VIRGINIA REGISTER OF REGULATIONS

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

ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

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.virgina.gov.

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

STATEMENT

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

CITATION TO THE *VIRGINIA REGISTER*

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

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

PUBLICATION SCHEDULE AND DEADLINES

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

August 2021 through September 2022

Volume: Issue	Material Submitted By Noon*	Will Be Published On
38:1	August 11, 2021	August 30, 2021
38:2	August 25, 2021	September 13, 2021
38:3	September 8, 2021	September 27, 2021
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38:6	October 20, 2021	November 8, 2021
38:7	November 3, 2021	November 22, 2021
38:8	November 15, 2021 **(Monday)**	December 6, 2021
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38:26	July 27, 2022	August 15, 2022
39:1	August 10, 2022	August 29, 2022
39:2	August 24, 2022	September 12, 2022

*Filing deadlines are Wednesdays unless otherwise specified.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF OPTOMETRY

Agency Decision

Title of Regulation: **18VAC105-20. Regulations Governing the Practice of Optometry.**

Statutory Authority: §§ 54.1-2400 and 54.1-3223 of the Code of Virginia.

Name of Petitioner: Weston Pack.

Nature of Petitioner's Request: To add an investigative ophthalmic drop to the approved formulary of drugs that may be prescribed by an optometrist.

Agency Decision: Request denied.

Statement of Reason for Decision: At its meeting on July 16, 2021, the board voted to deny the petition based on information that the drug requested is not yet approved by the Food and Drug Administration (FDA) for the particular use in optometric practice. The board will continue to monitor the process and will consider the initiation of a regulatory process when FDA approval is given.

Agency Contact: Leslie L. Knachel, Executive Director, Board of Optometry, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 597-4130, or email leslie.knachel@dhp.virginia.gov.

VA.R. Doc. No. PFR21-34; Filed July26, 2021, 9:55 a.m.

TITLE 1. ADMINISTRATION

COMMISSION ON LOCAL GOVERNMENT

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: **1VAC50-11, Public Participation Guidelines;** and **1VAC50-20, Organization and Regulations of Procedure**. 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 each regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to these regulations, including whether each regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

Public comment period begins August 16, 2021, and ends September 6, 2021.

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: Cody Anderson, Policy Analyst, Department of Housing and Community Development, Main Street Center, 600 East Main Street, Richmond, VA 23219, telephone (804) 371-7054.

TITLE 9. ENVIRONMENT

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 regulations are undergoing a periodic review and a small business impact review: **9VAC25-640, Aboveground Storage Tank and Pipeline Facility Financial Responsibility Requirements;** and **9VAC25-890, General VPDES Permit for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems**. 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 each regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to these regulations, including whether each regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

Public comment period begins August 16, 2021, and ends September 6, 2021.

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.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF SOCIAL WORK

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: **18VAC140-20, Regulations Governing the Practice of Social Work**. The review 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 August 16, 2021, and ends September 6, 2021.

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: Jaime Hoyle, Executive Director, Board of Social Work, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4406.

TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

COMMONWEALTH TRANSPORTATION BOARD

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Commonwealth Transportation Board conducted a periodic review and small business impact review of **24VAC30-21, General Rules and Regulations of the Commonwealth Transportation Board**, and determined that this regulation should be retained in its current form. The board is publishing its report of findings dated March 16, 2021, to support this decision.

Pursuant to its authority granted by § 33.2-210 of the Code of Virginia, it is reasonable and appropriate for the Commonwealth Transportation Board to regulate the activities that occur on highway rights-of-way under its jurisdiction through the land use permit framework. It is also reasonable and appropriate for the board to establish rules concerning the use of highway rights-of-way. Both of these situations involve the safety of the traveling public, cargo carriers, and anyone performing work on the highways or adjacent areas, as well as the integrity and soundness of the highway network itself. This regulation works in complement to the detailed regulations concerning land use, access management, and administration of facilities such as parking lots, waysides, and rest areas that the board has also established. The regulation is therefore necessary for the protection of public health, safety, and welfare. Additionally, the regulation is clearly written and easily understandable.

The existing regulation serves a necessary purpose and is not overly burdensome on the public. The board recommends retaining the regulation as is.

The regulation continues to be necessary for the safety and protection of the traveling public and workers performing tasks on or near the highways. The board has received no complaints concerning this regulation. The regulation is not complex and does not duplicate or conflict with other state or federal laws. The regulation was last amended in 2009.

Contact Information: JoAnne P. Maxwell, Agency Regulatory Coordinator, Governance and Legislative Affairs Division, Department of Transportation, 1401 East Broad Street, Richmond, VA 23219, telephone (804) 786-1830.

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Commonwealth Transportation Board conducted a periodic review and a small business impact review of **24VAC30-50, Rules and Regulations for the Administration of Waysides and Rest Areas**, and determined that this regulation should be retained in its current form. The board is publishing its report of findings dated March 18, 2021, to support this decision.

The board believes that this regulation is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable. Safety of the users is preserved by prohibiting potentially dangerous conduct at waysides and rest areas, such as using threatening language or littering. The integrity of the facilities is protected by prohibiting conduct, such as disturbing animals and birds or posting signs and other advertisements, so that all users may have the benefits of the facilities.

The regulation clearly states prohibited conduct, as well as activities that may be performed with permission of the Commissioner of the Virginia Department of Transportation.

The board recommends that the regulation should be retained without change.

This regulation is necessary because state law has specifically authorized the board to make regulations at waysides and describe topics that may be addressed. Furthermore, without written directives concerning their operation, users of these facilities would not be aware of prohibited and permitted activities. This regulation is not complex and does not overlap, duplicate, or conflict with federal or state law or regulation. The last time this regulation was subjected to periodic regulatory review was in 2013, at which time the board decided to retain the regulation without amendment. The board's decision regarding this regulation will minimize the economic impact on small businesses because this regulation has been in existence for decades without change. As a result of the board's recommendation to retain this regulation without change, there will be no new burdens placed on any small businesses.

Contact Information: JoAnne P. Maxwell, Agency Regulatory Coordinator, Governance and Legislative Affairs Division, Department of Transportation, 1401 East Broad Street, Richmond, VA 23219, telephone (804) 786-1830.

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Commonwealth Transportation Board conducted a periodic review and a small business impact review of **24VAC30-100, Rules and Regulations for the Administration of Parking Lots and Environs**, and

determined that this regulation should be retained in its current form. The board is publishing its report of findings dated March 18, 2021, to support this decision.

This regulation meets the criteria set out in Executive Order 14 (as amended, July 16, 2018). The board believes that this regulation is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable. Safety of the users is preserved by prohibiting potentially dangerous conduct, such as setting fires. The integrity of the facilities is protected by prohibiting conduct, such as disturbing animals and birds or posting signs and other advertisements, so that all users may have the benefits of the facilities. The regulation clearly states prohibited conduct, as well as activities that may be performed with permission of the Commissioner of the Virginia Department of Transportation (VDOT).

The board recommends the regulation be retained without making changes.

There is a continued need for this regulation. Without some written directives concerning their operation, users would not be aware of prohibited and permitted activities in VDOT parking lots. This regulation is not complex and does not overlap, duplicate, or conflict with federal or state law or regulation. The last time this regulation was subjected to periodic regulatory review was in 2013, and the regulation was last amended in 2018 when the regulation was amended in response to legislation passed by the General Assembly to allow mobile food vending in certain areas of the parking lots. VDOT's decision to retain this regulation will minimize the economic impact on small businesses because the regulation will remain in place without change as a result of this periodic regulatory review.

Contact Information: JoAnne P. Maxwell, Agency Regulatory Coordinator, Governance and Legislative Affairs Division, Department of Transportation, 1401 East Broad Street, Richmond, VA 23219, telephone (804) 786-1830.

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Commonwealth Transportation Board conducted a periodic review and a small business impact review of **24VAC30-130, Rules Governing Prequalification and Classification**, and determined that this regulation is repealed. The board is publishing its report of findings dated March 18, 2021, to support this decision.

Although the regulation is clearly written and easily understandable, its purpose can be accomplished through other means, so it is therefore not necessary for the protection of public health, safety, and welfare.

The board recommends repealing the regulation and maintaining the underlying policy as a board policy or guidance document.

Although the regulation is not complex and does not overlap or conflict with other law; it is not necessary to be maintained as a regulation. The regulation was last reviewed in 2010.

Contact Information: JoAnne P. Maxwell, Agency Regulatory Coordinator, Governance and Legislative Affairs Division, Department of Transportation, 1401 East Broad Street, Richmond, VA 23219, telephone (804) 786-1830.

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Commonwealth Transportation Board conducted a periodic review and a small business impact review of **24VAC30-210, Policy on Placing Utilities Underground**, and determined that this regulation should be repealed. The board is publishing its report of findings dated March 11, 2021, to support this decision.

Although the regulation was clearly written and easily understandable, it is no longer necessary for the protection of public health, safety, and welfare. Future decisions on relocation of aerial utility facilities underground in connection with highway construction or maintenance projects should be made in accordance with the Virginia Department of Transportation Utility Manual.

The Commonwealth Transportation Board recommends repeal of the regulation because the statute that set forth the program that the regulation governed has been repealed.

There is no continued need for the regulation.

Contact Information: JoAnne P. Maxwell, Agency Regulatory Coordinator, Governance and Legislative Affairs Division, Department of Transportation, 1401 East Broad Street, Richmond, VA 23219, telephone (804) 786-1830.

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Commonwealth Transportation Board conducted a periodic review and a small business impact review of **24VAC30-271, Economic Development Access Fund Policy**, and determined that this regulation should be repealed. The board is publishing its report of findings dated September 20, 2020, to support this decision.

Although the regulation is clearly written and easily understandable, it is not necessary for the protection of public health, safety, and welfare, as it serves the same purpose as a guidance document that the board has adopted and that provides guidance for any locality that wishes to request economic development access funds for a particular project.

