analysis of trends, potential systemic issues or causes, indicated remediation, and documentation of steps taken to mitigate the potential for future incidents.

D. The provider shall collect, maintain, and report or make available to the department the following information:

1. Each allegation of abuse or neglect shall be reported to the assigned human rights advocate and the individual's authorized representative within 24 hours from the receipt of the initial allegation. Reported information shall include the type of abuse, neglect, or exploitation that is alleged and whether there is physical or psychological injury to the individual department as provided in 12VAC35-115-230 A.

2. Each instance of death or serious injury Level II and Level III serious incidents shall be reported in writing to the department's assigned licensing specialist using the department's web-based reporting application and by telephone [or email] to anyone designated by the individual to receive such notice and to the individual's authorized representative within 24 hours of discovery and by phone to the individual's authorized representative within 24 hours. Reported information shall include the information specified by the department as required in its web-based reporting application, but at least the following: the date and place, and circumstances of the individual's death or serious injury; serious incident. For serious injuries and deaths, the reported information shall also include the nature of the individual's injuries or circumstances of the death and the any treatment received; and the circumstances of the death or serious injury. For all other Level II and Level III serious incidents, the reported information shall also include the consequences [or risk of harm] that resulted from the serious incident. Deaths that occur in a hospital as a result of illness or injury occurring when the individual was in a licensed service shall be reported.

3. Each instance Instances of seclusion or restraint that does not comply with the human rights regulations or approved variances or that results in injury to an individual shall be reported to the individual's authorized representative and the assigned human rights advocate within 24 hours shall be reported to the department as provided in 12VAC35-115-230 C 4.

E. A root cause analysis shall be conducted by the provider within 30 days of discovery of Level II serious incidents and any Level III serious incidents that occur during the provision of a service or on the provider's premises.

[1.] The root cause analysis shall include at least the following information:

[~~(i)~~ a. A] detailed description of what happened;

[~~(ii)~~ an b. An] analysis of why it happened, including identification of all identifiable underlying causes of the incident that were under the control of the provider; and

[~~(iii)~~ identified c. Identified] solutions to mitigate its recurrence [and future risk of harm] when applicable. [~~A more detailed root cause analysis, including convening a team, collecting and analyzing data, mapping processes, and charting causal factors should be considered based upon the circumstances of the incident.~~

2. The provider shall develop and implement a root cause analysis policy for determining when a more detailed root cause analysis, including convening a team, collecting and analyzing data, mapping processes, and charting causal factors, should be conducted. At a minimum, the policy shall require for the provider to conduct a more detailed root cause analysis when:

a. A threshold number, as specified in the provider's policy based on the provider's size, number of locations, service type, number of individuals served, and the unique needs of the individuals served by the provider, of similar Level II serious incidents occur to the same individual or at the same location within a six-month period;

b. Two or more of the same Level III serious incidents occur to the same individual or at the same location within a six-month period;

c. A threshold number, as specified in the provider's policy based on the provider's size, number of locations, service type, number of individuals served, and the unique needs of the individuals served by the provider, of similar Level II or Level III serious incidents occur across all of the provider's locations within a six-month period; or

d. A death occurs as a result of an acute medical event that was not expected in advance or based on a person's known medical condition.]

~~D. F.~~ The provider shall submit, or make available and, when requested, submit reports and information that the department requires to establish compliance with these regulations and applicable statutes.

~~E. G.~~ Records that are confidential under federal or state law shall be maintained as confidential by the department and shall not be further disclosed except as required or permitted by law; however, there shall be no right of access to communications that are privileged pursuant to § 8.01-581.17 of the Code of Virginia.

~~F. H.~~ Additional information requested by the department if compliance with a regulation cannot be determined shall be submitted within 10 business days of the issuance of the licensing report requesting additional information. Extensions may be granted by the department when requested prior to the due date, but extensions shall not exceed an additional 10 business days.

Regulations

~~G. I.~~ Applicants and providers shall not submit any misleading or false information to the department.

~~[J. The provider shall develop and implement a serious incident management policy, which shall be consistent with this section and which shall describe the processes by which the provider will document, analyze, and report to the department information related to serious incidents.]~~

12VAC35-105-170. Corrective action plan.

A. If there is noncompliance with any applicable regulation during an initial or ongoing review, inspection, or investigation, the department shall issue a licensing report describing the noncompliance and requesting the provider to submit a corrective action plan for each violation cited.

B. The provider shall submit to the department ~~[and implement]~~ a written corrective action plan for each ~~regulation with which it is found to be in violation as identified in the licensing report~~ violation cited.

C. The corrective action plan shall include a:

- ~~1. Description~~ Detailed description of the corrective actions to be taken that will minimize the possibility that the violation will occur again and correct any systemic deficiencies;
2. Date of completion for each corrective action; and
3. Signature of the person responsible for ~~[the service oversight of the implementation of the pledged corrective action]~~.

D. The provider shall submit a corrective action plan to the department within 15 business days of the issuance of the licensing report. ~~Extensions~~ One extension may be granted by the department when requested prior to the due date, but extensions shall not exceed an additional 10 business days. An immediate corrective action plan shall be required if the department determines that the violations pose a danger to individuals receiving the service.

E. Upon receipt of the corrective action plan, the department shall review the plan and determine whether the plan is approved or not approved. The provider has an additional 10 business days to submit a revised corrective action plan after receiving a notice that ~~the plan submitted has not been approved by the department~~ has not approved the revised plan. If the submitted revised corrective action plan is [still unacceptable not approved], the provider shall follow the dispute resolution process identified in this section.

F. When the provider disagrees with a citation of a violation ~~or the disapproval of [the a] revised corrective action [plans plan]~~, the provider shall discuss this disagreement with the licensing specialist initially. If the disagreement is not resolved, the provider may ask for a meeting with the licensing specialist's supervisor, in consultation with the

director of licensing, to challenge a finding of noncompliance. The determination of the director is final.

G. The provider shall implement [and monitor implementation of the approved corrective action and include a plan for monitoring in. The provider shall monitor implementation and effectiveness of approved corrective actions as part of its quality assurance activities improvement program specified in required by 12VAC30-105-620 their written corrective action plan for each violation cited by the date of completion identified in the plan.

H. The provider shall monitor implementation and effectiveness of approved corrective actions as part of its quality improvement program required by 12VAC35-105-620. If the provider determines that an approved corrective action was fully implemented, but did not prevent the recurrence of a regulatory violation or correct any systemic deficiencies, the provider shall:

1. Continue implementing the corrective action plan and put into place additional measures to prevent the recurrence of the cited violation and address identified systemic deficiencies; or
2. Submit a revised corrective action plan to the department for approval.]

12VAC35-105-320. Fire inspections.

The provider shall document at the time of its original application and annually thereafter that buildings and equipment in residential service locations [serving more than eight individuals] are maintained in accordance with the Virginia Statewide Fire Prevention Code (13VAC5-51). ~~[This section does not apply to correctional facilities or home and noncenter-based or sponsored residential home services. The provider shall evaluate each individual and, based on that evaluation, shall provide appropriate environmental supports and adequate staff to safely evacuate all individuals during an emergency.]~~

Article 3

Physical Environment of ~~Residential/Inpatient~~ Residential and Inpatient Service Locations

12VAC35-105-330. Beds.

A. The provider shall not operate more beds than the number for which its service location ~~or locations are~~ is licensed.

B. ~~A community ICF/MR~~ An ICF/IID may not have more than 12 beds at any one location. This applies to new applications for services and not to existing services or locations licensed prior to December 7, 2011.

12VAC35-105-400. Criminal ~~registry~~ background checks and registry searches.

A. Providers shall comply with the requirements for obtaining criminal history background check requirements for direct care positions checks as outlined in §§ 37.2-416, 37.2-506, and 37.2-607 of the Code of Virginia for individuals hired after July 1, 1999.

~~B. Prior to a new employee beginning his duties, the provider shall obtain the employee's written consent and personal information necessary to obtain a search of the registry of founded complaints of child abuse and neglect maintained by the Virginia Department of Social Services.~~

~~C. B.~~ The provider shall develop a written policy for criminal history background checks and registry checks for all employees, contractors, students, and volunteers searches. The policy shall require at a minimum a disclosure statement from the employee, contractor, student, or volunteer stating whether the person has ever been convicted of or is the subject of pending charges for any offense and shall address what actions the provider will take should it be discovered that an employee, student, contractor, or volunteer a person has a founded case of abuse or neglect or both, or a conviction or pending criminal charge.

~~D. C.~~ The provider shall submit all information required by the department to complete the criminal history background checks and registry checks for all employees and for contractors, students, and volunteers if required by the provider's policy searches.

~~E. D.~~ The provider shall maintain the following documentation:

1. The disclosure statement from the applicant stating whether he has ever been convicted of or is the subject of pending charges for any offense; and
2. Documentation that the provider submitted all information required by the department to complete the criminal history background checks and registry checks searches, memoranda from the department transmitting the results to the provider, [if applicable,] and the results from the Child Protective Registry check search.

12VAC35-105-440. Orientation of new employees, contractors, volunteers, and students.

New employees, contractors, volunteers, and students shall be oriented commensurate with their function or job-specific responsibilities within 15 business days. The provider shall document that the orientation covers each of the following policies, procedures, and practices:

1. Objectives and philosophy of the provider;
2. Practices of confidentiality including access, duplication, and dissemination of any portion of an individual's record;

3. Practices that assure an individual's rights including orientation to human rights regulations;
4. Applicable personnel policies;
5. Emergency preparedness procedures;
6. Person-centeredness;
7. Infection control practices and measures; ~~and~~
8. Other policies and procedures that apply to specific positions and specific duties and responsibilities; and
9. Serious incident reporting, including when, how, and under what circumstances a serious incident report must be submitted and the consequences of failing to report a serious incident to the department in accordance with this chapter.

12VAC35-105-450. Employee training and development.

The provider shall provide training and development opportunities for employees to enable them to support the individuals serve receiving services and to carry out ~~the their~~ job responsibilities of their jobs. The provider shall develop a training policy that addresses the frequency of retraining on serious incident reporting, medication administration, behavior intervention, emergency preparedness, and infection control, to include flu epidemics. Employee participation in training and development opportunities shall be documented and accessible to the department.

12VAC35-105-460. Emergency medical or first aid training.

There shall be at least one employee or contractor on duty at each location who holds a current certificate (i) issued by the American Red Cross, the American Heart Association, or comparable authority in standard first aid and cardiopulmonary resuscitation (CPR) or (ii) as an emergency medical technician. A licensed medical professional who holds a current professional license shall be deemed to hold a current certificate in first aid, but not in CPR. The certification process shall include a hands-on, in-person demonstration of first aid and CPR competency.

[12VAC35-105-500. Students and volunteers.

A. The provider shall implement a written policy that clearly defines and communicates the requirements for the use and responsibilities of students and volunteers including selection and supervision.

B. The provider shall not rely on students or volunteers ~~for the provision of direct care services to supplant direct care positions.~~ The provider staffing plan shall not include volunteers or students.]

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Article 5
Health and Safety Management

12VAC35-105-520. Risk management.

A. The provider shall designate a person responsible for the risk management function who has [completed department approved] training [and expertise in, which shall include training related to risk management, understanding of individual risk screening,] conducting investigations, root cause analysis, and [the use of] data [analysis to identify risk patterns and trends].

B. The provider shall implement a written plan to identify, monitor, reduce, and minimize risks associated with harms and risk of harm, including personal injury, infectious disease, property damage or loss, and other sources of potential liability.

C. The provider shall conduct systemic risk assessment reviews at least annually to identify and respond to practices, situations, and policies that could result in the risk of harm to individuals receiving services. The risk assessment review shall address [at least the following:

~~(i) the 1. The] environment of care;~~

~~[(ii) clinical 2. Clinical] assessment or reassessment processes;~~

~~[(iii) staff 3. Staff] competence and adequacy of staffing;~~

~~[(iv) use 4. Use] of high risk procedures, including seclusion and restraint; and~~

~~[(v) a 5. A] review of serious incidents. [This process shall incorporate uniform risk triggers and thresholds as defined by the department.~~

D. The systemic risk assessment process shall incorporate uniform risk triggers and thresholds as defined by the department.]

~~☞ [D. E.]~~ The provider shall conduct and document a safety inspection has been performed at least annually of each service location owned, rented, or leased by the provider. Recommendations for safety improvement shall be documented and implemented by the provider.

~~☛ [E. F.]~~ The provider shall document serious injuries to employees, contractors, students, volunteers, and visitors that occur during the provision of a service or on the provider's property. Documentation shall be kept on file for three years. The provider shall evaluate serious injuries at least annually. Recommendations for improvement shall be documented and implemented by the provider.

[12VAC35-105-530. Emergency preparedness and response plan.

A. The provider shall develop a written emergency preparedness and response plan for all of its services and locations that describes its approach to emergencies throughout the organization or community. This plan shall include an analysis of potential emergencies that could disrupt the normal course of service delivery including emergencies that would require expanded or extended care over a prolonged period of time. The plan shall address:

1. Specific procedures describing mitigation, preparedness, response, and recovery strategies, actions, and responsibilities for each emergency.

2. Documentation of coordination with the local emergency authorities to determine local disaster risks and community-wide plans to address different disasters and emergency situations.

3. The process for notifying local and state authorities of the emergency and a process for contacting staff when emergency response measures are initiated.

4. Written emergency management policies outlining specific responsibilities for provision of administrative direction and management of response activities, coordination of logistics during the emergency, communications, life safety of employees, contractors, students, volunteers, visitors, and individuals receiving services, property protection, community outreach, and recovery and restoration.

5. Written emergency response procedures for initiating the response and recovery phase of the plan including a description of how, when, and by whom the phases will be activated. This includes assessing the situation; protecting individuals receiving services, employees, contractors, students, volunteers, visitors, equipment, and vital records; and restoring services. Emergency procedures shall address:

a. Warning and notifying individuals receiving services;

b. Communicating with employees, contractors, and community responders;

c. Designating alternative roles and responsibilities of staff during emergencies including to whom they will report in the provider's organization command structure and when activated in the community's command structure;

d. Providing emergency access to secure areas and opening locked doors;

e. Evacuation procedures, including for individuals who need evacuation assistance;

~~e.~~ f. Conducting evacuations to emergency shelters or alternative sites and accounting for all individuals receiving services;

~~f.~~ g. Relocating individuals receiving residential or inpatient services, if necessary;

~~g.~~ h. Notifying family members or authorized representatives;

~~h.~~ i. Alerting emergency personnel and sounding alarms;

~~i.~~ j. Locating and shutting off utilities when necessary; and

~~j.~~ k. Maintaining a 24 hour telephone answering capability to respond to emergencies for individuals receiving services.

6. Processes for managing the following under emergency conditions:

a. Activities related to the provision of care, treatment, and services including scheduling, modifying, or discontinuing services; controlling information about individuals receiving services; providing medication; and transportation services;

b. Logistics related to critical supplies such as pharmaceuticals, food, linen, and water;

c. Security including access, crowd control, and traffic control; and

d. Back-up communication systems in the event of electronic or power failure.

7. Specific processes and protocols for evacuation of the provider's building or premises when the environment cannot support adequate care, treatment, and services.

8. Supporting documents that would be needed in an emergency, including emergency call lists, building and site maps necessary to shut off utilities, designated escape routes, and list of major resources such as local emergency shelters.

9. Schedule for testing the implementation of the plan and conducting emergency preparedness drills. Fire and evacuation drills shall be conducted at least monthly.

B. The provider shall evaluate each individual and, based on that evaluation, shall provide appropriate environmental supports and adequate staff to safely evacuate all individuals during an emergency.

~~B.~~ C. The provider shall implement annual emergency preparedness and response training for all employees, contractors, students, and volunteers. This training shall also be provided as part of orientation for new employees and cover responsibilities for:

1. Alerting emergency personnel and sounding alarms;

2. Implementing evacuation procedures, including evacuation of individuals with special needs (i.e., deaf, blind, nonambulatory);

3. Using, maintaining, and operating emergency equipment;

4. Accessing emergency medical information for individuals receiving services; and

5. Utilizing community support services.

~~C.~~ D. The provider shall review the emergency preparedness plan annually and make necessary revisions. Such revisions shall be communicated to employees, contractors, students, volunteers, and individuals receiving services and incorporated into training for employees, contractors, students, and volunteers and into the orientation of individuals to services.

~~D.~~ E. In the event of a disaster, fire, emergency or any other condition that may jeopardize the health, safety, or welfare of individuals, the provider shall take appropriate action to protect the health, safety, and welfare of individuals receiving services and take appropriate actions to remedy the conditions as soon as possible.

~~E.~~ F. Employees, contractors, students, and volunteers shall be knowledgeable in and prepared to implement the emergency preparedness plan in the event of an emergency. The plan shall include a policy regarding regularly scheduled emergency preparedness training for all employees, contractors, students, and volunteers.

~~F.~~ G. In the event of a disaster, fire, emergency, or any other condition that may jeopardize the health, safety, or welfare of individuals, the provider should first respond and stabilize the disaster or emergency. After the disaster or emergency is stabilized, the provider should report the disaster or emergency to the department, but no later than 24 hours after the incident occurs.

~~G.~~ H. Providers of residential services shall have at all times a three-day supply of emergency food and water for all residents and staff. Emergency food supplies should include foods that do not require cooking. Water supplies shall include one gallon of water per person per day.

~~H. This section does not apply to home and noncenter-based services.~~ I. All provider locations shall be equipped with at least one approved type ABC portable fire extinguisher with a minimum rating of 2A10BC installed in each kitchen.

J. All provider locations shall have an appropriate number of properly installed smoke detectors based on the size of the location, which shall include at a minimum:

1. At least one smoke detector on each level of multi-level buildings, including the basement;

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2. At least one smoke detector in each bedroom in locations with bedrooms;

3. At least one smoke detector in any area adjacent to any bedroom in locations with bedrooms; and

4. Any additional smoke detectors necessary to comply with all applicable federal and state laws and regulations and local ordinances.