Chapter 378 of the 2021 Acts of Assembly amended § 33.2-1509 of the Code of Virginia to require the board to establish guidelines for the Economic Development Access Fund and requires that the guidelines consider the number of jobs that will be created by the economic development project, the

proposed capital investment by the private sector at the economic development site, and any other relevant criteria related to the economic development project.

The functions performed by the regulation are those that are adequately performed by the existing Economic Development Access Fund guidelines that have been adopted by the Commonwealth Transportation Board as a guidance document. Therefore, the board is recommending that the regulation be repealed but that the guidance document be retained and reviewed for modifications necessary to comply with the requirements of Chapter 378.

Although the regulation is not complex and the board has received no complaints concerning the regulation, there is no continued need for the regulation because the board has adopted a guidance document to serve the same purpose in providing assistance to localities in requesting funding pursuant to § 33.2-1509 of the Code of Virginia. The most recent substantive amendment of the regulation was in 2012.

Contact Information: JoAnne P. Maxwell, Agency Regulatory Coordinator, Governance and Legislative Affairs Division, Department of Transportation, 1401 East Broad Street, Richmond, VA 23219, telephone (804) 786-1830.

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Commonwealth Transportation Board conducted a periodic review and a small business impact review of **24VAC30-420, Operation and Maintenance of Roads in Incorporated Towns Less Than 3,500**, and determined that this regulation should be repealed. The board is publishing its report of findings dated March 25, 2021, to support this decision.

Although the regulation is clearly written and easily understandable, its purpose can be accomplished through other means, so it is therefore not necessary for the protection of public health, safety, and welfare.

The board recommends repealing the regulation and maintaining the underlying policy as a board policy or guidance document.

Although the regulation is not complex and does not overlap or conflict with other law, it is not necessary to be maintained as a regulation. The regulation was last reviewed in 2010.

Contact Information: JoAnne P. Maxwell, Agency Regulatory Coordinator, Governance and Legislative Affairs Division, Department of Transportation, 1401 East Broad Street, Richmond, VA 23219, telephone (804) 786-1830.

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Commonwealth Transportation Board conducted a periodic review and a small business impact review of **24VAC30-430, Maintenance of Roads Crossing the Interstate System**, and determined that this regulation should be repealed. The board is publishing its report of findings dated March 31, 2021, to support this decision.

Although the regulation is clearly written and easily understandable, its purpose can be accomplished through other means, so it is therefore not necessary for the protection of public health, safety, and welfare.

The board recommends repealing the regulation and maintaining the underlying policy as a board policy or guidance document.

Although the regulation is not complex and does not overlap or conflict with other law, it is not necessary to be maintained as a regulation. The regulation was last reviewed in 2010.

Contact Information: JoAnne P. Maxwell, Agency Regulatory Coordinator, Governance and Legislative Affairs Division, Department of Transportation, 1401 East Broad Street, Richmond, VA 23219, telephone (804) 786-1830.

NOTICES OF INTENDED REGULATORY ACTION

TITLE 1. ADMINISTRATION

STATE BOARD OF ELECTIONS

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 Elections intends to consider promulgating **1VAC20-90, Campaign Finance and Political Advertisements**. The purpose of the proposed action is to guarantee that disclosure statements on certain political print media advertisements are displayed in a conspicuous manner and are proportionate to the size of the advertisement. The requirements in this proposed amendment are similar to federal print media advertisement requirements established by the Federal Election Commission under 11 CFR 110.11.

The agency intends to hold a public hearing on the proposed action after publication in the Virginia Register.

Statutory Authority: § 24.2-103 of the Code of Virginia.

Public Comment Deadline: September 15, 2021.

Agency Contact: Ashley Coles, Agency Regulatory Coordinator, Department of Elections, Washington Building, 1100 Bank Street, First Floor, Richmond, VA 23219, telephone (804) 864-8933, or email ashley.coles@elections.virginia.gov.

VA.R. Doc. No. R21-6850; Filed July 23, 2021, 8:27 a.m.

TITLE 2. AGRICULTURE

BOARD OF AGRICULTURE AND CONSUMER SERVICES

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Agriculture and Consumer Services intends to consider amending **2VAC5-317, Regulations for Enforcement of the Noxious Weeds Law**. The purpose of the proposed action is to add certain weeds to the noxious weeds list. The Noxious Weed Advisory Committee, which assists in the evaluation and risk-assessment of plant species that may be declared noxious weeds and makes recommendations to the commissioner regarding plant species that should be listed or delisted as noxious weeds, recommended that certain weed species be added to the noxious weeds list; therefore, the board has determined it is now appropriate to consider amending the current list of noxious weeds.

The agency intends to hold a public hearing on the proposed action after publication in the Virginia Register.

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

Public Comment Deadline: September 15, 2021.

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, TDD (800) 828-1120, or email david.gianino@vdacs.virginia.gov.

VA.R. Doc. No. R21-6889; Filed July 23, 2021, 8:35 a.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

COMMON INTEREST COMMUNITY BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Common Interest Community Board intends to consider amending **18VAC48-50, Common Interest Community Manager Regulations**. The purpose of the proposed action is to review the existing regulation and propose any amendments the board determines to be necessary and appropriate. The board last undertook a significant review and revision of the regulation in 2012, when the regulation was amended to establish certification requirements for principal or supervisory employees of common interest community managers. Since 2012, members of the public, individuals in the community management industry, and agency staff have identified several areas where the regulation would benefit from revision or clarification. A thorough review of the regulation is necessary to address these areas, ensure the regulation complements current Virginia law, provides minimal burdens on regulants while still protecting the public, are clearly written and understandable, and reflect current procedures and policies of the Department of Professional and Occupational Regulation. In addition, the review will be conducted in an effort to identify areas for regulatory reduction in accordance with Chapters 444 and 445 of the 2018 Acts of Assembly.

The agency intends to hold a public hearing on the proposed action after publication in the Virginia Register.

Statutory Authority: § 54.1-2349 of the Code of Virginia.

Public Comment Deadline: September 15, 2021.

Agency Contact: Joseph C. Haughwout, Jr., Board Administrator, Common Interest Community Board, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8510, FAX (866) 490-2723, or email cic@dpor.virginia.gov.

VA.R. Doc. No. R21-6830; Filed July 22, 2021, 4:09 p.m.

BOARD OF SOCIAL WORK

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Social Work intends to consider promulgating **18VAC140-30, Regulations Governing the Practice of Music Therapy**. The purpose of the proposed action is to establish regulations governing the practice of music therapy. The requirements for board certification offered by the Certification Board for Music Therapists will be considered as qualification for licensure as a licensed music therapist. The regulation shall (i) set forth the educational, clinical training, and examination requirements for licensure to practice music therapy; (ii) provide for appropriate application and renewal fees; and (iii) include requirements for licensure renewal and continuing education.

The agency intends to hold a public hearing on the proposed action after publication in the Virginia Register.

Statutory Authority: §§ 54.1-3709.1, 54.1-3709.2, and 54.1-3709.3 of the Code of Virginia.

Public Comment Deadline: September 15, 2021.

Agency Contact: Jaime Hoyle, Executive Director, Board of Social Work, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4406, FAX (804) 527-4435, or email jaime.hoyle@dhp.virginia.gov.

VA.R. Doc. No. R21-6888; Filed July 22, 2021, 4:10 p.m.

TITLE 1. ADMINISTRATION

DEPARTMENT OF GENERAL SERVICES

Proposed Regulation

Title of Regulation: **1VAC30-100. Regulations for Capitol Square (adding 1VAC30-100-15 through 1VAC30-100-90; repealing 1VAC30-100-10).**

Statutory Authority: § 2.2-1144 of the Code of Virginia.

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: October 15, 2021.

Agency Contact: Rhonda Bishton, Director's Executive Administrative Assistant, Department of General Services, 1100 Bank Street, Suite 420, Richmond, VA 23219, telephone (804) 786-3311, FAX (804) 371-8305, or email rhonda.bishton@dgs.virginia.gov.

Basis: Section 2.2-1144 of the Code of Virginia puts the control of Capitol Square public grounds under the direction and control of the Governor with the Department of General Services, except areas under the control of the legislature. Sections 2.2-1102, 2.2-1129, and 2.2-1144 of the Code of Virginia are the state legal authorities for the Department of General Service to promulgate this regulation.

Purpose: Virginia's Capitol Square is the Commonwealth's executive and legislative center and an architecturally and historically significant area located in downtown Richmond. The Department of General Services is charged with maintaining and operating the historic Capitol Square. Under this authority, the department establishes this regulation for use of Capitol Square. The Department of General Services permits persons, organizations, or groups to use Capitol Square grounds for various purposes and events when the use will not interfere with or disrupt governmental functions. The purpose of this regulation is to establish standards for the use of Capitol Square as well as the acceptance, processing, review, and disposition of permit applications for events on Capitol Square to ensure the health, safety, and welfare of the public; coordinate multiple uses of public grounds; preserve public spaces; preserve the aesthetic appearance of historic buildings and grounds; preserve the rights of individuals to free expression; and to protect the Commonwealth from financial losses.

The current regulation for use of Capitol Square was promulgated in 1970. The existing regulation contains outdated or irrelevant references and does not adequately equip the department or law enforcement to ensure the safety of participants at events that continue to increase in size and frequency. This regulation is being proposed with emphasis on ensuring the right to free speech, the safety of participants and visitors to Capitol Square, and protecting the buildings and grounds at historic Capitol Square.

Substance: The proposed amendments:

1. Require a permit for 10 or more people to hold an event on Capitol Square or for a government entity to hold a government function.

2. Establish new hours for the operation of Capitol Square, from 6 a.m. until 9 p.m. daily.

3. Outline requirements for an individual or organization to obtain a permit for an event on Capitol Square.

4. Limit permitted events to one at a time.

5. Outline what information must be included on a permit application.

6. Establish a 45-day application deadline for events that are expected to attract over 1,000 people to allow the department and law enforcement to coordinate resources.

7. Establish an exception to permit application deadline for spontaneous events.

8. Require the speaker or programmed activities to be held in the Bell Tower event area.

9. Establish a timeline for the department to act on permit requests.

10. Allow permit applications to be submitted up to 180 days in advance.

11. Establish rules for permitted events.

12. Outline when the department may deny applications or revoke permits.

13. Establish an appeals process for denied applications.

Issues: The primary advantage for the public, the agency, and other constituents that use or wish to use Capitol Square is the adoption of this regulation will set out clear guidelines for all and provide additional detail that currently is lacking.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Department of General Services (DGS) proposes to update regulations governing the events planned at Capitol Square.

Background. Virginia's Capitol Square is the Commonwealth's executive and legislative center and an architecturally and historically significant area located in downtown Richmond.

DGS, pursuant to § 2.2-1100 et seq., Code of Virginia, is charged with maintaining and operating the historic Capitol Square. DGS permits persons, organizations, or groups to use Capitol Square grounds for various purposes and events when the use will not interfere with or disrupt governmental functions.

DGS relates that the purpose of the regulation is to: establish standards for the use of Capitol Square, as well as the acceptance, processing, review, and disposition of permit applications for events on Capitol Square to ensure the health, safety, and welfare of the public; coordinate multiple uses of public grounds; preserve public spaces; preserve and protect the aesthetic appearance of historic buildings and grounds; preserve the rights of individuals to free expression; and to protect the Commonwealth from financial losses.

According to DGS the current regulation has not been updated since 1970. As a result, the language is outdated and not inclusive of all present-day situations and circumstances, contains outdated or irrelevant references, and does not adequately equip DGS or law enforcement to ensure the safety of participants at events that continue to increase in size and frequency.

Estimated Benefits and Costs. The proposed amendments mainly clarify language and update references. However, there are a few proposed changes that would depart from current practices. One of those changes would add an exemption to the requirement to obtain a permit when a gathering has fewer than 10 persons. Currently, there is no such exemption. Under the proposed amendments, an event requiring a permit "means the assemblage on Capitol Square of ten (10) or more persons for any demonstration, rally, march, performance, picketing, speechmaking, holding of vigils, sit-ins, or other activities that involve the communication or expression of views or ideas having the effect, intent, or propensity to draw a crowd or onlookers."

Another proposed change would extend the permit approval review time to 45 days for events involving more than 1,000 people. Currently, all events regardless of size are required to submit an application six days prior to the event. However, DGS notes that all large event applications so far have been received well in advance of the six days stated in the regulation. DGS states that six days to arrange a large event is "extremely difficult" as they require better preparation and coordination among different entities. For example, law enforcement must be notified and be allowed enough time to staff the event, Richmond ambulance authority needs time to arrange for medics at the event, the City of Richmond must be allowed enough time to accommodate road closures, arrange for parking, sidewalks, and pedestrian crossings, contractors must be allowed enough time to set up portable toilets, stages, water stations etc. DGS expects that the proposed submittal of an application prior to 45 days in advance of a large event would allow sufficient time for proper preparation.

The amendments would also allow a process for obtaining a permit where the six-day or 45-day submission timeframe requirements may be waived if applicant shows, in clear and descriptive writing, why the circumstances giving rise to the proposed event did not reasonably allow the applicant to apply for a permit under the usual application deadlines.

DGS also proposes to require applicants for small events to use DGS provided sound equipment. The purpose of this change is to better control the volume and operation of the equipment during the hours permitted.

This action also contains express language that marches are allowed and the Capitol Square is available for permitted events from 6 a.m. to 9 p.m. in addition to the current language stating "sunrise to sunset daily."

The review for the economic impact did not reveal any significant monetary costs or benefits implied by the proposed amendments. The main impact appears to be improved clarity and preparation for and coordination of the planned events as intended.

Businesses and Other Entities Affected. This regulation applies to events at the Capitol Square involving more than 10 persons. There were 66 permits issued in 2019 and 71 in 2020. Five of these events in 2019 and two in 2020 involved fewer than 10 persons (primarily weddings and other ceremonial events), which would be exempt under the proposed changes. Two events in 2019 and six in 2020 involved more than 1,000 persons and would require submittal of an application 45 days prior to the event under the proposed changes. Although applications for large events would be submitted earlier under the proposal, this is expected to benefit also the event itself in terms of better preparation and coordination. In cases where 45 days would be too onerous such as protest soon after an occurrence, there is an allowance for an exception. Thus, an adverse economic impact[1] on event applicants is not indicated.

Small Businesses[2] Affected. The proposed amendments do not appear to adversely affect small businesses.

Localities[3] Affected.[4] The proposed amendments could help the City of Richmond better prepare for events in terms of road closures and arrangements for sidewalks, crosswalks, parking etc. The proposed amendments do not introduce costs for localities including the City of Richmond.

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 changes may have a positive impact on the use of private property around the Capital Square due to the likelihood of improved preparation and coordination of large events. No significant impact on the value of private property or real estate development costs is expected.

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[1]Adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined.

[2]Pursuant 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."

[3]"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.

[4]§ 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

Agency's Response to Economic Impact Analysis: The Department of General Services (DGS) concurs with the economic impact analysis, however wishes to express the following exceptions: (i) on page 3, first paragraph the statement Capitol Square is available for permitted events from 6 a.m. to 9 p.m. in addition to the current language stating "sunrise to sunset daily." and (ii) DGS only addresses the public hours of Capitol Square in 1VAC30-100-30 C. DGS does not address permitted events hours in the regulation.

Summary:

The proposed amendments establish standards for the use of Capitol Square, including (i) acceptance, processing, review, and disposition of permit applications for events on Capitol Square; (ii) requirements for when a permit is necessary for use of Capitol Square, how to obtain a permit, deadlines for submitting permit applications, and permittee responsibilities; (iii) a department website address where rules for permitted events are available; and (iv) timelines for the department to act on permit applications, conditions upon which the department can deny an application or revoke a permit, and an appeals process for denied applications.

1VAC30-100-10. ~~Regulations for Capitol Square.~~ (Repealed.)

~~A. The Capitol Square shall be closed to the public from 11 p.m. each night until 6 a.m. the following morning, except for persons attending sessions of the General Assembly, public hearings which have not been concluded by 11 p.m. or an official function or program which has not adjourned by 11 p.m., and persons referred to in subsection B.~~

~~B. There shall be no parking of motor vehicles in the Capitol Square after 6 p.m. each evening until 6 a.m. the following morning, except for official motor vehicles, motor vehicles operated by a guest of the Governor, motor vehicles of members of the General Assembly, motor vehicles of employees of the Commonwealth on official business or motor vehicles bearing the official permit of the Division of Engineering and Buildings. During the months when daylight saving time is in effect, the Capitol Police may permit daylight parking after 6 p.m. for short periods of time to accommodate visitors and tourists. Parking in Capitol Square between the hours of 6 a.m. and 6 p.m. shall be limited to those employees of the Commonwealth who are assigned spaces, members of the General Assembly, those on official business, and visitors to the Capitol Building insofar as available parking will allow at the time in the judgment of the Capitol Police.~~

~~C. No parades, processions, assemblages or the displaying of flags, banners, or devices designed or adapted to bring into public notice any party, organization, or movement shall be permitted within Capitol Square except as provided herein.~~

~~D. With the approval of the Governor, the prohibitions set forth in subsection C may be suspended by the Director of the Division of Engineering and Buildings to permit meetings, gatherings, or assemblages if, in his discretion, the general enjoyment and use of the Capitol Square is not impaired, if freedom of movement of the public is not disrupted, and if the welfare, health, and safety of tourists, visitors, and persons performing various duties on the premises or traveling thereon are not endangered.~~

~~E. Requests for permits for assemblages, meetings, or functions by historical, partiotic, or other private groups must be in writing, must be submitted to the Director of the Division of Engineering and Buildings at least six days prior to the requested date, and must contain the following information:~~

~~1. Name of organization, date of origin, status (corporation, unincorporated association, partnership, nonprofit corporation, etc.) and name and address of registered agent, if a corporation.~~

~~2. Name, title within the organization, permanent address, occupation, and telephone number of the individual member who shall be responsible for the conduct of the meeting or function.~~

~~3. Statement as to the approximate number of members and other persons who will attend.~~

~~4. Date and specific period of time requested (from.....to.....).~~

~~5. Purpose of meeting or function, to include names and titles of speakers, if any.~~

~~F. Except for official functions of the Commonwealth of Virginia, the vehicular drives within Capitol Square must remain open at all times and the pedestrian walk ways must afford reasonable movement of pedestrians at all times.~~

~~G. All nonstate sponsored events, without exception, will be conducted at the Bell Tower.~~

~~H. All authorized functions are expected to be concluded within approximately one hour and during a time of day that will not interfere with major pedestrian and vehicular traffic within Capitol Square, with periods such as the beginning of the workday, the noon hour, and the close of the workday being avoided.~~

~~I. Requests for meetings or functions of organizations may be denied if, after proper inquiry, the Director of the Division of Engineering and Buildings shall determine that the proposed speech (or speeches) or demonstrations will constitute a clear and present danger to the orderly processes of state government and use of the Capitol grounds by the public as set forth because of the advocacy of: (i) the violent overthrow of the government of the United States, the Commonwealth of Virginia, or any political subdivision thereof; or (ii) the willful damage or destruction, or seizure and subversion, of state buildings or other property; or (iii) the forcible disruption or impairment of or interference with the regularly scheduled~~

~~functions of the Commonwealth; or (iv) the physical harm, coercion, intimidation or other invasion of lawful rights of officials of the Commonwealth or members of the public; or (v) other disorders of a violent nature.~~

~~J. The Director of the Division of Engineering and Buildings may refuse authorization for the use of Capitol Square, if he has reason to believe that the organization requesting a permit is organized, functioning, or conducting business in violation of Virginia law.~~

~~K. Authorization for the use of Capitol Square will be set forth in a letter addressed to the individual named in subsection E 2. Such authorization will automatically include all sections set forth above, together with any other specific stipulations or procedures that may be necessary at that time.~~

~~L. Violations of this chapter may result in immediate revocation of the permit by the Director of the Division of Engineering and Buildings or his duly appointed representative, and in the event such revocation occurs, all participants shall be required by the Capitol Police to leave the Capitol Square area forthwith.~~

1VAC30-100-15. Purpose.