K. Smoke detectors shall be tested monthly for proper operation.

L. All provider locations shall maintain a floor plan identifying locations of:

1. Exits;

2. Primary and secondary evacuation routes;

3. Accessible egress routes;

4. Portable fire extinguishers; and

5. Flashlights.

M. This section does not apply to home and noncenter-based services.]

12VAC35-105-580. Service description requirements.

A. The provider shall develop, implement, review, and revise its descriptions of services offered according to the provider's mission and shall make service descriptions available for public review.

B. The provider shall outline how each service offers a structured program of individualized interventions and care designed to meet the individuals' physical and emotional needs; provide protection, guidance and supervision; and meet the objectives of any required individualized services plan.

C. The provider shall prepare a written description of each service it offers. Elements of each service description shall include:

1. Service goals;

2. A description of care, treatment, ~~training~~ skills acquisition, or other supports provided;

3. Characteristics and needs of individuals to ~~be served~~ receive services;

4. Contract services, if any;

5. Eligibility requirements and admission, continued stay, and exclusion criteria;

6. Service termination and discharge or transition criteria; and

7. Type and role of employees or contractors.

D. The provider shall revise the written service description whenever the operation of the service changes.

E. The provider shall not implement services that are inconsistent with its most current service description.

F. The provider shall admit only those individuals whose service needs are consistent with the service description, for whom services are available, and for which staffing levels and types meet the needs of the individuals ~~erved~~ receiving services.

G. The provider shall provide for the physical separation of children and adults in residential and inpatient services and shall provide separate group programming for adults and children, except in the case of family services. The provider shall provide for the safety of children accompanying parents receiving services. Older adolescents transitioning from school to adult activities may participate in ~~mental retardation (intellectual disability)~~ developmental day support services with adults.

H. The service description for substance abuse treatment services shall address the timely and appropriate treatment of pregnant women with substance abuse (substance use disorders).

I. If the provider plans to serve individuals as of a result of a temporary detention order to a service, prior to admitting those individuals to that service, the provider shall submit a written plan for adequate staffing and security measures to ensure the individual can ~~be served~~ receive services safely within the service to the department for approval. If the plan is approved, the department ~~will~~ shall add a stipulation to the license authorizing the provider to serve individuals who are under temporary detention orders.

12VAC35-105-590. Provider staffing plan.

A. The provider shall implement a written staffing plan that includes the types, roles, and numbers of employees and contractors that are required to provide the service. This staffing plan shall reflect the:

1. Needs of the individuals ~~erved~~ receiving services;

2. Types of services offered;

3. Service description; ~~and~~

4. Number of ~~people~~ individuals to ~~be served~~ receive services at a given time; and

5. Adequate number of staff required to safely evacuate all individuals during an emergency.

B. The provider shall develop a written transition staffing plan for new services, added locations, and changes in capacity.

C. The provider shall meet the following staffing requirements related to supervision.

1. The provider shall describe how employees, volunteers, contractors, and student interns will be supervised in the staffing plan and how that supervision will be documented.
2. Supervision of employees, volunteers, contractors, and student interns shall be provided by persons who have experience in working with individuals receiving services and in providing the services outlined in the service description.
3. Supervision shall be appropriate to the services provided and the needs of the individual. Supervision shall be documented.
4. Supervision shall include responsibility for approving assessments and individualized services plans, as appropriate. This responsibility may be delegated to an employee or contractor who meets the qualification for supervision as defined in this section.
5. Supervision of mental health, substance abuse, or co-occurring services that are of an acute or clinical nature such as outpatient, inpatient, intensive in-home, or day treatment shall be provided by a licensed mental health professional or a mental health professional who is license-eligible and registered with a board of the Department of Health Professions.
6. Supervision of mental health, substance abuse, or co-occurring services that are of a supportive or maintenance nature, such as psychosocial rehabilitation or mental health supports, shall be provided by a QMHP-A, a licensed mental health professional, or a mental health professional who is license-eligible and registered with a board of the Department of Health Professions. An individual who is a QMHP-E may not provide this type of supervision.
7. Supervision of ~~mental retardation (intellectual disability)~~ developmental services shall be provided by a person with at least one year of documented experience working directly with individuals who have ~~mental retardation (intellectual disability)~~ or other developmental disabilities and holds at least a bachelor's degree in a human services field such as sociology, social work, special education, rehabilitation counseling, nursing, or psychology. Experience may be substituted for the education requirement.
8. ~~Supervision of individual and family developmental disabilities support (IFDDS) services shall be provided by a person possessing at least one year of documented experience working directly with individuals who have developmental disabilities and is one of the following: a doctor of medicine or osteopathy licensed in Virginia; a registered nurse licensed in Virginia; or a person holding at least a bachelor's degree in a human services field such as~~

~~sociology, social work, special education, rehabilitation counseling, or psychology. Experience may be substituted for the education requirement.~~ 9. Supervision of brain injury services shall be provided at a minimum by a clinician in the health professions field who is trained and experienced in providing brain injury services to individuals who have a brain injury diagnosis including: (i) a doctor of medicine or osteopathy licensed in Virginia; (ii) a psychiatrist who is a doctor of medicine or osteopathy specializing in psychiatry and licensed in Virginia; (iii) a psychologist who has a master's degree in psychology from a college or university with at least one year of clinical experience; (iv) a social worker who has a bachelor's degree in human services or a related field (social work, psychology, psychiatric evaluation, sociology, counseling, vocational rehabilitation, human services counseling, or other degree deemed equivalent to those described) from an accredited college or university with at least two years of clinical experience providing direct services to individuals with a diagnosis of brain injury; (v) a Certified Brain Injury Specialist; (vi) a registered nurse licensed in Virginia with at least one year of clinical experience; or (vii) any other licensed rehabilitation professional with one year of clinical experience.

D. The provider shall employ or contract with persons with appropriate training, as necessary, to meet the specialized needs of and to ensure the safety of individuals being served receiving services in residential services with medical or nursing needs; speech, language, or hearing problems; or other needs where specialized training is necessary.

E. Providers of brain injury services shall employ or contract with a neuropsychologist or licensed clinical psychologist specializing in brain injury to assist, as appropriate, with initial assessments, development of individualized services plans, crises, staff training, and service design.

F. ~~[Direct care staff who provide]~~ Staff in direct care positions providing brain injury services shall have at least a high school diploma and two years of experience working with individuals with disabilities or shall have successfully completed an approved training curriculum on brain injuries within six months of employment.

12VAC35-105-620. Monitoring and evaluating service quality.

[A.] The provider shall develop and implement written policies and procedures ~~to for a quality improvement program sufficient to identify,~~ monitor, and evaluate clinical and service quality and effectiveness on a systematic and ongoing basis.

[B.] The [quality improvement] program shall utilize standard quality improvement tools, including root cause analysis, and shall include a quality improvement plan [. that

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C. The quality improvement plan shall:

~~(i) is~~ 1. Be] reviewed and updated at least annually;

[~~(ii) defines~~ 2. Define] measurable goals and objectives;

[~~(iii) includes~~ 3. Include] and [~~reports~~ report] on statewide performance measures, if applicable, as required by DBHDS;

[~~(iv) monitors~~ 4. Monitor] implementation and effectiveness of approved corrective action plans pursuant to 12VAC35-105-170; and

[~~(v) includes~~ 5. Include] ongoing monitoring and evaluation of progress toward meeting established goals and objectives.

[D.] The provider's policies and procedures shall include the criteria the provider will use to [~~establish~~

1. Establish] measurable goals and objectives [;

2. Update the provider's quality improvement plan; and

3. Submit revised corrective action plans to the department for approval or continue implementing the corrective action plan and put into place additional measures to prevent the recurrence of the cited violation and address identified systemic deficiencies when reviews determine that a corrective action was fully implemented but did not prevent the recurrence of the cited regulatory violation or correct a systemic deficiency pursuant to 12VAC35-105-170.

E.] Input from individuals receiving services and their authorized representatives, if applicable, about services used and satisfaction level of participation in the direction of service planning shall be part of the provider's quality ~~assurance system~~ improvement plan. The provider shall implement improvements, when indicated.

12VAC35-105-650. Assessment policy.

A. The provider shall implement a written assessment policy. The policy shall define how assessments will be conducted and documented.

B. The provider shall actively involve the individual and authorized representative, if applicable, in the preparation of initial and comprehensive assessments and in subsequent reassessments. In these assessments and reassessments, the provider shall consider the individual's needs, strengths, goals, preferences, and abilities within the individual's cultural context.

C. The assessment policy shall designate employees or contractors who are responsible for conducting assessments. These employees or contractors shall have experience in working with the needs of individuals who are being assessed, the assessment ~~tool or~~ tools being utilized, and the provision of services that the individuals may require.

D. Assessment is an ongoing activity. The provider shall make reasonable attempts to obtain previous assessments or relevant history.

E. An assessment shall be initiated prior to or at admission to the service. With the participation of the individual and the individual's authorized representative, if applicable, the provider shall complete an initial assessment detailed enough to determine whether the individual qualifies for admission and to initiate an ISP for those individuals who are admitted to the service. This assessment shall assess immediate service, health, and safety needs, and at a minimum include the individual's:

1. Diagnosis;
2. Presenting needs including the individual's stated needs, psychiatric needs, support needs, and the onset and duration of problems;
3. Current medical problems;
4. Current medications;
5. Current and past substance use or abuse, including co-occurring mental health and substance abuse disorders; and
6. At-risk behavior to self and others.

F. A comprehensive assessment shall update and finalize the initial assessment. The timing for completion of the comprehensive assessment shall be based upon the nature and scope of the service but shall occur no later than 30 days, after admission for providers of mental health and substance abuse services and 60 days after admission for providers of ~~mental retardation (intellectual disability) and developmental disabilities~~ services. It shall address:

1. Onset and duration of problems;
2. Social, behavioral, developmental, and family history and supports;
3. Cognitive functioning including strengths and weaknesses;
4. Employment, vocational, and educational background;
5. Previous interventions and outcomes;
6. Financial resources and benefits;
7. Health history and current medical care needs, to include:
 - a. Allergies;
 - b. Recent physical complaints and medical conditions;
 - c. Nutritional needs;
 - d. Chronic conditions;
 - e. Communicable diseases;
 - f. Restrictions on physical activities if any;

g. Restrictive protocols or special supervision requirements;

h. Past serious illnesses, serious injuries, and hospitalizations;

~~h.~~ i. Serious illnesses and chronic conditions of the individual's parents, siblings, and significant others in the same household; and

~~h.~~ j. Current and past substance use including alcohol, prescription and nonprescription medications, and illicit drugs.

8. Psychiatric and substance use issues including current mental health or substance use needs, presence of co-occurring disorders, history of substance use or abuse, and circumstances that increase the individual's risk for mental health or substance use issues;

9. History of abuse, neglect, sexual, or domestic violence, or trauma including psychological trauma;

10. Legal status including authorized representative, commitment, and representative payee status;

11. Relevant criminal charges or convictions and probation or parole status;

12. Daily living skills;

13. Housing arrangements;

14. Ability to access services including transportation needs; and

15. As applicable, and in all residential services, fall risk, communication methods or needs, and mobility and adaptive equipment needs.

G. Providers of short-term intensive services including inpatient and crisis stabilization services shall develop policies for completing comprehensive assessments within the time frames appropriate for those services.

H. Providers of ~~non-intensive~~ nonintensive or short-term services shall meet the requirements for the initial assessment at a minimum. ~~Non-intensive~~ Nonintensive services are services provided in jails, nursing homes, or other locations when access to records and information is limited by the location and nature of the services. Short-term services typically are provided for less than 60 days.

I. Providers may utilize standardized state or federally sanctioned assessment tools that do not meet all the criteria of 12VAC35-105-650 as the initial or comprehensive assessment tools as long as the tools assess the individual's health and safety issues and substantially meet the requirements of this section.

J. Individuals who receive medication-only services shall be reassessed at least annually to determine whether there is a

change in the need for additional services and the effectiveness of the medication.

12VAC35-105-660. Individualized services plan (ISP).

A. The provider shall actively involve the individual and authorized representative, as appropriate, in the development, review, and revision of a person-centered ISP. The individualized services planning process shall be consistent with laws protecting confidentiality, privacy, human rights of individuals receiving services, and rights of minors.

B. The provider shall develop and implement an initial person-centered ISP for the first 60 days for ~~mental retardation (intellectual disability) and developmental disabilities~~ services or for the first 30 days for mental health and substance abuse services. This ISP shall be developed and implemented within 24 hours of admission to address immediate service, health, and safety needs and shall continue in effect until the ISP is developed or the individual is discharged, whichever comes first.

C. The provider shall implement a person-centered comprehensive ISP as soon as possible after admission based upon the nature and scope of services but no later than 30 days after admission for providers of mental health and substance abuse services and 60 days after admission for providers of ~~mental retardation (intellectual disability) and developmental disabilities~~ services.

D. The initial ISP and the comprehensive ISP shall be developed based on the respective assessment with the participation and informed choice of the individual receiving services.

[1.] To ensure the individual's participation and informed choice, the [provider following] shall [~~explain~~ be explained] to the individual or the individual's authorized representative, as applicable, in a reasonable and comprehensible manner [:

~~the~~ a. The] proposed services to be delivered [;:

b. Any] alternative services that might be advantageous for the individual [;:] and

[c. Any] accompanying risks or benefits [of the proposed and alternative services], [~~The provider shall clearly document that the individual's information was explained to the individual or the individual's authorized representative and the reasons the individual or the individual's authorized representative chose the option included in the ISP.~~

2. If no alternative services are available to the individual, it shall be clearly documented within the ISP, or within documentation attached to the ISP, that alternative services were not available as well as any steps taken to identify if alternative services were available.

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3. Whenever there is a change to an individual's ISP, it shall be clearly documented within the ISP, or within documentation attached to the ISP that:

a. The individual participated in the development of or revision to the ISP;

b. The proposed and alternative services and their respective risks and benefits were explained to the individual or the individual's authorized representative, and;

c. The reasons the individual or the individual's authorized representative chose the option included in the ISP.]

12VAC35-105-665. ISP requirements.

A. The comprehensive ISP shall be based on the individual's needs, strengths, abilities, personal preferences, goals, and natural supports identified in the assessment. The ISP shall include:

1. Relevant and attainable goals, measurable objectives, and specific strategies for addressing each need;
2. Services and supports and frequency of services required to accomplish the goals including relevant psychological, mental health, substance abuse, behavioral, medical, rehabilitation, training, and nursing needs and supports;
3. The role of the individual and others in implementing the service plan;
4. A communication plan for individuals with communication barriers, including language barriers;
5. A behavioral support or treatment plan, if applicable;
6. A safety plan that addresses identified risks to the individual or to others, including a fall risk plan;
7. A crisis or relapse plan, if applicable;
8. Target dates for accomplishment of goals and objectives;
9. Identification of employees or contractors responsible for coordination and integration of services, including employees of other agencies; ~~and~~
10. Recovery plans, if applicable; and
11. Services the individual elects to self direct, if applicable.

B. The ISP shall be signed and dated at a minimum by the person responsible for implementing the plan and the individual receiving services or the authorized representative in order to document agreement. If the signature of the individual receiving services or the authorized representative cannot be obtained, the provider shall document ~~his attempt~~ attempts to obtain the necessary signature and the reason why

he was unable to obtain it. The ISP shall be distributed to the individual and others authorized to receive it.

C. The provider shall designate a person who ~~will~~ shall be responsible for developing, implementing, reviewing, and revising each individual's ISP in collaboration with the individual or authorized representative, as appropriate.

D. Employees or contractors who are responsible for implementing the ISP shall demonstrate a working knowledge of the objectives and strategies contained in the individual's current ISP [, including an individual's detailed health and safety protocols].

E. Providers of short-term intensive services such as inpatient and crisis ~~stabilization~~ services that are typically provided for less than 30 days shall implement a policy to develop an ISP within a timeframe consistent with the length of stay of individuals.

~~F. The ISP shall be consistent with the plan of care for individuals served by the IFDDS Waiver.~~ G. When a provider provides more than one service to an individual the provider may maintain a single ISP document that contains individualized objectives and strategies for each service provided.

~~H. G.~~ Whenever possible the identified goals in the ISP shall be written in the words of the individual receiving services.

12VAC35-105-675. Reassessments and ISP reviews.

A. Reassessments shall be completed at least annually and ~~when~~ any time there is a need based on changes in the medical, psychiatric, ~~or~~ behavioral, or other status of the individual.

B. Providers shall complete changes to the ISP as a result of the assessments.

C. The provider shall update the ISP at least annually and any time assessments identify risks, injuries, needs, or a change in status of the individual.

D. The provider shall review the ISP at least every three months from the date of the implementation of the ISP or whenever there is a revised assessment based upon the individual's changing needs or goals.

1. These reviews shall evaluate the individual's progress toward meeting the ~~plan's~~ ISP's goals and objectives and the continued relevance of the ISP's objectives and strategies. The provider shall update the goals, objectives, and strategies contained in the ISP, if indicated, and implement any updates made.

2. These reviews shall document evidence of progression toward or achievement of a specific targeted outcome for each goal and objective.

3. For goals and objectives that were not accomplished by the identified target date, the provider and any appropriate

treatment team members shall meet to review the reasons for lack of progress and provide the individual an opportunity to make an informed choice of how to proceed.

Article 6
Behavior Interventions

12VAC35-105-691. Transition of individuals among service.

A. The provider shall implement written procedures that define the process for transitioning an individual between or among services operated by the provider. At a minimum the policy shall address:

1. The process by which the provider will assure continuity of services during and following transition;
2. The participation of the individual or his authorized representative, as applicable, in the decision to move and in the planning for transfer;
3. The process and timeframe for transferring the access to individual's record and ISP to the destination location;
4. The process and timeframe for completing the transfer summary; and
5. The process and timeframe for transmitting or accessing, where applicable, discharge summaries to the destination service.

B. The transfer summary shall include at a minimum the following:

1. Reason for the individual's transfer;
2. Documentation of ~~involvement~~ informed choice by the individual or his authorized representative, as applicable, in the decision to and planning for the transfer;
3. Current psychiatric and known medical conditions or issues of the individual and the identity of the individual's health care providers;
4. Updated progress of the individual in meeting goals and objectives in his ISP;
5. Emergency medical information;
6. Dosages of all currently prescribed medications and over-the-counter medications used by the individual when prescribed by the provider or known by the case manager;
7. Transfer date; and
8. Signature of employee or contractor responsible for preparing the transfer summary.

C. The transfer summary may be documented in the individual's progress notes or in information easily accessible within an electronic health record.

12VAC35-105-800. Policies and procedures on behavior interventions and supports.

A. The provider shall implement written policies and procedures that describe the use of behavior interventions, including seclusion, restraint, and time out. The policies and procedures shall:

1. Be consistent with applicable federal and state laws and regulations;
2. Emphasize positive approaches to behavior interventions;
3. List and define behavior interventions in the order of their relative degree of intrusiveness or restrictiveness and the conditions under which they may be used in each service for each individual;
4. Protect the safety and well-being of the individual at all times, including during fire and other emergencies;
5. Specify the mechanism for monitoring the use of behavior interventions; and
6. Specify the methods for documenting the use of behavior interventions.

B. Employees and contractors trained in behavior support interventions shall implement and monitor all behavior interventions.

C. Policies and procedures related to behavior interventions shall be available to individuals, their families, authorized representatives, and advocates. Notification of policies does not need to occur in correctional facilities.

D. Individuals receiving services shall not discipline, restrain, seclude, or implement behavior interventions on other individuals receiving services.

E. Injuries resulting from or occurring during the implementation of ~~behavior interventions~~ seclusion or restraint shall be ~~recorded in the individual's services record and reported to the assigned human rights advocate and the employee or contractor responsible for the overall coordination of services~~ department as provided in 12VAC35-115-230 C.

12VAC35-105-830. Seclusion, restraint, and time out.

A. The use of seclusion, restraint, and time out shall comply with applicable federal and state laws and regulations and be consistent with the provider's policies and procedures.

B. Devices used for mechanical restraint shall be designed specifically for emergency behavior management of human beings in clinical or therapeutic programs.

Regulations

C. Application of time out, seclusion, or restraint shall be documented in the individual's record and include the following:

1. Physician's order for seclusion or mechanical restraint or chemical restraint;
2. Date and time;
3. Employees or contractors involved;
4. Circumstances and reasons for use including other emergency behavior management techniques attempted;
5. Duration;
6. Type of technique used; and
7. Outcomes, including documentation of debriefing of the individual and staff involved following the incident.

Article 3

Services in Department of Corrections Correctional Facilities

12VAC35-105-1140. Clinical and security coordination.

A. The provider shall have formal and informal methods of resolving procedural and programmatic issues regarding individual care arising between the clinical and security employees or contractors.

B. The provider shall demonstrate ongoing communication between clinical and security employees to ensure individual care.

C. The provider shall provide cross-training for the clinical and security employees or contractors that includes:

1. Mental health, ~~mental retardation (intellectual disability)~~ developmental disability, and substance abuse education;
2. Use of clinical and security restraints; and
3. Channels of communication.

D. Employees or contractors shall receive periodic in-service training, and have knowledge of and be able to demonstrate the appropriate use of clinical and security restraint.

E. Security and behavioral assessments shall be completed at the time of admission to determine service eligibility and at least weekly for the safety of individuals, other persons, employees, and visitors.

F. Personal grooming and care services for individuals shall be a cooperative effort between the clinical and security employees or contractors.

G. Clinical needs and security level shall be considered when arrangements are made regarding privacy for individual contact with family and attorneys.

H. Living quarters shall be assigned on the basis of the individual's security level and clinical needs.

I. An assessment of the individual's clinical condition and needs shall be made when disciplinary action or restrictions are required for infractions of security measures.

J. Clinical services consistent with the individual's condition and plan of treatment shall be provided when security detention or isolation is imposed.

12VAC35-105-1245. Case management direct assessments.

Case managers shall meet with each individual face-to-face as dictated by the individual's needs. At face-to-face meetings, the case manager shall (i) observe and assess for any previously unidentified risks, injuries, needs, or other changes in status; (ii) assess the status of previously identified risks, injuries, or needs, or other changes in status; (iii) assess whether the individual's service plan is being implemented appropriately and remains appropriate for the individual; and (iv) assess whether supports and services are being implemented consistent with the individual's strengths and preferences and in the most integrated setting appropriate to the individual's needs.

12VAC35-105-1250. Qualifications of case management employees or contractors.

A. Employees or contractors providing case management services shall have knowledge of:

1. Services and systems available in the community including primary health care, support services, eligibility criteria and intake processes and generic community resources;
2. The nature of serious mental illness, ~~mental retardation (intellectual disability)~~ developmental disability, substance abuse (substance use disorders), or co-occurring disorders depending on the individuals ~~serve~~ receiving services, including clinical and developmental issues;
3. Different types of assessments, including functional assessment, 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. Types of mental health, developmental, and substance abuse programs available in the locality;
6. The service planning process and major components of a service plan;
7. The use of medications in the care or treatment of the population served; and
8. All applicable federal and state laws and regulations and local ordinances.

B. Employees or contractors providing case management services shall 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 service plans;
3. Identifying and documenting how resources, services, and natural supports such as family can be utilized to promote achievement of an individual's personal habilitative or rehabilitative and life goals; and
4. Coordinating the provision of services by diverse public and private providers.

C. Employees or contractors providing case management services shall 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.

D. Case managers serving individuals with developmental disability shall complete the DBHDS core competency-based curriculum within 30 days of hire.

Article 7

Intensive Community Treatment and Program of Assertive Community Treatment Services

12VAC35-105-1360. Admission and discharge criteria.

A. Individuals must meet the following admission criteria:

1. Diagnosis of a severe and persistent mental illness, predominantly schizophrenia, other psychotic disorder, or bipolar disorder that seriously impairs functioning in the community. Individuals with a sole diagnosis of substance addiction or abuse or ~~mental retardation (intellectual disability)~~ developmental disability are not eligible for services.
2. Significant challenges to community integration without intensive community support including persistent or recurrent difficulty with one or more of the following:
 - a. Performing practical daily living tasks;
 - b. Maintaining employment at a self-sustaining level or consistently carrying out homemaker roles; or
 - c. Maintaining a safe living situation.
3. High service needs indicated due to one or more of the following:
 - a. Residence in a state hospital or other psychiatric hospital but clinically assessed to be able to live in a

more independent situation if intensive services were provided or anticipated to require extended hospitalization, if more intensive services are not available;

- b. Multiple admissions to or at least one recent long-term stay (30 days or more) in a state hospital or other acute psychiatric hospital inpatient setting within the past two years; or a recent history of more than four interventions by psychiatric emergency services per year;
- c. Persistent or very recurrent severe major symptoms (e.g., affective, psychotic, suicidal);
- d. Co-occurring substance addiction or abuse of significant duration (e.g., greater than six months);
- e. High risk or a recent history (within the past six months) of criminal justice involvement (e.g., arrest or incarceration);
- f. Ongoing difficulty meeting basic survival needs or residing in substandard housing, homeless, or at imminent risk of becoming homeless; or
- g. Inability to consistently participate in traditional office-based services.

B. Individuals receiving PACT or ICT services should not be discharged for failure to comply with treatment plans or other expectations of the provider, except in certain circumstances as outlined. Individuals must meet at least one of the following criteria to be discharged:

1. Change in the individual's residence to a location out of the service area;
2. Death of the individual;
3. Incarceration of the individual for a period to exceed a year or ~~long-term~~ long-term hospitalization (more than one year); however, the provider is expected to prioritize these individuals for PACT or ICT services upon ~~their~~ the individual's anticipated return to the community if the individual wishes to return to services and the service level is appropriate to his needs;
4. Choice of the individual with the provider responsible for revising the ISP to meet any concerns of the individual leading to the choice of discharge; or
5. Significant sustained recovery by the individual in all major role areas with minimal team contact and support for at least two years as determined by both the individual and ICT or PACT team.

VA.R. Doc. No. R18-4381; Filed May 28, 2020, 5:08 p.m.



Regulations

TITLE 14. INSURANCE

STATE CORPORATION COMMISSION

Final Regulation

REGISTRAR'S NOTICE: Pursuant to 1VAC7-10-60, the Registrar of Regulations is updating certain regulations of the State Corporation Commission to correct an invalid web address in the Virginia Administrative Code.

Title of Regulation: 14VAC5-200. Rules Governing Long-Term Care Insurance (amending 14VAC5-200-75).

Effective Date: June 22, 2020.

Contact Information: Bob Grissom, Chief Insurance Market Examiner, Bureau of Insurance, State Corporation Commission, 1300 East Broad Street, Richmond, VA 23219, telephone (804) 371-9152, or email bob.grissom@scc.virginia.gov.

Summary:

The Virginia Bureau of Insurance's webpage address for public access to insurance premium rate filings is being changed to <https://scc.virginia.gov/boi/SERFFInquiry/LtcFilings.aspx>.

VA.R. Doc. No. R20-6331; Filed June 1, 2020, 1:03 p.m.

Basis: Virginia Board of Accountancy (VBOA) regulations are promulgated under the general authority of § 54.1-4403 of the Code of Virginia, which gives the board the power and duty to promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) as necessary to ensure continued competency, to prevent deceptive or misleading practices by licensees, and to effectively administer the regulatory system.

Purpose: The VBOA regularly receives informal and formal feedback about the agency's processes and rules. Feedback received includes concerns that the regulations are confusing. By simplifying the language where possible and making minor changes where appropriate, the proposed amendments should make the regulations more easily understandable. This includes making word choice and phrasing more consistent throughout the regulations so that the public and certified public accountants (CPAs) should be better able to understand the statutes and regulations associated with the VBOA.

Substance: Simple corrections or additions to the language are made for the purpose of clarity and consistency in 18VAC5-22-40, 18VAC5-22-50, and 18VAC-5-22-70.

Reporting requirements are clarified as well as added to 18VAC5-22-170; renewal requirements from 18VAC5-22-170 are moved into 18VAC5-22-180, and initial and reinstatement licensure provisions are clarified.

Three subsections of 18VAC5-22-90 are being moved to create new section 18VAC5-22-91, Documentation of continuing professional education. The language remaining in 18VAC5-22-90 is amended for clarification purposes.

Issues: The major advantage of the proposed amendments is that the regulation should be more clearly understood by the public, CPAs, and CPA applicants. Another advantage is that by requiring the disclosure of disciplinary sanctions against CPAs and CPA firms within 30 calendar days (18VAC5-22-170), the public will be better protected and more informed when seeking services from a CPA or a CPA firm. In addition, the section regarding the annual renewal of licenses (18VAC5-22-180) is greatly reduced and provides further clarification for renewal dates, particularly for new and recent licensees.

There are no known disadvantages to the public or businesses or for the agency or Commonwealth.

Periodic Review and Small Business Impact Review Report of Findings: This fast-track regulatory action serves as the report of the findings of the regulatory review pursuant to § 2.2-4007.1 of the Code of Virginia.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Accountancy (Board) proposes to require that

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF ACCOUNTANCY

Proposed Regulation

Title of Regulation: 18VAC5-22. Board of Accountancy Regulations (amending 18VAC5-22-20, 18VAC5-22-40, 18VAC5-22-50, 18VAC5-22-70, 18VAC5-22-90, 18VAC5-22-120, 18VAC5-22-170, 18VAC5-22-180; adding 18VAC5-22-91).

Statutory Authority: §§ 54.1-4402 and 54.1-4403 of the Code of Virginia.

Public Hearing Information:

August 4, 2020 - 10 a.m. - 9960 Mayland Drive, Second Floor Conference Center, Henrico, Virginia 23233

Public Comment Deadline: August 21, 2020.

Agency Contact: Nancy Glynn, Executive Director, Board of Accountancy, 9960 Mayland Drive, Suite 402, Richmond, VA 23233, telephone (804) 367-8540, FAX (804) 527-4409, TTY (804) 367-9753, or email nancy.glynn@boa.virginia.gov.

certified public accountant (CPA) licensees notify the Board within 30 days of 1) any administrative disciplinary action that the licensee is the subject of or party to before any court, agency of the state or federal government, branch of the U.S. armed forces, or before the American Institute of Certified Public Accountants, the Virginia Society of Certified Public Accountants or their successors, 2) any conviction concerning a felony or misdemeanor, regardless of whether sentence is imposed, suspended, or executed, 3) any guilty plea or plea of nolo contendere, 4) any final judgment rendered against the holder in a civil court of law, or 5) any receipt of a peer review report or a Public Company Accounting Oversight Board firm inspection report containing criticisms of or identifying potential defects in the firm's quality control systems. The Board also proposes to: a) have licensure applications expire after six years, b) have licenses that start on or after March 1 not expire until June 30 of the following year, c) add current guidance document text on continuing professional education (CPE) to the regulation, and d) add clarifying text.

Background. The items the Board proposes to require licensees to report within 30 days are currently asked to be self-reported in various combinations when the following forms are filled out: exam application, license application, license renewal, and license reinstatement. The current regulation does not ask for such self-reporting outside of the forms.

There is no current expiration date on licensure applications. Under the current regulation, all licenses expire on June 30, regardless of when they start.

Estimated Benefits and Costs. According to Board staff, the Board would use the information required to be reported within 30 days to make decisions on discipline. To the extent this proposed requirement is complied with,¹ this would allow the Board to receive relevant information considerably sooner.

Currently, the information is not requested before annual license renewal. Appropriate discipline to help protect the public could be meted out potentially several months sooner than without the proposed requirement.

The Board's website has a CPA Licensure Lookup feature.² Members of the public considering hiring a CPA can check licensure status and any discipline received for CPAs being considered for hire. Since as described the proposal to report information within 30 days would likely result in discipline occurring considerably sooner, that information would also be recorded in CPA Licensure Lookup sooner. This would allow consumers to be better informed in considering potential CPAs to hire.

According to Board staff, under the current regulation an applicant can submit an application for licensure before having completed all requirements for licensure. The Board's

proposal to have licensure applications expire after six years, and thus require that a new application be submitted, would effectively allow the Board to require that the applicant demonstrate continued competence. To the extent that objective is achieved, this would be beneficial for the public, though costly for the applicant who would have to pay another application fee (currently \$75) and perhaps complete additional activities or courses to demonstrate continued competence.

Under the current regulation, by having all licenses expire on June 30 regardless of when they start, some new licenses are very short in duration and are not prorated. The proposal to have licenses that start on or after March 1 not expire until June 30 of the following year is substantially beneficial for affected CPAs.

Businesses and Other Entities Affected. The proposed amendments affect the 30,000 CPAs³ in the Commonwealth, as well as CPA licensure applicants. Since adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits of the proposal exceed the costs for all entities combined, adverse impact is indicated for this action because costs would increase for those applicants whose application for licensure expires after six years and who chose to submit a new application and pay the corresponding fees and demonstrate continued competence as instructed by the Board. Data are not available to indicate the number of persons who may be affected in this way.

Small Businesses⁴ Affected: The proposed amendments do not appear to directly affect small businesses.

Localities⁵ Affected.⁶ 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 affect total employment.

Effects on the Use and Value of Private Property. The proposed amendments do not substantially affect private property, and do not affect real estate development costs.

¹The incentive to not report negative information may be countered by fines or harsher discipline than otherwise would be meted if found out by non-reported means after 30 days.

²See <https://secure1.boa.virginia.gov/Verification/>

³Approximate figures provided by the Board.

⁴Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million."

⁵"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.

Regulations

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

Agency's Response to Economic Impact Analysis: The Virginia Board of Accountancy (VBOA) concurs with the proposed regulation to report disciplinary sanctions within 30 days of the event, appropriate disciplinary action could be pursued sooner, helping to protect the public. The VBOA also concurs with the positive effects this would have with regard to the Certified Public Accountant (CPA) Licensure Lookup feature.

The VBOA concurs that the proposal to have licensure applications expire after six years helps protect the public by ensuring the continued competence of the applicant. Although the additional application fee and potential additional activities to ensure compliance would be an increased cost to the applicant, the VBOA does not often encounter renewed efforts to seek licensure from applications who have reached this expiration mark.

The VBOA concurs that the proposal to adjust the window for future license renewal from newly established licensees is substantially beneficial to affected CPAs.

As the economic impact analysis states, the only adverse impact is for individuals whose application for licensure expires after six years and who wish to continue to pursue the license application at that point. The proposed regulation, however, should help to protect the public by ensuring continued competence. This is in line with the VBOA mission, which is to protect the citizens of the Commonwealth through a regulatory program of licensure and compliance of CPAs and CPA firms.

Summary:

As the result of a periodic review, the proposed amendments require that certified public accountant (CPA) licensees notify the board within 30 days of (i) any administrative disciplinary action that the licensee is the subject of or party to before any court, agency of the state or federal government, branch of the United States armed forces, or before the American Institute of Certified Public Accountants, the Virginia Society of Certified Public Accountants, or their successors; (ii) any conviction concerning a felony or misdemeanor, regardless of whether sentence is imposed, suspended, or executed; (iii) any guilty plea or plea of nolo contendere; (iv) any final judgment rendered against the holder in a civil court of law; or (v) any receipt of a peer review report or a Public Company Accounting Oversight Board firm inspection report containing criticisms of or identifying potential defects in the firm's quality control systems.

In addition to clarifying text and reorganizing text, the proposed amendments also require licensure applications expire after six years, allow licenses that start on or after March 1 to expire June 30 of the following year, and add

continuing professional education requirements that had formerly been only in guidance.

18VAC5-22-20. Fees.