A. Virginia's Capitol Square is the Commonwealth's executive and legislative center and an architecturally and historically significant area located in downtown Richmond. The Department of General Services, pursuant to Chapter 11 (§ 2.2-1100 et seq.) of Title 2.2 of the Code of Virginia, is charged with maintaining and operating the historic Capitol Square. Under this authority, the department establishes this regulation for use of Capitol Square.

B. The Department of General Services permits persons, organizations, or groups to use Capitol Square grounds for various purposes and events when the use will not interfere with or disrupt governmental functions. The purpose of this regulation is to establish standards for the use of Capitol Square as well as the acceptance, processing, review, and disposition of permit applications for events on Capitol Square to ensure the health, safety, and welfare of the public; coordinate multiple uses of public grounds; preserve public spaces; preserve the aesthetic appearance of historic buildings and grounds; preserve the rights of individuals to free expression; and protect the Commonwealth from financial losses.

1VAC30-100-20. Definitions.

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

"Capitol Police" means the Division of Capitol Police.

"Capitol Square" means the historic grounds and structures surrounding the Virginia Capitol that are bound by a decorative iron fence designed by Sabbaton in 1818.

"Commercial activity" means any activity or action undertaken by one or more business entities or individuals, whose purpose in whole or in part, directly or indirectly, is to derive or realize a present or future financial gain for the individuals or business entities.

"Department" means the Department of General Services.

"Director" means the Director of the Department of General Services.

"Event" means the assemblage on Capitol Square of 10 or more persons for any demonstration, rally, march, performance, picketing, speechmaking, holding of vigils, sit-ins, or other activities that involve the communication or expression of views or ideas having the effect, intent, or propensity to draw a crowd or onlookers. "Event" does not include casual use of Capitol Square by visitors or tourists.

"Government function" means a function sponsored by a Commonwealth of Virginia government entity in support of the agency's mission.

"Permit" means a written authorization from the department allowing use of Capitol Square as set forth in the permit. A permit serves as a reservation to use a portion of Capitol Square with the priority for use set forth in this chapter.

"Permit area" means the area adjacent to the Bell Tower where an event speaker or an event programmed activities must be located.

"Permittee" means the individual, group, or entity identified in the permit as the holder of the permit.

1VAC30-100-30. General regulation requirements.

A. All events scheduled on Capitol Square must be permitted through the department. An Application for Use of Capitol Square form must be completed and the application and the Rules of Capitol Square must be signed by the individual who will be the permittee. For government functions on Capitol Square, the government entity must complete and submit an Agency Application for Use of Capitol Square to the department for approval. The application for each type of event can be found at https://dgs.virginia.gov.

B. Rules for the use of Capitol Square can be found on the department's website at https://dgs.virginia.gov.

C. Capitol Square shall be closed to the public from 9 p.m. until 6 a.m. daily, except for the conduct of official Commonwealth business. Capitol Square may be closed at any time for inclement weather or other necessity, or to protect the public from health or safety hazards, in the determination of the Governor or department. The Division of Capitol Police may close Capitol Square temporarily for law-enforcement purposes. The Chief of Police shall immediately notify the director or the director's designee if the Capitol Police close Capitol Square.

D. Capitol Square is primarily for the operation and function of government and nothing will be permitted that would interfere with those functions.

E. No activities will be permitted that will harm or destroy the natural, horticultural, or architectural beauty of or that will harm the physical condition or safety of Capitol Square or

structures on Capitol Square, including the surrounding historic fence.

F. No activities will be permitted that violate Virginia or federal law or threaten the health, safety, or welfare of persons on Capitol Square.

G. Commercial activities are not permitted on Capitol Square.

H. An event is not considered approved until the department has issued a permit.

1VAC30-100-40. Permittee responsibilities.

A. The permittee and alternate contact for the permit shall be at least 18 years of age.

B. The permittee shall indemnify the Commonwealth of Virginia against any loss or damage that may occur in connection with the permittee's use of and presence at the property.

C. A permittee shall be required to notify the department of any changes to the information contained in the permit application as soon as practicable.

D. A permittee should identify an alternate contact in the Application for Use of Capitol Square, and either the permittee or alternate contact person must be present during the entire activity, including setup and takedown of the event. The permit and any authorizations will be suspended if these requirements are not met.

E. A permittee must work directly with the designated department coordinator and the Capitol Police regarding setup, access, security, logistics, and all other aspects of the planned event. An in-person pre-meeting may be required by the department to discuss the details of the requested event.

F. A permittee is responsible for returning the areas used in conducting its event to their original condition, including removal of any materials and debris connected to the event. Any costs incurred by the department to restore the area to its original condition will be charged to the permittee.

G. A permittee shall comply with all federal and Virginia laws, and this chapter.

H. The permittee agrees to notify law enforcement if any unlawful activities occur during the permitted event. For emergencies, the permittee shall call 911 and the Capitol Police emergency number at (804) 786-4357. For nonemergencies, the permittee shall call (804) 786-2568.

1VAC30-100-50. Permit process.

A. The Governor will have priority over use of Capitol Square.

B. The department may not issue permits for any event in Capitol Square coinciding or conflicting with inaugural events, including activities associated with inauguration.

C. Requests for permits generally will be considered on a first-come, first-served basis.

D. Capitol Square is available for permitted events from sunrise to sunset daily, subject to the restrictions of 1VAC30-100-30 C.

E. Permitted events may last a maximum of one hour, with an additional 30 minutes to set up the event and 30 minutes to take it down.

F. No more than one event will be scheduled for the same time on the same day. This includes permitted setup and takedown time.

G. Application for a permit shall be made in writing on an Application for Use of Capitol Square and submitted to the department at least six days prior to the planned event when the expected attendance is less than 1,000 individuals. Application for events when expected attendance is more than 1,000 individuals shall be submitted 45 days in advance, except as specified in subsection I of this section.

H. An application for an event must contain, at a minimum, the following information:

1. Type and purpose of event, meeting, or function.

2. Name, address, telephone number, and email address of permittee.

3. Name, address, telephone number, and email address of alternate contact.

4. Name of organization, date of origin, status (e.g., corporation, unincorporated association, partnership, or nonprofit corporation) and name, address, and telephone number, and email address of registered agent if the permittee is a corporation or other business entity.

5. Approximate number of people who will attend the event.

6. Requested date and time of the event.

7. Whether the event is being advertised or promoted to the general public.

8. Transportation plan for attendees.

9. Waste management plan.

10. Whether the department's sound equipment will be needed.

I. An applicant may request as part of the application an exception to the six-day or 45-day requirements by providing written explanation of the reason such exception should be granted by the department, provided:

1. The applicant submits a completed permit application in accordance with this chapter;

2. The applicant shows in clear and descriptive writing, why the circumstances giving rise to the proposed event did not reasonably allow the applicant to apply for a permit in compliance with the time requirements; and

3. The event has not been planned for more than six days in advance of the proposed date of the event for those with fewer than 1,000 attendees or more than 45 days for events with more than 1,000 attendees.

J. The speaker and programmed activities for any permitted event must be located within the permit area.

K. Applications for permits may be submitted up to 180 days in advance of the date of the proposed event. The department will deny permit applications submitted more than 180 days in advance of the date of the proposed event.

L. Generally, permit requests will be granted or denied within five business days. Permit requests for events that are likely to require additional department or law enforcement resources may take longer to review.

M. The permit and the rights thereunder are nontransferable and may not be assigned to a third party.

N. Events should not be announced, promoted, or advertised until the applicant receives a permit.

O. Permit applications, issued permits, and supporting documentation are subject to release under Virginia's Freedom of Information Act (§ 2.2-3700 et seq. of the Code of Virginia).

P. All permitted activities on Capitol Square must strictly adhere to the times as scheduled to ensure that the activities will not conflict with other scheduled and permitted activities.

Q. The department reserves the right to limit the use of Capitol Square at any time due to unforeseen operational circumstances, including to emergency maintenance or urgent public health or security concerns. Every reasonable effort will be made to alleviate the effects of any such limitation.

R. The department may cancel a scheduled event if the location is required for an official government function. In such cases, the department will notify the contact person as soon as possible, and every reasonable effort will be made to allow for rescheduling the event.

1VAC30-100-60. Permitted events.

A. All activities shall be performed in compliance with this chapter, as well as any federal or Virginia laws. Unlawful activity is prohibited.

B. At no time shall any entrance or exit of any building be obstructed in such a way as to impede free access to or from the building by its occupants or the public.

C. No banners, flags, posters, or other objects shall be placed on or affixed to Capitol Square grounds or structures.

D. All event items and materials are to be removed upon conclusion of the event. All areas must be returned to their pre-event condition.

E. Props, equipment, and other moveable materials that do not require power to be used in connection with the event are allowed provided that prior notice is given on the application and the size, location, and structure of the items conforms to the reasonable conditions, limitations, and restrictions provided for by the department. The permittee shall bear all risk related to the use of any such props, equipment, and other moveable materials.

F. The department reserves the right at all times to immediately remove or cause to be removed any and all items of display it determines would damage government property, inhibit movement, or raise safety issues of the government property, attendees, or the public.

G. Items or props used for the event may not impede normal business operations or create safety concerns.

H. Due to the presence of underground utilities, irrigation, and other lines, nothing shall be driven into the ground or placed on the grounds anywhere without the location and method of placement approved in advance and in writing by the department.

I. Temporary structures of any kind may not be erected on Capitol Square. This includes tents, cabanas, canopies, stages, and all other types of covered or enclosed structures, as well as tables, stages, projectors, screens, or other structures.

J. The director reserves the right to require that special facilities, such as portable toilet facilities, be provided at the permittee's expense.