A. The board shall charge the following fees for services it provides:

Processing an initial application to take one or more sections of the CPA examination	\$120
Processing additional applications to take one or more sections of the CPA examination	\$20
Processing an application for issuance of a Virginia license to a person	\$75
Processing an application for issuance of a Virginia license to a firm	\$100
Processing an application for the timely renewal of a person's Virginia license except as provided in subsection B of 18VAC5-22-180	\$60
Processing an application for the timely renewal of a firm's Virginia license except as provided in subsection B of 18VAC5-22-180	\$75
Additional fee for processing an application for the renewal of a person's Virginia license that is not timely	\$100
Additional fee for processing an application for the renewal of a firm's Virginia license that is not timely	\$100
Processing an application for reinstatement of a person's Virginia license	\$350
Processing an application for reinstatement of a firm's Virginia license	\$500
Processing an application for lifting the suspension of the privilege of using the CPA title in Virginia	\$350
Processing an application for lifting the suspension of the privilege of providing attest services, compilation services, or financial statement preparation services for persons or entities located in Virginia	\$500
Providing or obtaining information about a person's grades on sections of the CPA examination	\$25
Processing requests for verification that a person or firm holds a Virginia license:	
1. Online request	\$25
2. Manual request	\$50

Providing an additional CPA wall certificate	\$25
Additional fee for not responding within 30 calendar days to any request for information by the board under subsection A of 18VAC5-22-170	\$100
Additional fee for not using the online payment option for any service provided by the board	\$25

B. All fees for services the board provides are due when the service is requested and are nonrefundable.

C. Any original application for a CPA license in Virginia will expire six years from the original application date, and a new application with the corresponding fees and requirements will need to be submitted.

18VAC5-22-40. Determining whether a person who holds a Virginia license is providing services to the public using the CPA title or to or on behalf of an employer using the CPA title.

For the purpose of determining whether a person who holds a Virginia license is providing services to the public or to or on behalf of an employer, those terms are to be defined in accordance with § 54.1-4400 of the Code of Virginia.

18VAC5-22-50. Determining whether the principal place of business of a person or of a firm is in Virginia.

Complying with subdivision A 1 of § 54.1-4409.1, subsection B of § 54.1-4411, or subsection B of § 54.1-4412.1 of the Code of Virginia requires the person or firm to use reasonable judgment in determining whether Virginia is the principal place of business in which:

1. The person provides services to the public; or
2. The firm provides attest services, ~~or~~ compilation services, or financial statement preparation services.

The determination shall be reasonable considering the facts and circumstances and can be based on quantitative or qualitative assessments. The determination shall be reconsidered for changes in facts and circumstances that are not temporary.

18VAC5-22-70. Education.

A. In order for a person to take the CPA examination through Virginia, he must have obtained from one or more accredited institutions at least 120 semester hours of education, a baccalaureate or higher degree, and an accounting concentration or equivalent prior to taking any part of the CPA examination.

B. For the purpose of complying with subsection A of this section and with subdivision A 1 a of § 54.1-4409.2 of the Code of Virginia, obtaining an accounting concentration or equivalent requires obtaining at a minimum:

1. 24 semester hours of accounting courses, ~~including that must include~~ courses in auditing, financial accounting, management accounting, and taxation; and
2. 24 semester hours of business courses, no more than six semester hours of which could be considered accounting courses.

Principles or introductory accounting courses cannot be considered in determining whether a person has obtained the 48 minimum number of semester hours required for an accounting concentration or equivalent.

18VAC5-22-90. Continuing professional education.

A. If during the current calendar year a person holds a Virginia license and has not been granted an exemption from meeting continuing professional education requirements by the board pursuant to subsection C of this section, he shall have obtained at least 120 hours of continuing professional education during the three-calendar-year period ending with the current calendar year. For each of the calendar years in that period, he shall have obtained at least 20 hours of continuing professional education, including an ethics course of at least two hours, which conforms to the requirements prescribed by the board. If a person holds an active license in another state and his principal place of business is not located in Virginia and:

1. ~~If the person also holds the license of another state and Virginia is not his principal place of business, the ethics course taken to comply with this subsection either shall conform with the requirements prescribed by the board or shall be an ethics course acceptable to the board of accountancy of another state in which the person holds a license. The other state has a continuing professional education requirement for ethics, he is eligible for an exemption from meeting the continuing professional education requirements of Virginia if he meets the continuing professional education requirements in the other state in which he holds an active license, or~~
2. ~~Otherwise, the ethics course shall conform to the requirements~~ The other state does not have a continuing professional education requirement for ethics, he is eligible for an exemption from meeting the continuing professional education requirements of Virginia if he meets the continuing professional education requirements in the other state in which he holds an active license and in addition he meets the continuing professional education requirement for ethics in Virginia as prescribed by the board.

B. If during the current calendar year a person who holds a Virginia license provided services to the public or to or on behalf of an employer, ~~has not been granted an exemption by the board pursuant to subsection C of this section, and did not hold a Virginia license or the license of another state during one or both of the two preceding calendar years, he shall~~

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determine whether he has complied with the requirements of subsection A of this section as follows:

1. If the person became licensed during the current calendar year, he shall be considered to have met the requirements of subsection A of this section for the three-calendar-year period ending with the current calendar year.
2. If the person became licensed during the preceding calendar year, he shall be considered to have met the requirements of the subsection for the three-calendar-year period ending with the current calendar year if during the current calendar year he obtained at least the minimum number of hours of continuing professional education required by subsection A of this section for the current calendar year, including an ethics course of at least two hours.
3. If the person became licensed during the calendar year prior to the preceding calendar year, he shall be considered to have met the requirements of the subsection for the three-calendar-year period ending with the current calendar year if during the current calendar year and the preceding calendar year he obtained at least the minimum number of hours of continuing professional education required by subsection A of this section for each of the years, including for each year an ethics course of at least two hours.

C. ~~If during the current calendar year a person who holds a Virginia license did not provide services to the public or to or on behalf of an employer, including on a volunteer basis, and has demonstrated to the board that he does not provide those services, he is not required to have obtained meet the continuing professional education requirements during the three-calendar-year period ending with the current calendar year for which the exemption was granted.~~ Any person who holds a Virginia license to whom an exemption has been granted shall annually affirm and certify to the board his continued eligibility for the exemption ~~in that he does not provide services to the public or to or on behalf of an employer.~~ However, in order to begin providing ~~those services to the public or to or on behalf of an employer, including on a volunteer basis:~~

1. He is required to have obtained at least 120 hours of continuing professional education prior to providing ~~the~~ services, including an ethics course of at least two hours.
2. The ethics course shall conform to the requirements prescribed by the board for the calendar year in which the person begins providing ~~the~~ services.

Continuing professional education obtained during the three calendar years prior to the current calendar year and from the start of the current calendar year to when he begins providing the services shall be considered in determining whether the person has complied with the requirements of this subsection.

D. If a person who has not held the license of any state applies for a Virginia license within the same calendar year in which he passes the CPA examination, he does not need to obtain continuing professional education for that calendar year. If a person who has not held the license of any state applies for a Virginia license after the end of the calendar year in which he passes the CPA examination, he shall obtain continuing professional education prior to applying for the license, including an ethics course of at least two hours.

1. The required minimum number of hours of continuing professional education shall be 40, 80, or 120 depending on whether he applies for the Virginia license by the end of the first calendar year after the calendar year in which he passes the CPA examination, by the end of the second calendar year, or later.
2. The ethics course shall conform to the requirements prescribed by the board for the calendar year in which the person applies for the license.

Continuing professional education obtained subsequent to passing the CPA examination but during the three calendar years prior to the calendar year in which the person applies for the license and from the start of that calendar year to when he applies for the license shall be considered in determining whether he has complied with this requirement.

~~E. Continuing professional education acceptable to the board may be obtained through a variety of forums, provided there is a means of demonstrating that the education was obtained. The acceptable forums are:~~

- ~~1. Attending seminars and educational conferences, provided that the instructors have appropriate knowledge of the subject matter and use appropriate teaching materials and that attendance is monitored in a manner that can be verified by the board;~~
- ~~2. Taking courses at an accredited institution for credit;~~
- ~~3. Completing self study courses, provided there is a method for determining that the person met the learning objectives;~~
- ~~4. Making a presentation at a professional seminar, educational conference, or in a classroom setting, provided the person has appropriate knowledge of the subject matter and uses appropriate teaching materials;~~
- ~~5. Writing material that is relevant to providing services to or on behalf of an employer or to the public that is formally reviewed by an independent party and that is published in a book, magazine, or similar publication; and~~
- ~~6. Passing examinations and obtaining certifications that have been approved by the board.~~

~~Whether other forums are acceptable shall be determined by the board on a case by case basis.~~

~~F. In determining whether a person has obtained the required number of hours of continuing professional education:~~

- ~~1. Repeat presentations shall not be considered.~~
- ~~2. No more than 30 hours from preparing for and making presentations shall be considered during each three-calendar-year period.~~
- ~~3. One semester hour of credit for courses at an accredited institution constitutes 15 hours of continuing professional education, and one quarter-hour of credit constitutes 10 hours of continuing professional education.~~
- ~~4. Credit for examination and certification shall be awarded for the calendar year in which the examination was passed and certification was received. If passage of the examination and certification occur in different calendar years, credit shall be awarded for the calendar year in which the examination was passed. The board shall determine how many hours are credited per certification.~~
- ~~5. No more than 60 hours from examination and certification shall be considered during each three-calendar-year period.~~

~~G. Depending on the facts and circumstances, the board may waive all or part of the continuing professional education requirement for one or more calendar years or grant additional time for complying with the continuing professional education requirement, provided that the waiver or deferral is in the public interest.~~

18VAC5-22-91. Documentation of continuing professional education.

A. Continuing professional education acceptable to the board may be obtained through a variety of forums, provided there is a means of demonstrating that the education was obtained. The acceptable forums are:

1. Attending seminars and educational conferences, provided that the instructors have appropriate knowledge of the subject matter and use appropriate teaching materials and that attendance is monitored in a manner that can be verified by the board;
2. Completing courses at an accredited institution for credit;
3. Completing self-study courses, provided there is a method for determining that the person met the learning objectives;
4. Making a presentation at a professional seminar, educational conference, or in a classroom setting, provided the person has appropriate knowledge of the subject matter and uses appropriate teaching materials;
5. Writing material that is relevant to providing services to the public or to or on behalf of an employer that is formally

reviewed by an independent party and that is published in a book, magazine, or similar publication; and

6. Passing examinations and obtaining certifications that have been approved by the board.

Whether other forums are acceptable shall be determined by the board on a case-by-case basis.

B. In determining whether a person has obtained the required number of hours of continuing professional education:

1. Repeat presentations, examinations, and courses shall not be considered.

2. No more than 30 hours from preparing for and making presentations shall be considered during each three-calendar-year period.

3. One semester-hour of credit for courses at an accredited institution constitutes 15 hours of continuing professional education, and one quarter-hour of credit constitutes 10 hours of continuing professional education.

4. Credit for examination and certification shall be awarded for the calendar year in which the examination was passed and certification was received. If passage of the examination and certification occur in different calendar years, credit shall be awarded for the calendar year in which the examination was passed. The board shall determine how many hours are credited per certification.

5. No more than 60 hours from examination and certification shall be considered during each three-calendar-year period.

C. Depending on the facts and circumstances, the board may waive all or part of the continuing professional education requirement for one or more calendar years or grant additional time for complying with the continuing professional education requirement, provided that the waiver or deferral is in the public interest.

D. Evidence of satisfactory completion of the continuing professional education requirements shall include:

1. Certificates of completion or some other form of documentation from the continuing professional education sponsor, including the sponsor's name, participant's name, course or content name, date taken, and hours of continuing professional education earned;

2. Official transcripts of the college or university for earning course credit at an accredited college or university;

3. A syllabus or agenda and a signed statement from the sponsoring individual or sponsoring organization indicating the length of the presentation for making a presentation;

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4. A copy of the published article, book, written material, or other proof of publication for producing written material relevant to CPAs who provide services to the public or to or on behalf of an employer; or

5. In the case of exams and certifications that have been approved by the board, a letter from the administering organization that identifies the passage of the exam or the certification, the participant's name, and the date of passage or certification;

The board shall not accept receipts, registration confirmations, canceled checks, outlines, presentation slides, or sign-in sheets as valid evidence of satisfactory completion of the continuing professional education requirements. Whether other documentation is acceptable shall be determined by the board on a case-by-case basis.

E. A person who holds a Virginia license shall retain evidence of his satisfactory completion of the continuing professional education requirements for a period of four years preceding the current calendar year.

F. One continuing professional education hour is satisfied by 50 minutes of participation in a program of continuing professional education.

18VAC5-22-120. Supervision of firm personnel.

To comply with subdivision C 2 of § 54.1-4412.1 of the Code of Virginia, a person's work must be planned, supervised, and reviewed by a person who either (i) holds a an active Virginia license or (ii) holds the active license of another state and complies with the substantial equivalency provisions of § 54.1-4411 of the Code of Virginia.

18VAC5-22-170. Communication with the board.

A. Pursuant to § 54.1-4425 of the Code of Virginia, each licensee or applicant shall respond within 30 calendar days to any board request for information regarding compliance with any statutes or regulations pertaining to the board or any of the programs that may be in another title of the Code of Virginia for which the board has regulatory responsibility. When the requested response is not produced by the licensee or applicant within 30 calendar days, this nonproduction shall be deemed a violation of this rule, unless otherwise determined by the board.

B. Each holder of a Virginia license shall notify the board in writing within 30 calendar days of ~~any~~:

1. Any change in the holder's legal name or in the postal and electronic addresses where the person or firm may be reached;

2. Any administrative disciplinary action that the holder is the subject of or party to before any court, agency of the state or federal government, branch of the armed forces of the United States of America, or before the American Institute of Certified Public Accountants, the Virginia

Society of Certified Public Accountants, or their successors;

3. Any conviction concerning a felony or misdemeanor, regardless of whether sentence is imposed, suspended, or executed;

4. Any guilty plea or plea of nolo contendere;

5. Any final judgment rendered against the holder in a civil court of law; or

6. Any receipt of a peer review report or a PCAOB firm inspection report containing criticisms of or identifying potential defects in the firm's quality control systems.

~~C. The board shall transmit license renewal notices electronically unless a person or firm is unable to communicate electronically. The responsibility for renewing a Virginia license is on its holder, and that responsibility is not affected by whether the holder receives a license renewal notice. Upon the renewal, reinstatement of, or the application for a Virginia license each person or entity shall notify the board in writing if any of the sanctions in subsection B of this section have occurred.~~

18VAC5-22-180. Issuance, renewal, and reinstatement of licenses.

~~A. Any Virginia license issued, renewed, or reinstated on or after February 26, 2018, and on or before June 30, 2018, shall expire on June 30, 2019, and its holder shall pay the fee prescribed in 18VAC5-22-20 upon submission of a completed license application.~~

~~B. Any Virginia license expiring between July 31, 2018, and on or before March 31, 2019, that is renewed pursuant to this subsection shall expire on June 30, 2019. Any Virginia license expiring between April 30, 2019, and on or before May 31, 2019, that is renewed pursuant to this subsection shall expire on June 30, 2020.~~

~~1. A person who holds a Virginia license that expires between July 31, 2018, and May 31, 2019, shall pay a prorated renewal fee as prescribed in this subdivision upon submission of a completed license renewal application.~~

Current Expiration Date	Renewal Fee	Expiration Date Following Renewal
July 31, 2018	\$55	June 30, 2019
August 31, 2018	\$50	June 30, 2019
September 30, 2018	\$45	June 30, 2019
October 31, 2018	\$40	June 30, 2019

November 30, 2018	\$35	June 30, 2019
December 31, 2018	\$30	June 30, 2019
January 31, 2019	\$25	June 30, 2019
February 28, 2019	\$20	June 30, 2019
March 31, 2019	\$15	June 30, 2019
April 30, 2019	\$60	June 30, 2020
May 31, 2019	\$60	June 30, 2020

~~2. A firm that holds a Virginia license that expires between July 31, 2018, and May 31, 2019, shall pay a prorated renewal fee as prescribed in this subdivision upon submission of a completed license renewal application.~~

Current Expiration Date	Renewal Fee	Expiration Date Following Renewal
July 31, 2018	\$68	June 30, 2019
August 31, 2018	\$62	June 30, 2019
September 30, 2018	\$56	June 30, 2019
October 31, 2018	\$50	June 30, 2019
November 30, 2018	\$43	June 30, 2019
December 31, 2018	\$37	June 30, 2019
January 31, 2019	\$31	June 30, 2019
February 28, 2019	\$25	June 30, 2019
March 31, 2019	\$18	June 30, 2019
April 30, 2019	\$75	June 30, 2020
May 31, 2019	\$75	June 30, 2020

~~C. Any Virginia license issued or reinstated from July 1, 2018, to on or before March 31, 2019, shall expire on June 30, 2019, and its holder shall pay the fee prescribed in 18VAC5-22-20 upon submission of a completed license application. Beginning April 1, 2019, any Virginia license issued or reinstated during the months of April, May, or June shall expire on June 30 of the succeeding calendar year, and its holder shall pay the fee prescribed in 18VAC5-22-20 upon submission of a completed license application.~~

~~D. A. For Virginia licenses expiring on June 30, 2019, or later, the holder of a Virginia license shall annually renew his license on or before June 30 of each calendar year by submitting a completed license renewal application and paying to the board a renewal fee as prescribed in 18VAC5-22-20.~~

~~B. If a person or entity applies for an initial license or reinstatement on or after March 1 of a calendar year, the license will not expire until June 30 of the following calendar year.~~

~~C. The board shall transmit license renewal notices electronically unless a person or firm is unable to communicate electronically. The responsibility for renewing a Virginia license is on its holder, and that responsibility is not affected by whether the holder receives a license renewal notice.~~

VA.R. Doc. No. R19-5755; Filed May 28, 2020, 1:13 p.m.

BOARD OF NURSING

Final Regulation

Titles of Regulations: 18VAC90-30. Regulations Governing the Licensure of Nurse Practitioners (amending 18VAC90-30-10, 18VAC90-30-20, 18VAC90-30-50, 18VAC90-30-85, 18VAC90-30-110, 18VAC90-30-120; adding 18VAC90-30-86).

18VAC90-40. Regulations for Prescriptive Authority for Nurse Practitioners (amending 18VAC90-40-90).

Statutory Authority: §§ 54.1-2400 and 54.1-2957 of the Code of Virginia.

Effective Date: July 22, 2020.

Agency Contact: Jay P. Douglas, R.N., Executive Director, Board of Nursing, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4520, FAX (804) 527-4455, or email jay.douglas@dhp.virginia.gov.

Summary:

Pursuant to Chapter 776 of the 2018 Acts of Assembly, which permits a nurse practitioner who meets certain statutory requirements to practice without a practice agreement with a patient care team physician, the amendments set the qualifications for authorization for a nurse practitioner to practice without a practice agreement, including (i) the hours required to be the equivalent of five years of full-time clinical experience, (ii) the content of the attestation from the physician and the nurse practitioner, (iii) the submission of an attestation when the nurse practitioner is unable to obtain a physician attestation, (iv) the requirements for autonomous practice, and (v) the fee for authorization for autonomous practice.

Summary of Public Comments and Agency's Response: A summary of comments made by the public and the agency's

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response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

Part I General Provisions

18VAC90-30-10. Definitions.

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

"Approved program" means a nurse practitioner education program that is accredited by the Council on Accreditation of Nurse Anesthesia Educational Programs/Schools, American College of Nurse Midwives, Commission on Collegiate Nursing Education, or the National League for Nursing Accrediting Commission or is offered by a school of nursing or jointly offered by a school of medicine and a school of nursing that grant a graduate degree in nursing and ~~which that~~ hold a national accreditation acceptable to the boards.

"Autonomous practice" means practice in a category in which a nurse practitioner is certified and licensed without a written or electronic practice agreement with a patient care team physician in accordance with 18VAC90-30-86.

"Boards" means the Virginia Board of Nursing and the Virginia Board of Medicine.

"Certified nurse midwife" means an advanced practice registered nurse who is certified in the specialty of nurse midwifery and who is jointly licensed by the Boards of Medicine and Nursing as a nurse practitioner pursuant to § 54.1-2957 of the Code of Virginia.

"Certified registered nurse anesthetist" means an advanced practice registered nurse who is certified in the specialty of nurse anesthesia, who is jointly licensed by the Boards of Medicine and Nursing as a nurse practitioner pursuant to § 54.1-2957 of the Code of Virginia, and who practices under the supervision of a doctor of medicine, osteopathy, podiatry, or dentistry but is not subject to the practice agreement requirement described in § 54.1-2957.

"Collaboration" means the communication and decision-making process among members of a patient care team related to the treatment and care of a patient and includes (i) communication of data and information about the treatment and care of a patient, including exchange of clinical observations and assessments, and (ii) development of an appropriate plan of care, including decisions regarding the health care provided, accessing and assessment of appropriate additional resources or expertise, and arrangement of appropriate referrals, testing, or studies.

"Committee" means the Committee of the Joint Boards of Nursing and Medicine.

"Consultation" means the communicating of data and information, exchanging of clinical observations and

assessments, accessing and assessing of additional resources and expertise, problem solving, and arranging for referrals, testing, or studies.

"Licensed nurse practitioner" means an advanced practice registered nurse who has met the requirements for licensure as stated in Part II (18VAC90-30-60 et seq.) of this chapter.

"National certifying body" means a national organization that is accredited by an accrediting agency recognized by the U.S. Department of Education or deemed acceptable by the National Council of State Boards of Nursing and has as one of its purposes the certification of nurse anesthetists, nurse midwives, or nurse practitioners, referred to in this chapter as professional certification, and whose certification of such persons by examination is accepted by the committee.

"Patient care team physician" means a person who holds an active, unrestricted license issued by the Virginia Board of Medicine to practice medicine or osteopathic medicine.

"Practice agreement" means a written or electronic statement, jointly developed by the collaborating patient care team ~~physician(s)~~ physician and the licensed nurse ~~practitioner(s)~~ practitioner that describes the procedures to be followed and the acts appropriate to the specialty practice area to be performed by the licensed nurse ~~practitioner(s)~~ practitioner in the care and management of patients. The practice agreement also describes the prescriptive authority of the nurse practitioner, if applicable. For a nurse practitioner licensed in the category of certified nurse midwife, the practice agreement is a statement jointly developed with the consulting physician.

18VAC90-30-20. Delegation of authority.

A. The boards hereby delegate to the executive director of the Virginia Board of Nursing the authority to issue the initial licensure and the biennial renewal of such licensure to those persons who meet the requirements set forth in this chapter, to grant authorization for autonomous practice to those persons who have met the qualifications of 18VAC90-30-86, and to grant extensions or exemptions for compliance with continuing competency requirements as set forth in subsection E of 18VAC90-30-105. Questions of eligibility shall be referred to the Committee of the Joint Boards of Nursing and Medicine.

B. All records and files related to the licensure of nurse practitioners shall be maintained in the office of the Virginia Board of Nursing.

18VAC90-30-50. Fees.

A. Fees required in connection with the licensure of nurse practitioners are:

- | | |
|-------------------------------|-------|
| 1. Application | \$125 |
| 2. Biennial licensure renewal | \$80 |

3. Late renewal	\$25
4. Reinstatement of licensure	\$150
5. Verification of licensure to another jurisdiction	\$35
6. Duplicate license	\$15
7. Duplicate wall certificate	\$25
8. Handling fee for returned check or dishonored credit card or debit card	\$50
9. Reinstatement of suspended or revoked license	\$200
10. <u>Autonomous practice attestation</u>	<u>\$100</u>

B. For renewal of licensure from July 1, 2017, through June 30, 2019, the following fee shall be in effect:

Biennial renewal	\$60
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18VAC90-30-85. Qualifications for licensure by endorsement.

A. An applicant for licensure by endorsement as a nurse practitioner shall:

1. Provide verification of licensure as a nurse practitioner or advanced practice nurse in another U.S. United States jurisdiction with a license in good standing, or, if lapsed, eligible for reinstatement;
2. Submit evidence of professional certification that is consistent with the specialty area of the applicant's educational preparation issued by an agency accepted by the boards as identified in 18VAC90-30-90; and
3. Submit the required application and fee as prescribed in 18VAC90-30-50.

B. An applicant shall provide evidence that includes a transcript that shows successful completion of core coursework that prepares the applicant for licensure in the appropriate specialty.

C. An applicant for licensure by endorsement who is also seeking authorization for autonomous practice shall comply with subsection F of 18VAC90-30-86.

18VAC90-30-86. Autonomous practice for nurse practitioners other than certified nurse midwives or certified registered nurse anesthetists.

A. A nurse practitioner with a current, unrestricted license, other than someone licensed in the category of certified nurse midwife or certified registered nurse anesthetist, may qualify for autonomous practice by completion of the equivalent of five years of full-time clinical experience as a nurse practitioner.

1. Five years of full-time clinical experience shall be defined as 1,800 hours per year for a total of 9,000 hours.

2. Clinical experience shall be defined as the postgraduate delivery of health care directly to patients pursuant to a practice agreement with a patient care team physician.

B. Qualification for authorization for autonomous practice shall be determined upon submission of a fee as specified in 18VAC90-30-50 and an attestation acceptable to the boards. The attestation shall be signed by the nurse practitioner and the nurse practitioner's patient care team physician stating that:

1. The patient care team physician served as a patient care team physician on a patient care team with the nurse practitioner pursuant to a practice agreement meeting the requirements of this chapter and §§ 54.1-2957 and 54.1-2957.01 of the Code of Virginia;

2. While a party to such practice agreement, the patient care team physician routinely practiced with a patient population and in a practice area included within the category, as specified in 18VAC90-30-70, for which the nurse practitioner was certified and licensed; and

3. The period of time and hours of practice during which the patient care team physician practiced with the nurse practitioner under such a practice agreement.

C. The nurse practitioner may submit attestations from more than one patient care team physician with whom the nurse practitioner practiced during the equivalent of five years of practice, but all attestations shall be submitted to the boards at the same time.

D. If a nurse practitioner is licensed and certified in more than one category as specified in 18VAC90-30-70, a separate fee and attestation that meets the requirements of subsection B of this section shall be submitted for each category. If the hours of practice are applicable to the patient population and in practice areas included within each of the categories of licensure and certification, those hours may be counted toward a second attestation.

E. In the event a patient care team physician has died, become disabled, retired, or relocated to another state, or in the event of any other circumstance that inhibits the ability of the nurse practitioner from obtaining an attestation as specified in subsection B of this section, the nurse practitioner may submit other evidence of meeting the qualifications for autonomous practice along with an attestation signed by the nurse practitioner. Other evidence may include employment records, military service, Medicare or Medicaid reimbursement records, or other similar records that verify full-time clinical practice in the role of a nurse practitioner in the category for which the nurse practitioner is licensed and certified. The burden shall be on the nurse practitioner to provide sufficient evidence to support the nurse practitioner's

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inability to obtain an attestation from a patient care team physician.

F. A nurse practitioner to whom a license is issued by endorsement may engage in autonomous practice if such application includes an attestation acceptable to the boards that the nurse practitioner has completed the equivalent of five years of full-time clinical experience as specified in subsection A of this section and in accordance with the laws of the state in which the nurse practitioner was previously licensed.

G. A nurse practitioner authorized to practice autonomously shall:

1. Only practice within the scope of the nurse practitioner's clinical and professional training and limits of the nurse practitioner's knowledge and experience and consistent with the applicable standards of care;
2. Consult and collaborate with other health care providers based on the clinical conditions of the patient to whom health care is provided; and
3. Establish a plan for referral of complex medical cases and emergencies to physicians or other appropriate health care providers.

18VAC90-30-110. Reinstatement of license.

A. A licensed nurse practitioner whose license has lapsed may be reinstated within one renewal period by payment of the current renewal fee and the late renewal fee.

B. An applicant for reinstatement of license lapsed for more than one renewal period shall:

1. File the required application and reinstatement fee;
2. Be currently licensed as a registered nurse in Virginia or hold a current multistate licensure privilege as a registered nurse; and
3. Provide evidence of current professional competency consisting of:
 - a. Current professional certification by the appropriate certifying agency identified in 18VAC90-30-90;
 - b. Continuing education hours taken during the period in which the license was lapsed, equal to the number required for licensure renewal during that period, not to exceed 120 hours; or
 - c. If applicable, current, unrestricted licensure or certification in another jurisdiction.
4. If qualified for autonomous practice, provide the required fee and attestation in accordance with 18VAC90-30-86.

C. An applicant for reinstatement of license following suspension or revocation shall:

1. Petition for reinstatement and pay the reinstatement fee;
2. Present evidence that he is currently licensed as a registered nurse in Virginia or hold a current multistate licensure privilege as a registered nurse; and
3. Present evidence that he is competent to resume practice as a licensed nurse practitioner in Virginia to include:
 - a. Current professional certification by the appropriate certifying agency identified in 18VAC90-30-90; or
 - b. Continuing education hours taken during the period in which the license was suspended or revoked, equal to the number required for licensure renewal during that period, not to exceed 120 hours.

The committee shall act on the petition pursuant to the Administrative Process Act, (§ 2.2-4000 et seq. of the Code of Virginia).

Part III

Practice of Licensed Nurse Practitioners

18VAC90-30-120. Practice of licensed nurse practitioners other than certified registered nurse anesthetists or certified nurse midwives.

A. A nurse practitioner licensed in a category other than certified registered nurse anesthetist or certified nurse midwife shall be authorized to render care in collaboration and consultation with a licensed patient care team physician as part of a patient care team or if determined by the boards to qualify in accordance with 18VAC90-30-86, authorized to practice autonomously without a practice agreement with a patient care team physician.

B. The practice shall be based on specialty education preparation as an advanced practice registered nurse in accordance with standards of the applicable certifying organization, as identified in 18VAC90-30-90.

C. All nurse practitioners licensed in any category other than certified registered nurse anesthetist or certified nurse midwife shall practice in accordance with a written or electronic practice agreement as defined in 18VAC90-30-10 or in accordance with 18VAC90-30-86.

D. The written or electronic practice agreement shall include provisions for:

1. The periodic review of patient charts or electronic patient records by a patient care team physician and may include provisions for visits to the site where health care is delivered in the manner and at the frequency determined by the patient care team;
2. Appropriate physician input in complex clinical cases and patient emergencies and for referrals; and

3. The nurse practitioner's authority for signatures, certifications, stamps, verifications, affidavits, and endorsements provided it is:

- a. In accordance with the specialty license of the nurse practitioner and within the scope of practice of the patient care team physician;
- b. Permitted by § 54.1-2957.02 or applicable sections of the Code of Virginia; and
- c. Not in conflict with federal law or regulation.

E. The practice agreement shall be maintained by the nurse practitioner and provided to the boards upon request. For nurse practitioners providing care to patients within a hospital or health care system, the practice agreement may be included as part of documents delineating the nurse practitioner's clinical privileges or the electronic or written delineation of duties and responsibilities; however, the nurse practitioner shall be responsible for providing a copy to the boards upon request.

Part III
Practice Requirements

18VAC90-40-90. Practice agreement.

A. ~~With the exception of~~ exceptions listed in subsection E of this section, a nurse practitioner with prescriptive authority may prescribe only within the scope of the written or electronic practice agreement with a patient care team physician.

B. At any time there are changes in the patient care team physician, authorization to prescribe, or scope of practice, the nurse practitioner shall revise the practice agreement and maintain the revised agreement.

C. The practice agreement shall contain the following:

- 1. A description of the prescriptive authority of the nurse practitioner within the scope allowed by law and the practice of the nurse practitioner.
- 2. An authorization for categories of drugs and devices within the requirements of § 54.1-2957.01 of the Code of Virginia.
- 3. The signature of the patient care team physician who is practicing with the nurse practitioner or a clear statement of the name of the patient care team physician who has entered into the practice agreement.

D. In accordance with § 54.1-2957.01 of the Code of Virginia, a physician shall not serve as a patient care team physician to more than six nurse practitioners with prescriptive authority at any one time.

E. Exceptions.

- 1. A nurse practitioner licensed in the category of certified nurse midwife and holding a license for prescriptive

authority may prescribe in accordance with a written or electronic practice agreement with a consulting physician or may prescribe Schedule VI controlled substances without the requirement for inclusion of such prescriptive authority in a practice agreement.

2. A nurse practitioner who is licensed in a category other than certified nurse midwife or certified registered nurse anesthetist and who has met the qualifications for autonomous practice as set forth in 18VAC90-30-86 may prescribe without a practice agreement with a patient care team physician.

VA.R. Doc. No. R19-5512; Filed May 26, 2020; 3:56 p.m.

GOVERNOR

EXECUTIVE ORDER NUMBER SIXTY-FOUR (2020)

Declaration of a State of Emergency Due to Civil Unrest and Institution of a Curfew in the City of Richmond

Importance of the Issue

On this day, May 31, 2020, I declare that a state of emergency exists in the Commonwealth of Virginia due to past and potential future civil unrest that poses a danger to public safety. The Commonwealth of Virginia has experienced significant events in the past 48 hours that have required intervention to restore order, ensure the safety of protestors and the public, protect property, and provide additional resources to support our local and state partners. In the past 24 hours alone, there have been numerous instances of unlawful activity resulting in injuries to peaceful protestors and first responders, significant property damage, and continued escalation of violent events. Specific incidents include unlawful assemblies declared in the City of Richmond, Prince William County, and Roanoke, extensive property damage in the City of Richmond including the burning of two buildings, vehicle fires, debris and dumpster fires, vandalism, looting, and the damage to law enforcement vehicles.

The Commonwealth has a compelling interest to maintain peace and order in the face of escalating tension. The effects of this civil unrest constitute an emergency wherein human lives and public and private property are imperiled, as described in § 44-146.16 of the Code of Virginia (Code). Action is necessary to preserve life and property and to alleviate the conditions caused by this situation.

Therefore, by virtue of the authority vested in me by Article V of the Constitution of Virginia, by §§ 44-146.17 and 44-75.1 of the Code, and as Governor and Director of Emergency Management and Commander-in-Chief of the Commonwealth's armed forces, I proclaim that a state of emergency exists in the Commonwealth of Virginia. Accordingly, I direct state and local governments to render appropriate assistance to prepare for and respond to this situation, to alleviate any conditions resulting from the situation, and to implement recovery and mitigation operations and activities so as to return impacted areas to pre-event conditions as much as possible. Emergency services shall be conducted in accordance with § 44-146.13 et seq. of the Code.

In order to marshal all public resources and appropriate preparedness, response, and recovery measures, I order the following actions:

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

B. Activation of the Virginia Emergency Operations Center and the Virginia Emergency Support Team, as directed by the State Coordinator of Emergency Management, to coordinate the provision of assistance to state, local, and tribal governments and to facilitate emergency services assignments to other agencies.

C. Authorization for the heads of executive branch agencies, on behalf of their regulatory boards as appropriate, and with the concurrence of their Cabinet Secretary, to waive any state requirement or regulation, and enter into contracts without regard to normal procedures or formalities, and without regard to application or permit fees or royalties. All waivers issued by agencies shall be posted on their websites.

D. Activation of the Virginia National Guard to State Active Duty.

E. Authorization of a maximum of \$350,000 in state sum sufficient funds for state and local government mission assignments and state response and recovery operations authorized and coordinated through the Virginia Department of Emergency Management allowable by The Stafford Act, 42 USC § 5121 et seq. Included in this authorization is \$250,000 for the Department of Military Affairs.

Further, I declare that the City of Richmond shall be under a curfew between the hours of 8 p.m. and 6 a.m. beginning May 31, 2020, and ending June 3, 2020. Unless extended by further executive order, the curfew shall end at 6 a.m., June 3, 2020. While the curfew is in place no person shall be present on any street, road, alley, avenue, park, or other public place in the City of Richmond with the following exceptions:

- Persons traveling to and from home, work, or places of worship;
- Hospital personnel;
- Members of the press;
- State and City of Richmond employees and volunteers;
- Military personnel including but not limited to national guard troops;
- Private emergency medical transport workers;
- Persons seeking emergency services; and
- Other emergency workers

Nothing in this Order shall be construed to prohibit or restrict travel to a hospital in the event of a medical emergency, nor shall such travel be considered in violation of this Order.

Violation of this Order shall be a Class 1 misdemeanor pursuant to § 44-146.17 of the Code of Virginia.

Effective Date of this Executive Order

This Order shall be effective immediately and with the exception to the provisions instituting a curfew, shall remain

in full force and effect until June 29, 2020, unless amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia this 31st day of May, 2020.