K. Sound amplification is permitted; however, the sound must not disrupt the orderly business of government bodies and agencies located on Capitol Square or unreasonably disturb other persons who are visiting Capitol Square. For events with fewer than 1,000 attendees, the department, at permittee's request, will provide a microphone, podium, and speaker for use during the event. All other electric sound amplification equipment is prohibited for events with fewer than 1,000 attendees. For events with more than 1,000 attendees, the department will consider the use of amplification equipment provided by the permittee. If the department approves use of amplification equipment provided by the permittee, the department will supply power.

The permittee shall bear all risk related to the use of any such amplification equipment provided by the permittee.

L. Use of sound systems will be discontinued after the permitted event time limit expires.

M. If the permittee desires to use available department-provided sound amplification equipment, the equipment will be set up by department staff and this setup will not be moved or altered by the permittee or other event attendees without the express permission of the department.

N. Activities that create loud or unusual noise or are disruptive to the performance of official duties or delivery of services may be denied, ceased, or interrupted by the department or Capitol Police.

O. Permittees shall not offer any item for sale, solicit money or items of value, or display any form of advertising on Capitol Square.

P. Marches may be permitted into and out of Capitol Square provided the march does not disrupt the orderly business of government or impede the access by others visiting the grounds or buildings of Capitol Square.

1VAC30-100-70. Denials and revocations.

A. The department may deny a request for a permit or revoke a permit before or during an event upon determination of the director or the director's designee that any of the following conditions has occurred:

1. A completed application for an event at the same time already has been received from another applicant, and a permit has been or will be granted for the event. In such a case, an alternate date or time, if available, will be proposed.

2. Incomplete information, false statements, or misrepresentation have been made on the permit application.

3. Fraud was committed or misrepresentation made in obtaining the permit.

4. The permittee or the alternate contact persons are not present for the duration of the event, including during setup and takedown times.

5. The conduct of either the permittee or persons attending the event involves a violation of the permit, this chapter, or Virginia or federal law.

6. The number of persons engaged in the event exceeds the number of permitted attendees or cannot be safely accommodated.

7. The permittee twice (i) violated the terms of prior permits issued to the permittee or (ii) violated applicable law while applying for or using a prior permit. In such instances, the permittee is banned from obtaining a permit for 18 months from the date of the most recent violation.

8. The Governor's Office will be using all or part of the permit area during all or part of the requested time.

9.The Senate of Virginia or the Virginia House of Delegates will be using all or part of the permit area during all or part of the requested time for a government function.

10. The permit applicant has not certified that the applicant will comply with this chapter or applicable law.

11. The permit application is not submitted within the required timeframes of six or 45 days, depending on the number of planned attendees, or the application submitted does not justify an exception to the time requirements.

12. The permit application was submitted more than 180 days in advance of the proposed event.

13. The requested use would cause a clear and present danger to the orderly functions of Commonwealth of Virginia government or to the use of Capitol Square due to:

a. Advocacy of the imminent violent overthrow of government of the United States or the government of the Commonwealth of Virginia or any political subdivision thereof;

b. The willful damage or destruction or seizure and subversion of public property;

c. The forcible disruption or impairment of or interference with the regularly scheduled functions of the Commonwealth of Virginia;

d. Causing harm to or violating the lawful rights of any person; or

e. Other disorders of a violent nature.

B. Prior to commencement of the permitted event, the department finds it necessary to revoke the permit due to previously unknown circumstances.

C. During an event, the Capitol Police may require discontinuation of the event if activity presents a clear and present danger to public safety, good order, or health or for any violation of applicable statutes, regulations, rules, or policies.

1VAC30-100-80. Appeals.

A. This section and the appeal procedures set forth herein shall apply only in cases when a timely and complete permit application was filed in accordance with this chapter, and the permit was denied. No appeal shall be available if a timely and complete permit application was not filed.

B. If an application is denied, the applicant will be informed in writing of any reason for the denial and will be advised that the denial may be appealed by written request to the director submitted within five business days of receipt of notice of such denial. The director may reverse, affirm, or modify the original determination. The director's written determination on the appeal shall be provided no later than 24 hours prior to the requested event time, provided it is received by the department at least 48 hours prior to the requested time.

C. The appeal shall include the name, address, and contact information of the applicant; a concise statement of the reason the appeal should be granted; and a description of the event for which the permit is sought.

1VAC30-100-90. Violations.

Violations of this chapter or of any other provision of Virginia or federal law shall result in the immediate revocation of the permit by the department or discontinuation of the event by the department or Capitol Police. In the event such revocation or discontinuation occurs, all participants shall immediately leave Capitol Square. Remaining in Capitol Square after proper notice that the permit has been revoked or the event discontinued shall be considered trespass in violation of § 18.2-119 of the Code of Virginia.

NOTICE: The following forms used in administering the regulation have been filed by the agency. Amended or added forms are reflected in the listing and are published following the listing. Online users of this issue of the Virginia Register of Regulations may also click on the name to access a form. The forms are also available from the agency contact or may be viewed at the Office of Registrar of Regulations, 900 East Main Street, 11th Floor, Richmond, Virginia 23219.

FORMS (1VAC30-100)

~~Official Application for Use of Capitol Square Grounds.~~

Request to Hold an Event at the Bell Tower (submitted 8/2021)

Agency Application for Use of Capitol Square (submitted 8/2021)

VA.R. Doc. No. R21-6493; Filed July 22, 2021, 4:07 p.m.

TITLE 4. CONSERVATION AND NATURAL RESOURCES

BOARD OF WILDLIFE RESOURCES

Final Regulation

REGISTRAR'S NOTICE: The Board of Wildlife Resources is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 A 3 of the Code of Virginia when promulgating regulations regarding the management of wildlife.

Title of Regulation: **4VAC15-35. Bird: Incidental Take of Bird Species (adding 4VAC15-35-10 through 4VAC15-35-100).**

Statutory Authority: §§ 29.1-103, 29.1-501, and 29.1-502 of the Code of Virginia.

Effective Date: August 1, 2021.

Agency Contact: Aaron Proctor, Regulations Coordinator, Department of Wildlife Resources, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228, telephone (804) 367-8341, or email aaron.proctor@dwr.virginia.gov.

Summary:

The new regulation addresses the incidental take of migratory birds and includes (i) setting types of, requirements for, and procedure for acquiring, including for denial and appeal of denial, a permit to take migratory birds; (ii) exempting certain activities, including silvicultural and agricultural activities, residential construction, and certain emergency actions from requiring a permit; and (iii) setting standards of permits and enforcement of this chapter.

Chapter 35

[~~Bird~~ Birds]: Incidental Take of Bird Species

4VAC15-35-10. Purpose.

The purpose of this chapter is to:

1. Regulate the incidental take of regulated bird species and habitats in the context of the board's oversight authorities described in § 29.1-501 A of the Code of Virginia and the department's conservation and management authorities described in § 29.1-521 A 2 and A 10 of the Code of Virginia by establishing a regulatory framework for the administration, implementation, and enforcement of an incidental take permitting program;

2. Provide ample protections to regulated bird species and habitats while authorizing take that may occur incidental to regulated activities through the issuance of a general permit or an individual incidental take permit that stipulates best management practices with the intended purpose of avoiding, minimizing, or compensating incidental take; and

3. Delineate the procedures and requirements to be followed in connection with permits issued by the department, while providing flexibility for innovative solutions that avoid, minimize, or compensate incidental take of regulated bird species and habitats when such authorization meets the criteria of this chapter.

4VAC15-35-20. Definitions.

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

"Active nest" means any nest structure of a regulated bird species that contains one or more viable eggs incubated by attendant adults or live dependent young.

"Applicant" means a person who is seeking or has obtained an individual incidental take permit or general permit through the department in accordance with procedures established in this chapter.

"Best management practice" refers to structural or nonstructural measures designed to avoid or minimize the incidental take of regulated bird species or habitats that may result from regulated activities during the construction and operational phases of the project.

"Biologically significant avian habitat" means an area within public or private conservation lands and waters, including national wildlife refuges; national parks or seashores; national forests; national recreation areas; state wildlife management areas; state parks; state natural areas and preserves; state recreation areas; lands owned or under easement by conservation organizations; lands and waters that have been designated as biologically important, such as Coastal Avian Protection Zones, Important Bird Areas, and Marine Sanctuaries; and other lands and waters that encompass unique features deemed biologically important to regulated bird species by the department.

"Board" means the Board of Wildlife Resources.

"Compensation" means achieving no net loss of regulated habitats through restoration, creation, enhancement, or, in certain circumstances, out-of-kind measures for the purposes of offsetting incidental take of regulated bird species or habitats that remain after all appropriate and practicable avoidance and minimization has been considered or achieved. Where permissible, appropriate compensation will be set forth in individual take permits or other board regulation or guidance. There will be no compensation required under general permits.

"Department" means the Department of Wildlife Resources.

"General avian habitat" means lands and waters that are not classified as "biologically significant avian habitat" but nonetheless require evaluation using methods developed by the

department to determine their biological value to regulated bird species.

"Incidental take" means any take of a regulated bird species that is incidental to, but not the purpose of, a regulated activity.

"Person" means any individual, non-federal government entity, firm, corporation, association, partnership, club, or private body.

"Regulated activity" or "activity" means a new construction or development activity or the expansion of an activity beyond the original or existing footprint of the activity for which the board has adopted a sector-specific plan.

"Regulated bird species" means any migratory bird species, or any active nest, or egg thereof, regulated by the federal Migratory Bird Treaty Act (16 USC §703 et seq.) or its attendant regulations, excluding any bird species listed as endangered or threatened pursuant to 4VAC15-20-130.

"Regulated habitat" means biologically significant avian habitat or general avian habitat that is in an area subject to a sector-specific plan, an avian conservation and mitigation plan, or an individual incidental take permit.

"Sector-specific plan" means a framework adopted by regulation of the board that defines what activities will require a permit from the department for incidental take of regulated bird species and outlines the criteria for obtaining such a permit, such as specific best management practices, schedules, or criteria for avoiding or minimizing incidental take and circumstances in which project bundling may be applicable.