/s/ Ralph S. Northam
Governor

AMENDED EXECUTIVE ORDER NUMBER SIXTY-FOUR (2020)

Declaration of a State of Emergency Due to Civil Unrest and Institution of a Curfew in the City of Richmond and the City of Virginia Beach

Importance of the Issue

On this day, May 31, 2020, I declare that a state of emergency exists in the Commonwealth of Virginia due to past and potential future civil unrest that poses a danger to public safety. The Commonwealth of Virginia has experienced significant events in the past 48 hours that have required intervention to restore order, ensure the safety of protestors and the public, protect property, and provide additional resources to support our local and state partners. In the past 24 hours alone, there have been numerous instances of unlawful activity resulting in injuries to peaceful protestors and first responders, significant property damage, and continued escalation of violent events. Specific incidents include unlawful assemblies declared in the City of Richmond, Prince William County, and Roanoke, extensive property damage in the City of Richmond and the City of Virginia Beach including the burning of two buildings, vehicle fires, debris and dumpster fires, vandalism, looting, and the damage to law enforcement vehicles.

The Commonwealth has a compelling interest to maintain peace and order in the face of escalating tension. The effects of this civil unrest constitute an emergency wherein human lives and public and private property are imperiled, as described in § 44-146.16 of the Code of Virginia (Code). Action is necessary to preserve life and property and to alleviate the conditions caused by this situation.

Therefore, by virtue of the authority vested in me by Article V of the Constitution of Virginia, by §§ 44-146.17 and 44-75.1 of the Code, and as Governor and Director of Emergency Management and Commander-in-Chief of the Commonwealth's armed forces, I proclaim that a state of emergency exists in the Commonwealth of Virginia. Accordingly, I direct state and local governments to render appropriate assistance to prepare for and respond to this situation, to alleviate any conditions resulting from the situation, and to implement recovery and mitigation operations and activities so as to return impacted areas to pre-event conditions as much as possible. Emergency services shall be conducted in accordance with § 44-146.13 et seq. of the Code.

In order to marshal all public resources and appropriate preparedness, response, and recovery measures, I order the following actions:

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

B. Activation of the Virginia Emergency Operations Center and the Virginia Emergency Support Team, as directed by the State Coordinator of Emergency Management, to coordinate the provision of assistance to state, local, and tribal governments and to facilitate emergency services assignments to other agencies.

C. Authorization for the heads of executive branch agencies, on behalf of their regulatory boards as appropriate, and with the concurrence of their Cabinet Secretary, to waive any state requirement or regulation, and enter into contracts without regard to normal procedures or formalities, and without regard to application or permit fees or royalties. All waivers issued by agencies shall be posted on their websites.

D. Activation of the Virginia National Guard to State Active Duty.

E. Authorization of a maximum of \$350,000 in state sum sufficient funds for state and local government mission assignments and state response and recovery operations authorized and coordinated through the Virginia Department of Emergency Management allowable by The Stafford Act, 42 USC § 5121 et seq. Included in this authorization is \$250,000 for the Department of Military Affairs.

Further, I declare that the City of Richmond and the City of Virginia Beach shall be under a curfew between the hours of 8 p.m. and 6 a.m. With respect to the City of Richmond, the curfew shall begin on May 31, 2020, and end June 3, 2020. Unless extended by further executive order, that curfew shall end at 6 a.m., June 3, 2020. With respect to the City of Virginia Beach, the curfew shall begin on June 1, 2020 at 8 p.m. and end on June 4, 2020, at 6 a.m. unless extended by further executive order. While the curfew is in place no person shall be present on any street, road, alley, avenue, park, or other public place in the City of Richmond and the City of Virginia Beach with the following exceptions:

- Persons traveling to and from home, work, or places of worship;
- Hospital personnel
- Members of the press;
- State, City of Richmond, and City of Virginia Beach employees and volunteers;
- Military personnel including but not limited to national guard troops;
- Private emergency medical transport workers;

Governor

- Travel to and from public meetings City of Virginia Beach City Council and School Board;
- Persons seeking emergency services; and
- Other emergency workers

Nothing in this Order shall be construed to prohibit or restrict travel to a hospital in the event of a medical emergency, nor shall such travel be considered in violation of this Order.

Violation of this Order shall be a Class 1 misdemeanor pursuant to § 44-146.17 of the Code of Virginia.

Effective Date of this Executive Order

This Order shall be effective immediately and with the exception to the provisions instituting a curfew, shall remain in full force and effect until June 29, 2020, unless amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia this 1st day of June, 2020.

/s/ Ralph S. Northam
Governor

SECOND AMENDED EXECUTIVE ORDER NUMBER SIXTY-FOUR (2020)

Declaration of a State of Emergency Due to Civil Unrest and Institution of a Curfew in the City of Richmond, the City of Virginia Beach and the City of Hampton

Importance of the Issue

On this day, May 31, 2020, I declare that a state of emergency exists in the Commonwealth of Virginia due to past and potential future civil unrest that poses a danger to public safety. The Commonwealth of Virginia has experienced significant events in the past 48 hours that have required intervention to restore order, ensure the safety of protestors and the public, protect property, and provide additional resources to support our local and state partners. In the past 24 hours alone, there have been numerous instances of unlawful activity resulting in injuries to peaceful protestors and first responders, significant property damage, and continued escalation of violent events. Specific incidents include unlawful assemblies declared in the City of Richmond, Prince William County, and Roanoke, extensive property damage in the City of Richmond, the City of Virginia Beach, and the City of Hampton including the burning of two buildings, vehicle fires, debris and dumpster fires, vandalism, looting, and the damage to law enforcement vehicles.

The Commonwealth has a compelling interest to maintain peace and order in the face of escalating tension. The effects of this civil unrest constitute an emergency wherein human lives and public and private property are imperiled, as

described in § 44-146.16 of the Code of Virginia (Code). Action is necessary to preserve life and property and to alleviate the conditions caused by this situation.

Therefore, by virtue of the authority vested in me by Article V of the Constitution of Virginia, by §§ 44-146.17 and 44-75.1 of the Code, and as Governor and Director of Emergency Management and Commander-in-Chief of the Commonwealth's armed forces, I proclaim that a state of emergency exists in the Commonwealth of Virginia. Accordingly, I direct state and local governments to render appropriate assistance to prepare for and respond to this situation, to alleviate any conditions resulting from the situation, and to implement recovery and mitigation operations and activities so as to return impacted areas to pre-event conditions as much as possible. Emergency services shall be conducted in accordance with § 44-146.13 et seq. of the Code.

In order to marshal all public resources and appropriate preparedness, response, and recovery measures, I order the following actions:

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

B. Activation of the Virginia Emergency Operations Center and the Virginia Emergency Support Team, as directed by the State Coordinator of Emergency Management, to coordinate the provision of assistance to state, local, and tribal governments and to facilitate emergency services assignments to other agencies.

C. Authorization for the heads of executive branch agencies, on behalf of their regulatory boards as appropriate, and with the concurrence of their Cabinet Secretary, to waive any state requirement or regulation, and enter into contracts without regard to normal procedures or formalities, and without regard to application or permit fees or royalties. All waivers issued by agencies shall be posted on their websites.

D. Activation of the Virginia National Guard to State Active Duty.

E. Authorization of a maximum of \$350,000 in state sum sufficient funds for state and local government mission assignments and state response and recovery operations authorized and coordinated through the Virginia Department of Emergency Management allowable by The Stafford Act, 42 USC § 5121 et seq. Included in this authorization is \$250,000 for the Department of Military Affairs.

Further, I declare that the City of Richmond, the City of Virginia Beach, and the City of Hampton shall be under a curfew between the hours of 8 p.m. and 6 a.m. With respect to the City of Richmond, the curfew shall begin on May 31, 2020, and end June 3, 2020. Unless extended by further executive order, that curfew shall end at 6 a.m., June 3, 2020.

With respect to the City of Virginia Beach, the curfew shall begin on June 1, 2020 at 8 p.m. and end on June 4, 2020, at 6 a.m. unless extended by further executive order. With respect to the City of Hampton, the curfew shall begin on June 3, 2020 at 8 p.m. and end on June 6, 2020, at 6 a.m. unless extended by further executive order. While the curfew is in place no person shall be present on any street, road, alley, avenue, park, or other public place in the City of Richmond, the City of Virginia Beach, and the City of Hampton with the following exceptions:

- Persons traveling to and from home, work, or places of worship;
- Hospital personnel;
- Members of the press;
- State, City of Richmond, City of Virginia Beach, and the City of Hampton employees and volunteers;
- Military personnel including but not limited to national guard troops;
- Private emergency medical transport workers;
- Travel to and from public meetings City of Virginia Beach City Council and School Board;
- Persons seeking emergency services; and
- Other emergency workers

Nothing in this Order shall be construed to prohibit or restrict travel to a hospital in the event of a medical emergency, nor shall such travel be considered in violation of this Order.

Violation of this Order shall be a Class 1 misdemeanor pursuant to § 44-146.17 of the Code of Virginia.

Effective Date of this Executive Order

This Order shall be effective immediately and with the exception to the provisions instituting a curfew, shall remain in full force and effect until June 29, 2020, unless amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia this 3rd day of June, 2020.

/s/ Ralph S. Northam
Governor

EXECUTIVE ORDER NUMBER SIXTY-FIVE (2020) AND ORDER OF PUBLIC HEALTH EMERGENCY SIX

Phase Two Easing of Certain Temporary Restrictions Due to Novel Coronavirus (COVID-19)

Excluding the City of Richmond and the Northern Virginia Region

Importance of the Issue

On May 8, 2020, Executive Order 61 and Order of Public Health Emergency Three began easing business, gathering,

and traveling restrictions originally imposed by Executive Order 53 and Executive Order 55 issued in March of 2020. We did this because our health data metrics showed that we were increasing testing availability, we have adequate supply of personal protective equipment and hospital bed supply, the percentage of positive tests, hospitalizations, and positive tests were trending downward. The health data metrics for some jurisdictions, however, still presented sharper challenges. Therefore, pursuant to Executive Order 62 and Order of Public Health Emergency Four (2020), later amended, the Northern Virginia Region (as defined by that Order), the County of Accomack, and the City of Richmond remained in Phase Zero. On May 29, 2020, those jurisdictions moved into Phase One.

During the weeks that the majority of Virginia has been in Phase One, the public health metrics have continued to show the same trends. Our testing is increasing, our supply of personal protective equipment is steady, our hospital bed capacity remains steady, our hospitalizations statewide have a slight downward trend, and the percentage of positive tests continue to trend downward.

Now under this Order, the majority of the Commonwealth will move into Phase Two. The Northern Virginia Region and the City of Richmond will remain in Phase One under Third Amended Executive Order 61 and Third Amended Order of Public Health Emergency Three (2020). We have made remarkable progress over the past several weeks. As we move forward, we will remain vigilant, cautious, and measured. We will continue teleworking, whenever possible, to wash our hands frequently, to not touch our faces, and to wear face coverings. Through these efforts, we will continue to protect ourselves, our families, and our fellow Virginians as we respond to this emergency.

Directive

Therefore, by virtue of the authority vested in me by Article V of the Constitution of Virginia, by § 44-146.17 of the Code of Virginia, by any other applicable law, and in furtherance of Amended Executive Order 51 (2020), and by virtue of the authority vested in the State Health Commissioner pursuant to §§ 32.1-13, 32.1-20, and 35.1-10 of the Code of Virginia, the following is ordered:

A. EASING OF BUSINESS RESTRICTIONS

1. All Businesses

Any businesses, not listed in this section, should adhere to the Guidelines for All Business Sectors expressly incorporated by reference herein as best practices. This guidance is located [here](#).

2. Restaurants, Dining Establishments, Food Courts, Breweries, Microbreweries, Distilleries, Wineries, and Tasting Rooms

Restaurants, dining establishments, food courts, breweries, microbreweries, distilleries, wineries, and tasting rooms may operate delivery, take-out, and indoor and outdoor dining and beverage services, provided such businesses comply with the Guidelines for All Business Sectors, and sector-specific guidance for restaurant and beverage services incorporated by reference herein. Such guidance includes, but is not limited to, the following requirements:

- a. Occupancy may not exceed the 50% of the lowest occupancy load on the certificate of occupancy, if applicable.
- b. All parties, whether seated together or across multiple tables, must be limited to 50 patrons or less.
- c. Tables at which dining parties are seated must be positioned six feet apart from other tables. If tables are not movable, parties must be seated at least six feet apart.
- d. No self-service of food (except beverages), including condiments. Condiments should be removed from tables and dispensed by employees upon the request of a customer. Buffets must be staffed by servers. For self-service beverage areas, use beverage equipment designed to dispense by a contamination-free method.
- e. Bar seats and congregating areas of restaurants must be closed to patrons except for through-traffic. Non-bar seating in a bar area may be used for customer seating as long as a minimum of six feet is provided between parties at tables.
- f. Employees working in customer-facing areas must wear face coverings over their nose and mouth at all times.
- g. A thorough cleaning and disinfection of frequently-contacted surfaces must be conducted every 60 minutes during operation. Tabletops, chairs, and credit card/bill folders must be cleaned in between patrons.
- h. If any such business cannot adhere to these requirements, it must close.

3. Farmers Markets

Farmers markets may continue to operate, provided such businesses comply with the Guidelines for All Business Sectors and the sector-specific guidelines for farmers markets incorporated by reference herein. Such guidance includes, but is not limited to, the following requirements:

- a. On-site shopping is allowed, as long as physical distancing guidelines are followed. Configure operations to avoid congestion or congregation points.
- b. Employees and vendors in customer-facing areas must wear face coverings over their nose and mouth at all times.
- c. Vendors must supply hand sanitizer stations or hand washing stations for patrons and employees.
- d. A thorough cleaning and disinfection of frequently-contacted surfaces must be conducted.

e. If any such business cannot adhere to these requirements, it must close.

4. Brick And Mortar Retail Businesses Not Listed In Section C, Paragraph 1 (Non-Essential Retail)

Any brick and mortar retail business not listed in section C, paragraph 1 may continue to operate, provided such business complies with the Guidelines for All Business Sectors and the sector-specific guidance for brick and mortar retail expressly incorporated by reference herein. Such guidance includes, but is not limited to, the following requirements:

- a. Occupancy must be limited to no more than 50% of the lowest occupancy load on the certificate of occupancy.
- b. Employees working in customer-facing areas must wear face coverings over their nose and mouth at all times.
- c. If any such business cannot adhere to these requirements, it must close.

5. Fitness and Exercise Facilities

Fitness centers, gymnasiums, recreation centers, sports facilities, and exercise facilities may reopen for indoor and outdoor activities, provided such businesses comply with the Guidelines for All Business Sectors and the sector-specific guidelines for fitness and exercise facilities expressly incorporated by reference herein. Such guidance includes, but is not limited to, the following requirements:

- a. Patrons, members, and guests must remain at least ten feet apart during all activities.
- b. Instructors and all participants of group exercise and fitness classes must maintain at least ten feet of physical distancing between each other at all times.
- c. The total number of attendees (including both participants and instructors) in all group exercise and fitness classes cannot exceed the lesser of 30% of the minimum occupancy load on the certificate of occupancy or 50 patrons, members, and guests.
- d. Hot tubs, spas, splash pads, spray pools, and interactive play features must be closed.
- e. Outdoor and indoor swimming pools may be open for lap swimming, diving, exercise, and instruction only and must be limited to no more than three persons per lane with ten feet of physical distance per swimmer.
- f. Employees working in customer-facing areas are required to wear face coverings over their nose and mouth at all times.
- g. Employers must ensure cleaning and disinfection of shared equipment after each use.
- h. Facilities shall prohibit the use of any equipment that cannot be thoroughly disinfected between uses (e.g., climbing rope, exercise bands, etc.).

i. Businesses must supply hand sanitizer stations or hand washing stations for patrons, members, and guests.

j. If any such business cannot adhere to these requirements, it must close.

6. Personal Care and Personal Grooming Services

Beauty salons, barbershops, spas, massage centers, tanning salons, tattoo shops, and any other location where personal care or personal grooming services are performed may continue to operate, provided such businesses comply with the Guidelines for All Business Sectors and the sector-specific guidelines for personal care and personal grooming services expressly incorporated by reference herein. Such guidance includes, but is not limited to, the following requirements:

a. Occupancy may not exceed 50% of the lowest occupancy load on the certificate of occupancy with at least six feet of physical distancing between work stations and no more than two appointments per service provider at a time.

b. Service providers and employees working in customer-facing areas must wear face coverings over their nose and mouth at all times.

c. Provide face coverings for clients or ask that clients bring a face covering with them, which they must wear during the service. Limit services to only those that can be completed without clients removing their face covering.

d. A thorough cleaning and disinfection of frequently-contacted surfaces must be conducted every 60 minutes in operations, while cleaning and disinfecting all personal care and personal grooming tools after each use. If that is not possible, such items must be discarded.

e. If any such business cannot adhere to these requirements, it must close.

7. Campgrounds

Privately-owned campgrounds as defined in § 35.1-1 of the Code of Virginia may continue to operate, provided they comply with the Guidelines for All Business Sectors and the sector-specific guidelines for campgrounds, which are expressly incorporated by reference herein. Such guidance includes, but is not limited to, the following requirements:

a. A minimum of 20 feet must be maintained between units for all lots rented for short-term stays of less than 14 nights (and not owned by individuals).

b. Employees working in public-facing areas are required to wear face coverings over their nose and mouth at all times.

c. It is recommended that campgrounds must strongly encourage customers to wear face coverings over their nose and mouth.

d. The provision of hand washing in bath houses and sanitizing stations for guests and employees.

e. If any such business cannot adhere to these requirements, it must close.

8. Indoor Shooting Ranges

Indoor shooting ranges may operate, provided they comply with the following requirements:

a. Occupancy must be limited to 50% of the lowest occupancy load on the certificate of occupancy with at least six feet of physical distancing between individuals at all times. Use every other lane to achieve six feet of physical distancing.

b. Employees working in customer-facing areas are required to wear face coverings over their nose and mouth at all times.

c. Perform thorough cleaning and disinfection of frequently-contacted surfaces every 60 minutes in operation, while disinfecting all equipment between each customer use and prohibiting the use of equipment that cannot be thoroughly disinfected.

d. Either thoroughly clean shared or borrowed equipment in between uses, or only allow the use of personal equipment at the range.

e. If any such indoor shooting range cannot adhere to these requirements, it must close.

9. Public Beaches

All public beaches as defined in § 10.1-705 of the Code of Virginia may remain open to individual and family recreational activity, in addition to exercise and fishing. All such public beaches, with the exception of the beaches in the City of Virginia Beach, must comply with the requirements below.

a. Require beachgoers to practice physical distancing of at least six feet between each person unless they are with members of the same household.

b. Prohibit gatherings of more than 50 people.

c. Prohibit group sports, alcohol, tents, groupings of umbrellas, and other activities and items that attract gatherings.

d. Prohibit entertainment and programming that generate gatherings.

e. All common areas that encourage gatherings, such as pavilions, gazebos, playsets, and picnic areas must remain closed. This does not apply to fishing piers.

f. Implement a cleaning schedule for all high-touch surfaces made of plastic or metal such as benches and railings that includes cleaning at least every two hours between the hours of 9 a.m. and 6 p.m.

g. Establish, train, and deploy a team to educate and promote compliance with beach rules and refer cases of noncompliance to public safety personnel, if appropriate.

h. Establish procedures for temporary beach closure or access limitations in the event of overcrowding.

i. Ensure adequate personal protective equipment for all lifeguards.

j. Perform a disinfectant-level cleaning of all public restrooms every two hours with an EPA-approved disinfectant by staff or volunteers trained to follow Centers for Disease Control and Prevention (CDC) guidance on cleaning and disinfecting.

k. For chair and umbrella rental companies, require vendors to set up chairs and umbrellas for customers, maintaining at least six feet of distance between groups, and to clean equipment between rentals following Environmental Protection Agency and CDC guidelines on cleaning and disinfecting.

l. Post signage at all public access points to the beaches and other "cluster prone" areas providing health reminders regarding physical distancing, gathering prohibitions, options for high risk individuals, and staying home if sick. Messaging must be specific to location.

m. Locality shall provide daily metrics to its local health department to include beach closures, complaint incidents, police reports of violence related to enforcement, and number of reports of noncompliance to be submitted each Monday.

n. All employees and contract workers must wear a cloth face covering when not able to practice physical distancing following CDC Use of Face Cloth Coverings guidance.

o. Employees and contract workers must have access to soap and water or hand sanitizer containing at least 60% alcohol, and locality should provide best hygiene practices to employees on a regular basis, including washing hands often with soap and water for at least 20 seconds and practicing respiratory etiquette protocols.

p. Locality shall require all employees and contract workers to take their temperature before reporting to work and direct such employees not to report to work if they have a fever of over 100.4 degrees, have experienced chills, or have been feverish in the last 72 hours.

q. Follow enhanced workplace safety best practices outlined in the Guidelines for All Business Sectors.

Public beaches in the City of Virginia Beach may continue to operate provided activities on the public beaches are conducted in compliance with the requirements linked [here](#) and [here](#).

10. Racetracks

Outdoor racetracks may remain open for racing events, provided such businesses comply with the Guidelines for All

Business Sectors and the sector-specific guidelines for racetracks expressly incorporated by reference herein and linked [here](#) and [here](#). Such guidance includes, but is not limited to, the following requirements:

a. The event must be held at locations with the ability to restrict access (i.e. barriers and gating that would preclude the general public from accessing the event).

b. No tailgating and camping is allowed during these events, including staff or race participants.

c. Entrances and exits must be staffed.

d. No spectators or members of the public are permitted to attend the event. This includes owners, family (unless the guardian of a minor child), as well as outside vendors. Only individuals essential to the operation of the event are permitted to attend.

e. All individuals must maintain at least six feet of physical distancing between themselves and other participants.

f. Prior to each race event, participants must self-monitor their symptoms by taking their temperature to check for fever.

g. No public-facing amenities will be provided, including concessions, food sales, merchandise sales, hospitality, or loitering on the property, or fan experiences.

11. Recreational and Entertainment Businesses

Outdoor performing arts venues, outdoor concert venues, outdoor sports venues, outdoor movie theaters, museums, aquariums, zoos, and botanical gardens may reopen, provided such businesses comply with the Guidelines for All Business Sectors and the sector-specific guidelines, which are expressly incorporated by reference herein. Such guidance includes, but is not limited to, the following requirement:

a. The total number of attendees (including both participants and spectators) cannot exceed the lesser of 50% of the occupancy load of the venue, if applicable, or 50 persons.

b. Install visible markers for queue lines that separate people by six feet of physical distance.

c. Create a guest flow plan of modified queue lines into and within the facility. Determine areas likely to become bottlenecks or pinch points and adjust guest flow accordingly.

d. Perform thorough cleaning and disinfection of frequently-contacted surfaces including digital ordering devices, check presenters, self-service areas, tabletops, bathroom surfaces, and other common touch areas every 60 minutes during operation.

e. Where possible, install sneeze guards in front of commonly used point-of-sale or guest service stations.

f. Employees working in customer-facing areas are required to wear face coverings over their nose and mouth.

g. Provide hand washing or sanitizing stations for guests and employees.

h. If any such business cannot adhere to these requirements, it must close.

12. Public and private social clubs

Public and private social clubs may reopen, provided such establishments abide by the gathering ban in section B, paragraph 2 of this Order and comply with the Guidelines for All Business Sectors and the sector-specific guidelines for public and private social clubs expressly incorporated by reference herein.

13. Recreational Sports

Indoor and outdoor recreational sports activities are permitted, provided participants and organizers of recreational sports activities comply with the Guidelines for All Business Sectors and the sector-specific guidelines for recreational sports expressly incorporated by reference herein. Such guidance includes, but is not limited to, the following requirements:

a. Ten feet of physical distance must be maintained by all instructors, participants, and spectators, with the exception of incidental contact or contact between members of the same household. This applies during instruction and practice and during competitive events. Competition that involves close contact with other athletes must be avoided.

b. The total number of attendees (including both participants and spectators) of outdoor recreational sports cannot exceed the lesser of 50% of the occupancy load of the venue, if applicable, or 50 persons. For sports played on a field, attendees are limited to 50 persons per field.

c. The total number of attendees for indoor recreational sports cannot exceed the lesser of 30% of the lowest occupancy load on the certificate of occupancy or 50 persons. For sports played on a field, attendees are limited to 50 persons per field.

d. For indoor recreational sports, spectators may not be present except parents, guardians, or caretakers who are supervising children.

14. Enforcement

Guidelines for All Business Sectors and the sector-specific guidelines appear [here](#). The Virginia Department of Health shall have authority to enforce section A of this Order. Any willful violation or refusal, failure, or neglect to comply with this Order, issued pursuant to § 32.1-13 of the Code of Virginia, is punishable as a Class 1 misdemeanor pursuant to § 32.1-27 of the Code of Virginia. The State Health Commissioner may also seek injunctive relief in circuit court for violation of this Order, pursuant to § 32.1-27 of the Code of Virginia. In addition, any agency with regulatory authority over a business listed in section A may enforce this Order as to that business to the extent permitted by law.

B. CONTINUED RESTRICTIONS

1. Certain Recreational and Entertainment Businesses

All public access to recreational and entertainment businesses set forth below shall remain closed:

a. Indoor theaters, Indoor performing arts centers, indoor concert venues, and other indoor entertainment centers;

b. Historic horse racing facilities; and

c. Bowling alleys, skating rinks, arcades, amusement parks, trampoline parks, fairs, carnivals, arts and craft facilities, escape rooms, and other places of indoor public amusement.

2. All Public and Private In-Person Gatherings

All public and private in-person gatherings of more than 50 individuals are prohibited. The presence of more than 50 individuals performing functions of their employment is not a "gathering." A "gathering" includes, but is not limited to, parties, celebrations, or other social events, whether they occur indoors or outdoors.

This restriction does not apply to the gathering of family members living in the same residence. "Family members" include blood relations, adopted, step, and foster relations, as well as all individuals residing in the same household. Family members are not required to maintain physical distancing while in their homes.

a. Individuals may attend religious services subject to the following requirements:

i. Religious services must be limited to no more than 50% of the lowest occupancy load on the certificate of occupancy of the room or facility in which the religious services are conducted.

ii. Individuals attending religious services must be at least six feet apart when seated and must practice proper physical distancing at all times. Family members, as defined above, may be seated together.

iii. Mark seating in six-foot increments and in common areas where attendees may congregate.

iv. Attendees shall not pass items to other attendees, who are not family members, as defined above.

v. Any items used to distribute food or beverages must be disposable, used only once, and discarded.

vi. A thorough cleaning and disinfection of frequently-contacted surfaces must be conducted prior to and following any religious service.

vii. Post signage at the entrance that states that no one with a fever or symptoms of COVID-19 is permitted in the establishment.

viii. Post signage to provide public health reminders regarding social distancing, gatherings, options for high risk individuals, and staying home if sick.

ix. If religious services cannot be conducted in compliance with the above requirements, they must not be held in-person.

Further, any social gathering held in connection with a religious service is subject to the public and private in-person gatherings restriction in section B, paragraph 2. Additional suggested guidance can be found [here](#).

3. Institutions of Higher Education

Institutions of higher education are encouraged to continue remote learning where practical. However, such institutions may offer in-person classes and instruction, including labs and related practical training, provided they comply with all applicable requirements under the "Guidelines for All Business Sectors." No institutions of higher education shall hold or host gatherings of more than 50 individuals. Any postsecondary provider offering vocational training in a profession regulated by a Virginia state agency/board must also comply with any sector-specific guidelines relevant to that profession to the extent possible under the regulatory training requirements. Such professions may include, but are not necessarily limited to: aesthetician, barber, cosmetologist, massage therapist, nail technician, and practical nurse

4. Overnight Summer Camps

Overnight services of summer camps, as defined in § 35.1-1 of the Code of Virginia, must remain closed.

5. Enforcement

Violations of section B paragraphs 1, 2, 3, and 4 of this Order shall be a Class 1 misdemeanor pursuant to § 44-146.17 of the Code of Virginia.

C. CONTINUED GUIDANCE AND DIRECTION

1. Essential Retail Businesses

Essential retail businesses as set out below may remain open during their normal business hours. They should comply with the Guidelines for All Business Sectors expressly incorporated by reference and linked [here](#), as best practices. Employers are required to provide face coverings to employees.

a. Grocery stores, pharmacies, and other retailers that sell food and beverage products or pharmacy products, including dollar stores, and department stores with grocery or pharmacy operations;

b. Medical, laboratory, and vision supply retailers;

c. Electronic retailers that sell or service cell phones, computers, tablets, and other communications technology;

d. Automotive parts, accessories, and tire retailers as well as automotive repair facilities;

e. Home improvement, hardware, building material, and building supply retailers;

f. Lawn and garden equipment retailers;

g. Beer, wine, and liquor stores;

h. Retail functions of gas stations and convenience stores;

i. Retail located within healthcare facilities;

j. Banks and other financial institutions with retail functions;

k. Pet and feed stores;

l. Printing and office supply stores; and

m. Laundromats and dry cleaners.

2. State Agencies

All relevant state agencies shall continue to work with all housing partners to execute strategies to protect the health, safety, and well-being of Virginians experiencing homelessness during this pandemic and to assist Virginians in avoiding evictions or foreclosures.

3. Face Coverings

The waiver of § 18.2-422 of the Code of Virginia is continued, so as to allow the wearing of a medical mask, respirator, or any other protective face covering for the purpose of facilitating the protection of one's personal health in response to the COVID-19 public health emergency declared by the State Health Commissioner on February 7, 2020, and reflected in Amended Executive Order 51 (2020) declaring a state of emergency in the Commonwealth. Amended Executive Order 51 (2020) remains so amended. This waiver is effective as of March 12, 2020.

Further, where a mandatory business sector requirement in this Order conflicts with a requirement to wear a face covering in Executive Order 63 and Order of Public Health Emergency Five (2020), the business sector-specific requirement governs.

4. State Travel

Continued cessation of all official travel outside of Virginia by state employees, with increased flexibility for inter-state commuters and essential personnel.

5. Exceptions

Nothing in the Order shall limit: (a) the provision of health care or medical services; (b) access to essential services for low-income residents, such as food banks; (c) the operations of the media; (d) law enforcement agencies; or (e) the operation of government.

6. Expiration of Order

Executive Order 55 (2020) shall expire at 11:59 p.m., June 4, 2020.

Effective Date of the Executive Order

This Order shall be effective 12:00 a.m., Friday, June 5, 2020.
This Executive Order shall remain in full force and effect until amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia and the Seal of the Office of the State Health Commissioner of the Commonwealth of Virginia, this 2nd day of June, 2020.

/s/ Ralph S. Northam
Governor

GUIDANCE DOCUMENTS

PUBLIC COMMENT OPPORTUNITY

Pursuant to § 2.2-4002.1 of the Code of Virginia, a certified guidance document is subject to a 30-day public comment period after publication in the Virginia Register of Regulations and prior to the guidance document's effective date. During the public comment period, comments may be made through the Virginia Regulatory Town Hall website (<http://www.townhall.virginia.gov>) or sent to the agency contact. Under subsection C of § 2.2-4002.1, the effective date of the guidance document may be delayed for an additional period. The guidance document may also be withdrawn.

The following guidance documents have been submitted for publication by the listed agencies for a public comment period. Online users of this issue of the Virginia Register of Regulations may click on the name of a guidance document to access it. Guidance documents are also available on the Virginia Regulatory Town Hall (<http://www.townhall.virginia.gov>) or from the agency contact or may be viewed at the Office of the Registrar of Regulations, 900 East Main Street, Richmond, Virginia 23219.

STATE BOARD OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

Titles of Documents:

[Guidance on Corrective Action Plans \(CAPs\).](#)

[Incident Reporting Requirements.](#)

Public Comment Deadline: July 22, 2020.

Effective Date: July 23, 2020.

Agency Contact: John Cimino, Legal and Regulatory Coordinator, Office of Licensing, Department of Behavioral Health and Developmental Services, P.O. Box 1797, Richmond, VA 23218-1797, telephone (804) 298-3279, or email john.cimino@dbhds.virginia.gov.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Title of Document: [Changes to the Service Delivery Hour Requirements for Addiction and Recovery Treatment Services \(ARTS\) Intensive Outpatient Services \(IOPs\): Effective March 5, 2020.](#)

Public Comment Deadline: July 22, 2020.

Effective Date: July 23, 2020.

Agency Contact: Emily McClellan, Policy and Research Division, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-6043, or email emily.mcclellan@dmas.virginia.gov.

STATE WATER CONTROL BOARD

Title of Document: [New Underground Storage Tank \(UST\) Requirements Effective January 1, 2021.](#)

Public Comment Deadline: July 22, 2020.

Effective Date: July 31, 2020.

Agency Contact: Alicia Meadows, Underground Storage Tank Compliance Coordinator, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (540) 562-6729, or email alicia.meadows@deq.virginia.gov.

GENERAL NOTICES/ERRATA

STATE AIR POLLUTION CONTROL BOARD

State Implementation Plan Revision - Proposed 2017 Base Year Inventory for Northern Virginia Ozone Nonattainment Area for Precursors to the Pollutant Ozone

The Department of Environmental Quality (DEQ) is seeking comments and announcing a public comment period on a proposed 2017 base year inventory for precursors to the pollutant ozone, which are carbon monoxide (CO), nitrogen oxides (NO_x), and volatile organic compounds (VOC), in the Northern Virginia Ozone Nonattainment Area. The Commonwealth intends to submit the inventory as a revision to the Virginia State Implementation Plan (SIP) in accordance with the federal Clean Air Act. The SIP is the plan developed by Virginia in order to fulfill its responsibilities under the federal Clean Air Act to attain and maintain the National Ambient Air Quality Standards (NAAQS) promulgated by the U.S. Environmental Protection Agency (EPA).

Purpose of notice: DEQ is seeking comments on the overall 2017 inventory for the Northern Virginia portion of the Metropolitan Washington, DC-MD-VA Ozone Nonattainment Area, which is classified as marginal for the 2015 NAAQS, and consists of the counties of Arlington, Fairfax, Loudoun, and Prince William and the cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park.

Public comment period: June 22, 2020, to July 22, 2020. This comment period is in addition to the previously conducted public comment period of April 27, 2020, to May 27, 2020.

Public hearing: A public hearing will be conducted if a request is made in writing to the contact listed at the end of this notice. In order to be considered, the request must include the full name, address, and telephone number of the person requesting the hearing and be received by DEQ by the last day of the comment period. Notice of the date, time, and location of any requested public hearing will be announced in a separate notice and another 30-day comment period will be conducted.

Description of proposal: The proposal consists of a comprehensive inventory of actual emissions from all sources of relevant pollutants for the base year 2017. This inventory, once finalized, will be the basis for any future planning exercises that have as a goal compliance with the 2015 ozone NAAQS. The proposal was prepared by the Metropolitan Washington Air Quality Committee (MWAQC), which consists of elected officials from the affected localities and representatives of state transportation and air quality planning agencies.

The complete proposal is available at <https://www.mwcog.org/documents/2020/05/27/washington-dc-md-va-2015-ozone-naaqs-nonattainment-area-base-year-2017-emissions-inventory-updated-may-28-2020/>.

Federal information: This notice is being given to satisfy the public participation requirements of federal regulations (40 CFR 51.102). The proposed inventory and supporting technical documents will be submitted as a revision to the Commonwealth of Virginia SIP under § 110(a) of the federal Clean Air Act in accordance with 40 CFR 51.104.

How to comment: DEQ accepts written comments by email, fax, and postal mail. In order to be considered, comments must include the full name, address, and telephone number of the person commenting and be received by DEQ no later than the last day of the comment period. A cover page with recipient designation must be part of each fax. DEQ prefers that comments be provided in writing, along with any the supporting documents or exhibits. Comments must be submitted to the contact person listed at the end of this notice. All materials received are part of the public record.

To review the proposal: The proposal and any supporting documents are available on the DEQ Air Public Notices for Plans and Programs website at <https://www.deq.virginia.gov/Programs/Air/PublicNotices/air-plansandprograms.aspx>. The documents may also be obtained by contacting the DEQ representative provided. The public may schedule an appointment to review the documents between 8:30 a.m. and 4:30 p.m. of each business day until the close of the public comment period at the following DEQ locations:

- 1) Main Street Office, 22nd Floor, 1111 East Main Street, Richmond, VA, telephone (804) 698-4249; and
- 2) Northern Regional Office, 13901 Crown Court, Woodbridge, VA, telephone (703) 583-3800.