"Take" means to harass, harm, pursue, hunt, shoot, wound, kill, capture, trap, collect, possess, destroy, disturb, or to attempt to engage in any such conduct or any activity that significantly or permanently impedes breeding, foraging, resting, or other normal avian behaviors conducted during the annual life cycle, obstructs the use of or destroys or degrades regulated habitats, or reduces reproductive success or survival rates of regulated bird species.

4VAC15-35-30. Requirement for a permit.

Except as provided in this chapter, it shall be unlawful for any person to conduct a regulated activity that results or will result in incidental take of a regulated bird species or regulated habitat without obtaining and complying with a permit from the department. However, no permit shall be necessary for incidental take of regulated bird species or habitats unless the board has adopted a sector-specific plan requiring such permit. The board may adopt sector-specific plans for any of the following categories:

1. Commercial projects, including new construction or expansion:

a. Retail stores or malls;

b. Restaurants;

c. Lodging facilities;

d. Office buildings outside of an existing commercial park;

e. Commercial parks;

f. Medical facilities, including nursing homes, rehabilitation and convalescence centers;

g. Sports facilities; or

h. Other large-scale nonindustrial structures and facilities planned for commerce, health care, hospitality services, government use, or other business use.

2. Industrial projects, including new construction or expansion:

a. Industrial manufacturing buildings outside of an existing industrial park;

b. Industrial parks;

c. Sewage treatment plants;

d. Government facilities, such as warehouses and laboratories;

e. Power generation plants; or

f. Other large-scale noncommercial public, private, or governmental structures or facilities that directly engage in or are connected to the handling, storage, manufacturing, maintenance, treatment, or disposal of materials, products, goods, commodities, or hazardous waste.

3. Oil, gas, and wastewater disposal pits.

4. Methane or other gas burner pipes.

5. Communications towers.

6. Electric transmission and distribution lines.

7. Wind and solar energy projects.

8. Transportation projects.

4VAC15-35-40. Activities occurring before adoption of sector-specific plan.

No permit shall be necessary for any regulated activity that is actively under construction, has received all necessary permits and approvals but construction has not commenced or that has provided evidence of other contractual obligations that may be described in the appropriate sector-specific plan on or before the effective date of a sector-specific plan that would otherwise apply to that regulated activity. Upon request, the department may review the circumstances of a project and provide a letter stating that no permit is necessary to any person conducting such an activity.

4VAC15-35-50. Applicability of other laws or regulations.

Nothing in this section shall be interpreted to excuse compliance with the prohibitions, provisions or requirements of any other federal, state, or local laws, regulations, or ordinances, including the Virginia Endangered Species Act

(§ 29.1-563 et seq. of the Code of Virginia); the federal Migratory Bird Treaty Act (16 USC § 703 et seq.), the federal Bald and Golden Eagle Protection Act (16 USC § 668 et seq.), and the federal Endangered Species Act (16 USC § 1531 et seq.).

4VAC15-35-60. Exemptions.

The following activities are exempt from the permitting requirements of this chapter. Any incidental take associated with these activities will not be considered a violation of this section:

1. Activities that are not defined as "regulated activities";

2. Agricultural and silvicultural activities;

3. Residential construction activities; and

4. Regulated activities performed under emergency situations, including activities necessary to restore essential services, protect human health, address a public safety issue, or prevent imminent damage to property.

4VAC15-35-70. Permits.

The following permits authorize incidental take resulting from regulated activities:

1. General permit.

a. The board may, by regulation, adopt a sector-specific plan that provides the framework for general permits issued for a particular category of regulated activities.

b. An applicant whose activities qualifies for a general permit must submit an application to the department and comply with all requirements stated in the sector-specific plan.

c. The general permit authorizes a regulated activity only if the activity and applicant satisfy all of the terms and conditions of the general permit and associated sector-specific plan.

d. An applicant for general permit coverage must adhere to the conditions set forth in this chapter pertaining to permit renewal, amendment, transfer, suspension, revocation, and other procedures for permit issuance. If a sector-specific plan expressly requires department review and authorization of general permit coverage, the applicant shall submit a permit application and any required documents, together with the applicable fee, to the department prior to commencing the proposed activity, and adhere to the [~~following~~ identified] procedures unless the sector-specific plan otherwise specifies [~~.~~ The department will review the permit application and required documents to ensure that the activity complies with the terms and conditions of the general permit.]

[~~(1) The department will review the permit application and required documents to ensure that the activity complies with the terms and conditions of the general permit.~~

~~(2) If the department determines that the proposed activity is not covered by the general permit, the department will notify and instruct the applicant on necessary procedures for obtaining an individual incidental take permit or provide the applicant with the opportunity to revise the proposed activity to ensure its compatibility with the general permit.~~]

e. Incidental take by a regulated activity of regulated bird species or habitats shall be first avoided and then minimized through the use of best management practices described in the appropriate sector-specific plan or otherwise authorized by the department.

f. Persons authorized by the general permit may be required to monitor and report impacts to and the incidental take of regulated bird species that result from the regulated activity as set forth in the sector-specific plan.

g. No general permit coverage issued under this chapter shall be valid for a period of more than eight years after the date of its issuance, or such shorter term otherwise specified in the applicable sector-specific plan or requested by the applicant. An applicant may terminate a permit prior to the expiration of the defined term upon providing written evidence to the department of the conclusion of construction and fulfillment of any applicable monitoring or site closure requirements defined in the appropriate general permit.

h. If the department, upon receiving an application for a general permit, determines that the activity does not qualify for a general permit, but still requires a permit from the department, the department will notify the applicant in writing of the reasons that the activity does not qualify for a general permit. The applicant may revise the activity and resubmit the application for a general permit or submit an application for an individual incidental take permit.

2. Individual incidental take permit.

a. Applicants shall obtain individual incidental take permits under such terms and conditions necessary to avoid, minimize, or compensate for the incidental take of regulated bird species or habitats when:

(1) Regulated activities will occur within or adjacent to biologically significant avian habitat, or

(2) Required by the terms of the applicable sector-specific plan.

b. In addition to the conditions set forth in this section governing permit renewal, amendment, transfer, suspension, revocation, and other procedures for permit issuance, an applicant for an individual incidental take permit must adhere to the following procedures:

(1) The applicant shall prepare and submit an avian conservation and mitigation plan in accordance with the provisions in this section for department approval and

must submit the applicable fee and any additional information and documents that the department determines are necessary for permit issuance. The applicant must receive final permit approval prior to commencing the proposed activity.

(2) The department shall review the applicant's permit application and included avian conservation and mitigation plan and shall notify the person applying for the permit in writing of any necessary amendments or additions.

(3) Impacts of a regulated activity on regulated bird species or habitats shall be first avoided and then minimized through the use of best management practices or other measures as described in the appropriate sector-specific plan and the avian conservation and mitigation plan. Persons authorized by the individual incidental take permit will be required to compensate for unavoidable incidental take of regulated bird species or habitats.

(4) Persons authorized by the individual take permit may be required to monitor and report impacts to and the incidental take of regulated bird species that result from the regulated activity as set forth in the sector-specific plan, individual incidental take permit, or avian conservation and mitigation plan.

(5) No individual incidental take permit issued under this subsection shall be for a period of more than 10 years after the date of its issuance or such shorter time period determined appropriate by the department or requested by the applicant. An applicant may terminate a permit prior to the expiration of the defined term upon providing written evidence to the department of the conclusion of construction and fulfillment of any applicable monitoring requirements defined in the individual incidental take permit.

c. An avian conservation and mitigation plan must provide sufficient information to demonstrate that the conservation criteria established in the individual incidental take permit will be fulfilled. The plan must clearly define the project's scope of work and the project's possible impacts on regulated bird species or habitats. In addition, the plan must include:

(1) A site plan drawn to scale showing the location of the proposed activity;

(2) A detailed description and schedule of the work to be performed;

(3) A quantitative or narrative description of the likely incidental take of regulated bird species or habitats;

(4) The steps the applicant will take to avoid, minimize, and compensate for such impacts, including:

(a) Avoidance, minimization, and compensation measures the applicant shall employ using reliable department-approved methods that are be based upon the best available science and utilizing the best practicable and necessary technology to meet the requirements of the applicable sector-specific plan. These measures shall be evaluated for effectiveness in a consistent and rigorous manner by the applicant throughout their implementation.

(b) Compensation measures that shall ensure that a naturally-sustaining ecosystem or quality of habitat comparable to the pre-activity conditions at the location of the regulated activity or within a reasonable proximity is established upon the activity's completion and achieves no net loss of regulated birds or habitats.

(c) Any actions included in the applicable sector-specific plan considered by the applicant and the reasons why such actions are not being utilized;

(d) A contingency plan to rectify any failures of implemented measures or actions necessary to provide additional protection to regulated bird species, including hazing programs or other temporary or emergency measures that would be instituted;

(e) A timeline of when each element of the plan will be completed; and

(f) Such other measures that the department or applicable sector-specific plan may require as being necessary or appropriate for purposes of the plan; and

(5) The avian conservation and mitigation plan may avoid duplication by incorporating information included in any permit application required by any other permitting agency. The plan shall identify by source, section, and page number when referencing such information.

d. While most general and individual incidental take permits will apply only to the construction phase of a regulated activity, nothing in this chapter shall prevent the board from including requirements for the operational phase of a particular regulated activity in a sector-specific plan if the board determines that operations are likely to incidentally take regulated bird species or habitats. If operational requirements are included in a sector-specific plan, permits may be renewed throughout the life of the regulated activity.

4VAC15-35-80. Permit procedures.

A. Required general information. A permit application must contain the following information:

1. Applicant's full name and address, telephone number, and, if available, fax number and email address;

a. If the applicant resides or is located outside of the Commonwealth of Virginia, the name and address of an agent located in the Commonwealth of Virginia; and

b. If the applicant is an entity, a description of the type of entity and the name and title of an individual who will be responsible for the permit;

2. Location of the regulated activity;

3. Certification in the following language: "I hereby certify that the information submitted in this application is complete and accurate to the best of my knowledge and belief";

4. Desired effective date of the permit except where issuance date is fixed by the sector-specific plan under which the permit is issued;

5. Desired duration of the permit, if less than the default term for the sector-specific plan under which the general or individual incidental take permit is requested;

6. Date of application;

7. Signature or electronic signature of the applicant; and

8. Such other information or documentation as may be required by the applicable sector-specific plan.

B. Administrative procedures.

1. The department shall determine the completeness of an application and shall notify the applicant of any determination within 45 calendar days of receipt. Where available to the applicant, electronic communication may be considered communication in writing.

a. If, within those 45 calendar days, the application is deemed to be incomplete, the applicant shall be notified in writing of the reasons the application is deemed incomplete. If the application is resubmitted, all deadlines in this section shall apply from the date of receipt of the resubmitted application.

b. If a determination of completeness is made and the associated sector-specific plan does not require additional department review, the application is deemed approved and the applicant will be notified in writing.

c. If a determination of completeness is not made and communicated to the applicant within 45 calendar days of receipt, the application shall be deemed complete on the 46th day after receipt.

d. If the application is complete and the associated sector-specific plan requires additional department review, the department will take no more than 120 days to review. Bundled projects subject to prior approval of biennial standards and specifications as described in 4VAC15-35-90 may take up to 180 days. If, at the end of the designated review period, the department has not taken final action on the application or notified the applicant in writing of the need for an additional 60 days for review, the application shall be deemed approved.

2. During the review period, the application shall be approved or disapproved, and the decision communicated in writing to the applicant. If the application is not approved, the reasons for not approving the application shall be provided in writing. Approval or denial shall be based on the application's compliance with the requirements of this chapter and the applicable sector-specific plan.

a. If the application is not approved, the applicant shall have 45 calendar days to revise the permit application to bring it into compliance with the appropriate sector-specific plan or to appeal the decision to the director of the department under the department's dispute resolution and administrative appeals procedure. The applicant may request, in writing, an extension of the timeframe in which to submit a revised application, not to exceed an additional 60 calendar days. If the revised application is not submitted within the defined timeframe, the department will administratively close the application.

b. Upon submission of a revised application after denial, the department shall have 120 days to review and make a determination. If the application is denied again, the applicant will have 45 days after denial to appeal the decision to the director of the department under the department's dispute resolution and administrative appeal procedure. Any new revisions to the permit must be submitted as a new application.

3. Upon approval of an application for an individual incidental take permit, the department will provide the applicant with a permit, including terms and conditions. The applicant shall have 30 calendar days to appeal terms and conditions to the department director under the department's dispute resolution and administrative appeals procedures.

C. Permit issuance.

1. Denial. The department shall not issue a permit if:

a. The applicant has one or more of the disqualifying factors included in subdivision 2 of this subsection;

b. The applicant has failed to disclose material information or has made false statements as to any material fact in connection with the application; or

c. The department determines that the application fails to comply with the applicable sector-specific plan or any other applicable wildlife law, regulation, or ordinance.

2. Disqualifying factors. The department will provide written notice of any known disqualifying factors to the applicant. Any one of the following will disqualify an applicant from receiving or exercising a permit:

a. A conviction of, or entry of a plea of guilty or nolo contendere by, the applicant or a representative of the applicant for a violation of the Lacey Act (16 USC § 3371 et seq.); the federal Migratory Bird Treaty Act (16 USC § 668 et seq.); the federal Bald and Golden Eagle Protection Act (16 USC § 668 et seq.); the federal Endangered Species Act (16 USC § 1531 et seq.); the Virginia Endangered Species Act (§ 29.1-563 et seq. of the Code of Virginia); or this chapter within the five-year period preceding the application, unless such disqualification has been expressly waived by the department in response to a request by the applicant.

b. The failure to pay any required fees.

c. The suspension of any other incidental take permit. The applicant is disqualified from receiving any additional incidental take permits as long as the suspension exists.

3. Fees. An application fee of $50 and a permit fee of $50 per year shall be due for each permit. The application fee shall be due at the time of application submittal, and no application shall be processed until the fee is received. The full amount of the permit fee shall be based on the default duration of the permit and is due at the time of certification if no approval is required. If the department's approval is required, the full amount of the permit fee is due upon approval or issuance of a permit. The fees will be deposited into the Nongame Cash Fund and used for the conservation and management of regulated bird species consistent with § 58.1-344.3 of the Code of Virginia. No refund of any fees paid shall be made if a permit application is denied or if a permit is terminated prior to the expiration date.

4. Permit renewal. Applications for renewal shall meet and comply with all requirements for permit application and be submitted at least 90 calendar days prior to the expiration of an existing permit.

5. Modifications to permits. Permits may be modified with the department's approval in accordance with the following:

a. Applicant's request. Where circumstances have changed so that an applicant desires to have any condition of the permit modified, the applicant must submit a full written justification and supporting information to the department in conformity with the terms and conditions under which the permit was issued.

b. Department determination. The department may amend any permit during its term where circumstances have changed such that amendments to the permit are deemed necessary by the department. In such instances, the department will notify the applicant in writing 60 calendar days in advance of the effective date of any amendment. The applicant shall have 30 calendar days to appeal the decision to the department director under the department's dispute resolution and administrative appeals procedures.

6. Transfer of permits and scope of permit authorization.

a. Except as otherwise provided for in this subsection, permits issued under this part are not transferable or assignable.

b. Permits may be transferred in whole or in part through a joint submission by the applicant and the proposed transferee, or, in the case of a deceased applicant, the deceased applicant's legal representative and the proposed transferee. The department will review the submission and approve the transfer provided that:

(1) The proposed transferee meets all of the qualifications under this part for holding a permit;

(2) The proposed transferee has provided adequate written assurances that it will implement the relevant terms and conditions of the permit; and

(3) The proposed transferee has provided other information that the department determines is relevant to the processing of the submission.

c. Except as otherwise stated on the face of the permit, any person who is under the direct control of the applicant or who is employed by or under contract to the applicant for purposes authorized by the permit may carry out the activity authorized by the permit. However, the applicant will remain responsible for ensuring compliance with all aspects of the permit.

7. Discontinuance of permit activity. When an applicant discontinues activities authorized by a permit, the applicant shall within 30 calendar days of the discontinuance notify the department of permit termination.

8. Permit inspections. The department shall have the right to perform inspections of a permitted activity to ensure compliance with permit conditions. Written, including electronic, or verbal notice of such inspection shall be given on a business day, and the inspection shall not occur no less than one and no more than five business days from the date of the notice, except when the department determines that an emergency inspection is necessary.

9. Permit suspension and revocation.

a. Criteria for suspension. The privileges of exercising some or all of the permit authority may be suspended at any time if the applicant is not in compliance with the conditions of the permit, the sector-specific plan, or any applicable laws or regulations governing the conduct of the regulated activity. Such suspension shall remain in effect until the department determines that the applicant has corrected the deficiencies.

b. Criteria for revocation. A permit may be revoked for any of the following reasons:

(1) The applicant willfully violates any provision of the Virginia Endangered Species Act (§ 29.1-563 et seq. of the Code of Virginia); the federal Migratory Bird Treaty Act (16 USC § 703 et seq.); the federal Bald and Golden Eagle Protection Act (16 USC § 668 et seq.); the federal Endangered Species Act (16 USC § 1531 et seq.); or the conditions or a permit issued under those acts or this chapter; or

(2) The applicant fails within 60 calendar days to correct deficiencies that were the cause of a permit suspension.

c. Procedure for suspension and revocation.

(1) The applicant shall be notified in writing of the suspension or revocation by certified or registered mail. This notice shall identify the permit to be suspended, the reasons for such suspension, and the actions necessary to correct the deficiencies and inform the applicant of the right to appeal the suspension. The department may amend any notice of suspension or revocation at any time.

(2) The applicant shall be provided with an opportunity to appeal the suspension or revocation within 30 calendar days of mailing the suspension or revocation notice. Appeal may be requested by filing a written objection specifying the reasons the applicant objects to the suspension or revocation and may include supporting documentation. Amendment of a notice of suspension or revocation will allow the applicant another 30 calendar days to appeal the decision from the date of mailing notice of the amendment if they have not already initiated an appeal.

(3) If at the end of 30 calendar days no appeal has been received by the department, a final order shall be issued suspending or revoking the permit.

(4) If the applicant timely submits an appeal, an informal fact-finding proceeding will be held within 30 calendar days, or at the option of the department or the applicant, a formal hearing may be scheduled as soon as may be practicable.

(5) Following an informal fact-finding proceeding or formal hearing, a final decision shall be made by the director within 30 calendar days of the informal fact-finding proceeding or receipt of a recommendation by any hearing officer.

4VAC15-35-90. Biennial standards and specifications.

Any person who will undertake multiple regulated activities requiring a permit may biennially submit a single set of standards and specifications for department approval that describes how covered regulated activities shall be conducted.

1. Such standards and specifications shall be consistent with the requirements of this chapter and the applicable sector-specific plans. Each project constructed for which a permit is required shall obtain such permit by filing a permit application referencing the approved standards and specifications and paying the fee applicable under 4VAC15-35-80 C 3 prior to the commencement of the regulated activity. The standards and specifications shall include:

a. A reference to which sector-specific plans are addressed by the standards and specifications;

b. A description of the regulated activities that the applicant intends to be addressed by the standards and specifications, and, if applicable, any other regulated activities that the applicant intends to conduct that will not utilize the standards and specifications;

c. Information satisfactory to the department demonstrating how regulated activities conducted under the standards and specifications will meet the requirements of the applicable sector-specific plans, together with a copy of any reference materials cited by the standards and specifications; and

d. Implementation by the applicant of a regulated activity tracking system of all regulated activities conducted under the standards and specification, together with a permittee self-monitoring program that will ensure compliance with the standards and specifications.

2. Such standards and specification may be utilized following department approval. Utilization of approved standards and specification shall not affect the department's authority to perform inspections of regulated activities addressed by the standards and specifications. Noncompliance with the approved standards and specifications shall have the same effect as noncompliance with the requirements of the applicable sector-specific plan for purposes of permit modification, suspension, or revocation under this section.

4VAC15-35-100. Enforcement; unpermitted regulated activities.