Contact Information: Doris A. McLeod, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4197, FAX (804) 698-4178, or email doris.mcleod@deq.virginia.gov.

STATE CORPORATION COMMISSION

AT RICHMOND, MAY 29, 2020

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. PUE-2013-00045

Concerning the establishment of a renewable energy pilot program for third party power purchase agreements

ORDER UPDATING GUIDELINES

On March 14, 2013, the Virginia General Assembly enacted Chapter 382 of the 2013 Virginia Acts of Assembly ("2013 Legislation") requiring the State Corporation Commission ("Commission") to conduct a renewable energy pilot program for third party power purchase agreements ("Pilot Program")

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within the service territory of Virginia Electric and Power Company and to establish certain guidelines regarding implementation of this Pilot Program. Pursuant to the 2013 Legislation, on November 14, 2013, the Commission established the Pilot Program and developed Guidelines Regarding Notice Information for a Third Party Renewable Power Purchase Agreement ("Guidelines").

On April 5, 2017, the Virginia General Assembly approved Chapter 803 of the 2017 Virginia Acts of Assembly ("2017 Amendments"), which, among other things, re-enacted the 2013 Legislation with amendments requiring that the Pilot Program be conducted within the certificated service territory of each investor-owned electric utility in Virginia, excepting any utility described in § 56-580 G of the Code of Virginia. As a result, updates to the Applicability and Program Cap Management sections of the Guidelines were made by the Commission on June 29, 2017, in this docket.

During its 2020 Session, the Virginia General Assembly enacted Chapters 1193 (HB 1526) and 1194 (SB 851) of the 2020 Virginia Acts of Assembly which, inter alia, amended the Pilot Program ("2020 Amendments").¹ The 2020 Amendments require that the Pilot Program be conducted within the certificated service territory of each investor-owned electric utility in Virginia, now including Kentucky Utilities Company d/b/a Old Dominion Power Company in addition to Virginia Electric and Power Company and Appalachian Power Company. The 2020 Amendments also: (i) increase the renewable generation capacities available for this program, (ii) increase the size of the renewable generation facilities eligible for inclusion in the program, and (iii) increase the overall caps of this program in the investor-owned utilities' service territories, based upon the utilities' peak load forecasts. As a result, updates to the Applicability, Contents of Filing and Program Cap Management sections of the Guidelines are necessary to reflect these legislative changes.

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds that the Guidelines should be updated as set forth in Attachment A to this Order to reflect the 2020 Amendments.²

Accordingly, IT IS ORDERED THAT:

- (1) The instant case is moved from "closed" to "active" status in the records maintained by the Clerk of the Commission and is restored to the Commission's docket for the purpose of updating the Commission's Guidelines.
- (2) The Guidelines, which were established pursuant to the 2013 Legislation and previously updated to reflect changes to the Pilot Program resulting from the 2017 Amendments, hereby are further updated as set forth in Attachment A to this Order to reflect the changes to the Pilot Program resulting from the 2020 Amendments.

(3) On and after the effective dates of these updates, any renewable third-party power purchase agreement established pursuant to the Pilot Program shall be established in accordance with these Guidelines and shall comply with the attendant statutory requirements.

(4) The updates to these Guidelines shall become effective on July 1, 2020.

(5) The Commission's Division of Public Utility Regulation shall provide copies of this Order by electronic transmission, or when electronic transmission is not possible, by mail, to: (i) all current Pilot Program participants; and (ii) individuals, organizations, and companies who (a) previously participated in the Commission's dockets establishing and updating the Pilot Program Guidelines, or (b) have otherwise been identified by the Commission Staff as interested in the development of solar and wind powered generation in the Commonwealth. This Order shall also be posted on the Commission's website.

(6) This case is dismissed.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to: Paul E. Pfeffer, Esquire, Dominion Resources Services, Inc., 120 Tredegar Street, Riverside 2, Richmond, Virginia 23219, paul.e.pfeffer@dominionenergy.com; Noelle J. Coates, Esquire, American Electric Power Service Corporation, 1051 E. Cary Street, 3 James Center, Suite 1100, Richmond, Virginia 23219, njcoates@aep.com; Allyson K. Sturgeon, Esquire LG&E and KU Energy LLC, 220 West Main Street, Louisville, Kentucky 40202, allyson.sturgeon@lge-ku.com; C. Meade Browder, Jr., Senior Assistant Attorney General, Office of the Attorney General, Division of Consumer Counsel, 202 N. 9th Street, Floor 8, Richmond, Virginia 23219, mbrowder@oag.state.va.us; and a copy shall be delivered to the Commission's Office of General Counsel and Divisions of Public Utility Regulation and Utility Accounting and Finance.

¹These Acts of Assembly are duplicate enactments known as the "Virginia Clean Economy Act." The 2020 Amendments to the Pilot Program are also included in Chapters 1178 (HB 572), 1187 (SB 710), 1189 (HB 1184), and 1239 (HB 1647) of the 2020 Acts of Assembly.

²A copy of the Guidelines that highlights the updates included in Attachment A also is attached to this Order as Attachment B. A copy of the Guidelines set forth in Attachment A and Attachment B also may be viewed at <https://scc.virginia.gov/pages/Renewable-Energy-Pilot-Program>.

* * *

AT RICHMOND, MAY 29, 2020

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. URS-2020-00052

Ex Parte: In the matter
concerning regulations required by Chapter 822
of the 2020 Acts of Assembly

ORDER ESTABLISHING PROCEEDING

Chapter 822 of the 2020 Virginia Acts of Assembly ("Act") amends the Code of Virginia ("Code") by adding a provision directing the State Corporation Commission ("Commission") to promulgate regulations requiring that a licensed professional engineer exercise responsible charge over engineering projects that (i) involve gas pipeline facilities, as defined in the federal regulations promulgated under 49 USC § 60101 et seq., as amended and adopted by the Commission, and the federal pipeline safety laws, and (ii) may present a material risk to public safety.¹ These regulations are in furtherance of the Act's related amendment to a Code provision² that, inter alia, exempts from professional engineer licensing, employees of Commission-regulated public service corporations when providing engineering services in connection with public service corporations' facilities regulated by the Commission.³

The Act further directs the Commission to convene a stakeholder group to develop and propose to the Commission no later than December 1, 2020, recommendations concerning these regulations ("Stakeholder Group").⁴ The Stakeholder Group is to include representatives of natural gas utilities in the Commonwealth.

NOW THE COMMISSION, upon consideration of the foregoing, hereby directs the Staff of the Commission's Division of Utility and Railroad Safety ("URS Division Staff" or "Staff") to furnish copies of this Order to individuals, organizations, and companies identified by Staff as potentially having an interest in this proceeding. We further direct the URS Division Staff to organize and convene the Stakeholder Group required by the Act. The Stakeholder Group shall include one representative from each of the following: individual local distribution companies in the Commonwealth, the Virginia Society of Professional Engineers, the Department of Professional Occupational Regulations, and other natural gas utilities in the Commonwealth. Finally, we will direct the URS Division Staff, utilizing input from the Stakeholder Group and its own inquiry, to submit to the Commission a report presenting draft regulations, findings, and recommendations ("Staff Report") corresponding to the directives to the Commission contained in the Act's Third Enactment Clause.⁵

Accordingly, IT IS ORDERED THAT:

(1) The Commission establishes Case No. URS-2020-00052 for the purpose of developing regulations to be promulgated by the Commission regarding engineering projects involving gas pipeline facilities.

(2) The URS Division Staff shall establish and coordinate the Stakeholder Group required by the Act, convening the group's first meeting by July 15, 2020. Requests for information concerning Stakeholder Group participation and meetings shall be directed to lauren.govoni@scc.virginia.gov.

(3) On or before December 1, 2020, the URS Division Staff, utilizing input from the Stakeholder Group and its own inquiry, shall submit to the Commission a Staff Report presenting draft regulations, findings, and recommendations in response to the directives to the Commission contained in the Act's Third Enactment Clause.

(4) The Staff shall also transmit electronically or by mail a copy of this Order to individuals, organizations, and companies identified by Staff as potentially having an interest in this proceeding.

(5) This matter is continued.

AN ATTESTED COPY HEREOF shall be sent by the Clerk of the Commission to: Richard S. Tyler, P.E., President, Virginia Society of Professional Engineers, P.O. Box 6087 Fredericksburg, VA 22403, info@vspe.org; Mary Broz-Vaughan, Director, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, Virginia 23233, mary.broz-vaughan@dpor.virginia.gov; Brently K. Archer, President, Columbia Gas of Virginia, Inc., 1809 Coyote Drive, Chester, Virginia 23836, barcher@nisource.com; Jim Kibler, President, Virginia Natural Gas, Inc., 544 S Independence Boulevard, Virginia Beach, Virginia, 23452, jkibler@southernco.com; Donald "Blue" Jenkins, President, Washington Gas Light Company, 6801 Industrial Road, Springfield, Virginia 22151, blue.jenkins@washgas.com; Paul Nester, President & CEO, Roanoke Gas Company, 519 Kimball Avenue NE, Roanoke, Virginia, 24016, paul_nester@rgcresources.com; James E. McClain, President, Southwestern Virginia Gas Company, 208 Lester Street, Martinsville, Virginia 24112, james@swvagas.com; John D. Jessee, President, Appalachian Natural Gas Distribution Company, 220 West Valley Street, NW, Abingdon, Virginia, 24210, jjessee@appnatgas.com; J. Kevin Dobbs, President, Atmos Energy Corporation, 810 Crescent Center Drive Suite 600, Franklin, Tennessee, 37067, kevin.dobbs@atmosenergy.com; Eric V. Taylor, Director, Pipeline Safety Management Systems, Dominion Energy Transmission, Inc., 925 White Oaks Blvd, Bridgeport, West Virginia 26330. eric.v.taylor@dominionenergy.com;

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Christopher J. Wagner, Director of Safety, AmeriGas Propane, Inc., 460 North Gulph Road, King of Prussia, Pennsylvania 19406, christopher.wagner@amerigas.com; Nicole Sullivan, Vice President, Anderson Propane Service, Inc., P.O. Box 300, 11905 Tidewater Trail, Fredericksburg, Virginia 22408, nicoles@andersonoil.com; Dennis Hochkammer, Propane Safety Manager, Holtzman Oil Corp., P.O. Box 8, Mt. Jackson, Virginia 22842, dennish@hotzmandcorp.com; John Henry Jordan, Vice President of Facilities, Management Services Corporation, 102 South First Street, Suite 301, P.O. Box 5306, Charlottesville, Virginia 22905, jjordan@msc-rents.com. A copy also shall be delivered to the Commission's Office of General Counsel and Division of Utility and Railroad Safety.

¹New § 56-257.2:1 of the Code.

²Section 54.1-401 of the Code.

³The Act's Fourth Enactment Clause delays the effective date of the Act's First Enactment containing these Code amendments to January 1, 2021. However, the rulemaking process established herein is directed pursuant to the Act's Second and Third Enactments.

⁴The Act's Second Enactment Clause establishes this stakeholder process.

⁵The Act's Third Enactment Clause provides as follows: "3. That prior to promulgating the regulations required by § 56-257.2:1 of the Code of Virginia, as created by this act, the State Corporation Commission (the Commission) shall determine the extent to which engineering projects involving gas pipeline facilities present a material risk to public safety and thereby require the seal of a professional engineer. In making its determination, the Commission shall consider solutions that other states and the natural gas industry have proposed or used in addressing such risks and any other information it deems relevant. The Commission shall evaluate (i) the installation of new or replacement transmission class pipelines, distribution mains, distribution services, points of delivery, and district regulator stations; (ii) projects that involve a change in system pressure; (iii) any other projects that may present a material risk to public safety; and (iv) alternative procedures for emergency work."

DEPARTMENT OF ENVIRONMENTAL QUALITY

Apple Grove Solar Notice of Intent for Small Renewable Energy Project (Solar) - Louisa County

Apple Grove Solar has provided the Department of Environmental Quality a notice of intent to submit the necessary documentation for a permit by rule for a renewable energy project (solar) in the Louisa County. The project is to be located on up to 147 acres adjacent to Jefferson Highway. The project will have a maximum capacity of 20 megawatts alternating current and, depending on final design, consist of approximately 66,000 solar photovoltaic modules installed on single-axis tracking racking structures and inverters installed on approximately five separate concrete pads.

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

Grassfield Solar LLC Withdrawal of Notice of Intent for Small Renewable Energy Project (Solar) - City of Chesapeake

Grassfield Solar LLC has withdrawn the notice of intent to submit the necessary documentation for a permit by rule for a small renewable energy project (solar) in the City of Chesapeake. The proposed solar farm was to be located on the west side of West Road approximately 1,000 feet south of the intersection of West Road and Airport Drive. The notice of intent was originally published in the Virginia Register of Regulations on August 5, 2019.

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

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Medical Assistance Eligibility Manual Draft Transmittal

Comment period: June 1, 2020, to June 30, 2020.

The Medical Assistance Eligibility Manual draft transmittal (DMAS-17) is now available for review and public comment. The changes in this document are proposed to be effective on July 1, 2020.

The notice is available at <http://www.dmas.virginia.gov/files/links/5346/Draft%20TN%20#DMAS-17%20Effective%207-1-20.pdf>.

Contact Information: Emily McClellan, Regulatory Manager, Division of Policy and Research, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-4300, FAX (804) 786-1680, TDD (800) 343-0634, or email emily.mcclellan@dmas.virginia.gov.

STATE WATER CONTROL BOARD

Proposed Enforcement Action for Nicholas Anoaia

An enforcement action has been proposed for Nicholas Anoaia for violations of the State Water Control Law in Virginia Beach, Virginia. A description of the proposed action is available at the Department of Environmental Quality office listed or online at www.deq.virginia.gov. Russell Deppe will accept comments by email at russell.deppe@deq.virginia.gov, FAX at (757) 518-2009, or postal mail at Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Boulevard, Virginia Beach, VA 23462, from June 22, 2020, to July 22, 2020.

Proposed Consent Special Order for Hanover County Department of Public Utilities

The State Water Control Board proposes to issue a consent special order to Hanover County Department of Public Utilities for alleged violation of the State Water Control Law at the Doswell wastewater treatment plant, 15468 Theme Park Way, Hanover, Virginia. A description of the proposed action is available at the Department of Environmental Quality office listed or online at www.deq.virginia.gov. Jeff Reynolds will accept comments by email at jefferson.reynolds@deq.virginia.gov, FAX at (804) 527-5106, or postal mail at Department of Environmental Quality, Piedmont Regional Office (Enforcement), 4949-A Cox Road, Glen Allen, VA 23060 until July 22, 2020.

Proposed Consent Special Order for Highway Express Inc.

The State Water Control Board proposes to issue a consent special order to Highway Express Inc. for alleged violation of the State Water Control Law at 25306 North James Madison Highway, New Canton, Virginia 23123. A description of the proposed action is available at the Department of Environmental Quality office listed or online at www.deq.virginia.gov. Aree Reinhardt will accept comments by email at aree.reinhardt@deq.virginia.gov, FAX at (804) 527-5106, or postal mail at Department of Environmental Quality, Piedmont Regional Office (Enforcement), 4949-A Cox Road, Glen Allen, VA 23060, from June 22, 2020, to July 23, 2020.

Proposed Enforcement Action for Mil-Spec Abrasives LLC

An enforcement action has been proposed for Mil-Spec Abrasives LLC for violations of the State Water Control Law in Norfolk, Virginia. A description of the proposed action is available at the Department of Environmental Quality office listed or online at www.deq.virginia.gov. Russell Deppe will accept comments by email at russell.deppe@deq.virginia.gov, FAX at (757) 518-2009, or postal mail at Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Boulevard, Virginia Beach, VA 23462, from June 22, 2020, to July 22, 2020.

Proposed Enforcement Action for Tri M. Nguyen

An enforcement action is proposed for Tri M. Nguyen for violations in Accomack County at the Anna Farm. Tri M. Nguyen withdrew groundwater without a permit in violation of the Groundwater Management Act of 1992. A description of the proposed action is available at <https://www.deq.virginia.gov/Programs/Enforcement/PublicNotices.aspx>. Lee Crowell will accept comments by email at lee.crowell@deq.virginia.gov or postal mail at Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, from June 22, 2020, to July 22, 2020.

Proposed Enforcement Action for Quarles Petroleum Inc.

An enforcement action has been proposed for Quarles Petroleum Inc. for violations at the Valley Avenue Citgo in Winchester, Virginia. The State Water Control Board proposes to issue a consent order with penalty to Quarles Petroleum Inc. to address noncompliance with State Water Control Law. A description of the proposed action is available at the Department of Environmental Quality office listed or online at www.deq.virginia.gov. Eric Millard will accept comments by email at eric.millard@deq.virginia.gov, FAX at (540) 574-7878, or postal mail at Department of Environmental Quality, Valley Regional Office, 4411 Early Road, P.O. Box 3000, Harrisonburg, VA 22801, from June 22, 2020, to July 22, 2020.

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/cumulstab.pdf>.

Filing Material for Publication in the *Virginia Register of Regulations*: Agencies use the Regulation Information System (RIS) to file regulations and related items for publication in the *Virginia Register of Regulations*. The Registrar's office works closely with the Department of Planning and Budget (DPB) to coordinate the system with the Virginia Regulatory Town Hall. RIS and Town Hall complement and enhance one another by sharing pertinent regulatory information.

ERRATA

STATE WATER CONTROL BOARD

Title of Regulation: 9VAC25-260. Water Quality Standards.

Publication: 36:11 VA.R. 1255 January 20, 2020.

Correction to Notice of Effective Date:

Page 1255, as the last sentence in the notice, preceding the Agency Contact, add "Upon this notice of effective date, in subdivision bb of 9VAC25-260-310, after "effective date," insert ", January 9, 2020,"

VA.R. Doc. No. R12-2932; Filed June 4, 2020.