Administrative permit actions, including modification, suspension, and revocation, shall be addressed according to the department's dispute resolution and administrative appeals procedures. Any person conducting a regulated activity for which a permit is required by this chapter without such permit, including where a regulated activity has commenced without a permit or continued after permit suspension or revocation, shall be guilty of a Class 3 misdemeanor as specified by § 29.1-505 of the Code of Virginia.

VA.R. Doc. No. R21-6852; Filed July 22, 2021, 9:07 a.m.

MARINE RESOURCES COMMISSION

Final Regulation

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

Title of Regulation: **4VAC20-420. Pertaining to the Use of Trawls in the Territorial Sea (repealing 4VAC20-420-10, 4VAC20-420-20, 4VAC20-420-30).**

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

Effective Date: August 1, 2021.

Agency Contact: Jennifer Farmer, Marine Resources Commission, 380 Fenwick Road, Fort Monroe, VA 23551, telephone (757) 247-2248, or email jennifer.farmer@mrc.virginia.gov.

Summary:

The amendments repeal 4VAC20-420, Pertaining to the Use of Trawls in the Territorial Sea, which allowed for a shrimp trawl fishery in parts of Virginia's coastal waters.

VA.R. Doc. No. R22-6900; Filed July 28, 2021, 12:07 p.m.

Final Regulation

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

Title of Regulation: **4VAC20-1090. Pertaining to Licensing Requirements and License Fees (amending 4VAC20-1090-30).**

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

Effective Date: August 1, 2021.

Agency Contact: Jennifer Farmer, Marine Resources Commission, 380 Fenwick Road, Fort Monroe, VA 23551, telephone (757) 247-2248, or email jennifer.farmer@mrc.virginia.gov.

Summary:

The amendment adds a shrimp trawl license fee.

4VAC20-1090-30. License fees.

The following listing of license fees applies to any person who purchases a license for the purpose of harvesting for commercial purposes or fishing for recreational purposes during any calendar year. The fees listed below include a $1.00 agent fee.

1. COMMERCIAL LICENSES	
Commercial Fisherman Registration License	$190.00
Commercial Fisherman Registration License for a person 70 years or older	$90.00
Delayed Entry Registration	$190.00
Delayed Entry Registration License for a person 70 years or older	$90.00
Seafood Landing License for each boat or vessel	$175.00
For each Commercial Fishing Pier over or upon subaqueous beds (mandatory)	$83.00
Seafood Buyer's License -- For each boat or motor vehicle	$63.00
Seafood Buyer's License -- For each place of business	$126.00
Clam Aquaculture Product Owner's Permit	$10.00
Oyster Aquaculture Product Owner's Permit	$10.00
Clam Aquaculture Harvester's Permit	$5.00
Oyster Aquaculture Harvester's Permit	$5.00
Nonresident Harvester's License	$444.00
2. OYSTER RESOURCE USER FEES	
Any licensed commercial fisherman harvesting oysters by hand	$50.00
For any harvester using one or more gear types to harvest oysters or for any registered commercial fisherman who solely harvests or possesses any bushel limit described in 4VAC20-720-80, only one oyster resource user fee, per year, shall be paid	$300.00
On any business shucking or packing no more than 1,000 gallons of oysters	$500.00
On any business shucking or packing more than 1,000 but no more than 10,000 gallons of oysters	$1,000.00
On any business shucking or packing more than 10,000 but no more than 25,000 gallons of oysters	$2,000.00
On any business shucking or packing more than 25,000 gallons of oysters	$4,000.00
On any oyster buyer using a single truck or location	$100.00
On any oyster buyer using multiple trucks or locations	$300.00
Commercial aquaculture operation, on riparian assignment or general oyster planting grounds	$50.00

3. OYSTER HARVESTING, SHUCKING, RELAY, AND BUYERS LICENSES	
Any person purchasing oysters caught from the public grounds of the Commonwealth or the Potomac River, for a single place of business with one boat or motor vehicle used for buying oysters	$50.00
Any person purchasing oysters caught from the public grounds of the Commonwealth or the Potomac River, for a single place of business with multiple boats or motor vehicles used for buying oysters	$100.00
For each person taking oysters by hand, or with ordinary tongs	$10.00
For each single-rigged patent tong boat taking oysters	$35.00
For each double-rigged patent tong boat taking oysters	$70.00
Oyster Dredge Public Ground	$50.00
Oyster Hand Scrape	$50.00
To shuck and pack oysters, for any number of gallons under 1,000	$12.00
To shuck and pack oysters, for 1,000 gallons, up to 10,000	$33.00
To shuck and pack oysters, for 10,000 gallons, up to 25,000	$74.00
To shuck and pack oysters, for 25,000 gallons, up to 50,000	$124.00
To shuck and pack oysters, for 50,000 gallons, up to 100,000	$207.00
To shuck and pack oysters, for 100,000 gallons, up to 200,000	$290.00
To shuck and pack oysters, for 200,000 gallons or over	$456.00
One-day permit to relay condemned shellfish from a general oyster planting ground	$150.00
4. BLUE CRAB HARVESTING AND SHEDDING LICENSES, EXCLUSIVE OF CRAB POT LICENSES	
For each person taking or catching crabs by dip nets	$13.00
For ordinary trotlines	$13.00
For patent trotlines	$51.00
For each single-rigged crab-scrape boat	$26.00
For each double-rigged crab-scrape boat	$53.00
For up to 210 peeler pots	$36.00
For up to 20 tanks and floats for shedding crabs	$9.00
For more than 20 tanks or floats for shedding crabs	$19.00
For each crab trap or crab pound	$8.00
5. CRAB POT LICENSES	
For up to 85 crab pots	$48.00
For over 85 but not more than 127 crab pots	$79.00
For over 127 but not more than 170 crab pots	$79.00
For over 170 but not more than 255 crab pots	$79.00
For over 255 but not more than 425 crab pots	$127.00

6. HORSESHOE CRAB ~~AND~~, LOBSTER, AND SHRIMP LICENSES	
For each person harvesting horseshoe crabs by hand	$16.00
For each boat engaged in fishing for or landing of lobster using less than 200 pots	$41.00
For each boat engaged in fishing for or landing of lobster using 200 pots or more	$166.00
For each person commercial shrimp trawling	$100.00
7. CLAM HARVESTING LICENSES	
For each person taking or harvesting clams by hand, rake, or with ordinary tongs	$24.00
For each single-rigged patent tong boat taking clams	$58.00
For each double-rigged patent tong boat taking clams	$84.00
For each boat using clam dredge (hand)	$19.00
For each boat using clam dredge (power)	$44.00
For each boat using hydraulic dredge to catch soft shell clams	$83.00
For each person taking surf clams	$124.00
Water Rake Permit	$24.00
8. CONCH (WHELK) HARVESTING LICENSES	
For each boat using a conch dredge	$58.00
For each person taking channeled whelk by conch pot	$51.00
9. FINFISH HARVESTING LICENSES	
Each pound net	$41.00
Each stake gill net of 1,200 feet in length or under, with a fixed location	$24.00
All other gill nets up to 600 feet	$16.00
All other gill nets over 600 feet and up to 1,200 feet	$24.00
Each person using a cast net or throw net or similar device	$13.00
Each fyke net head, weir, or similar device	$13.00
For fish trotlines	$19.00
Each person using or operating a fish dip net	$9.00
On each haul seine used for catching fish, under 500 yards in length	$48.00
On each haul seine used for catching fish, from 500 yards in length to 1,000 yards in length	$146.00
For each person using commercial hook and line	$31.00
For each person using commercial hook and line for catching striped bass only	$31.00
For up to 100 fish pots	$19.00
For over 100 but not more than 300 fish pots	$24.00
For over 300 fish pots	$62.00
For up to 100 eel pots	$19.00

For over 100 but not more than 300 eel pots	$24.00
For over 300 eel pots	$62.00
For each person electrofishing catfish	$100.00
10. MENHADEN HARVESTING LICENSES Any person purchasing more than one of the following licenses, as described in this subsection, for the same vessel, shall pay a fee equal to that for a single license for the same vessel.	
On each boat or vessel under 70 gross tons fishing for the purse seine menhaden reduction sector	$249.00
On each vessel 70 gross tons or over fishing for the purse seine menhaden reduction sector	$996.00
On each boat or vessel under 70 gross tons fishing for the purse seine menhaden bait sector	$249.00
On each vessel 70 gross tons or over fishing for the purse seine menhaden bait sector	$996.00
11. COMMERCIAL GEAR FOR RECREATIONAL USE	
Up to five crab pots with a terrapin excluder device	$36.00
Up to five crab pots without a terrapin excluder device	$46.00
Crab trotline (300 feet maximum)	$10.00
One crab trap or crab pound	$6.00
One gill net up to 300 feet in length	$9.00
Fish dip net	$7.00
Fish cast net	$10.00
Up to two eel pots	$10.00
12. SALTWATER RECREATIONAL FISHING LICENSE	
Individual, resident	$17.50
Individual, nonresident	$25.00
Temporary 10-Day, resident	$10.00
Temporary 10-Day, nonresident	$10.00
Recreational boat, resident	$48.00
Recreational boat, nonresident, provided a nonresident may not purchase a recreational boat license unless his boat is registered in Virginia	$76.00
Head Boat/Charter Boat, resident, six or less passengers	$190.00
Head Boat/Charter Boat, nonresident, six or less passengers	$380.00
Head Boat/Charter Boat, resident, more than six passengers, plus $5.00 per person, over six persons	$190.00
Head Boat/Charter Boat, nonresident, more than six passengers, plus $5.00 per person, over six persons	$380.00
Rental Boat, resident, per boat, with maximum fee of $703	$14.00
Rental Boat, nonresident, per boat, with maximum fee of $1270	$18.00
Commercial Fishing Pier (Optional)	$632.00
Disabled Resident Lifetime Saltwater License	$10.00

Disabled Nonresident Lifetime Saltwater License	$10.00
Reissuance of Saltwater Recreational Boat License	$5.00
13. COMBINED SPORTFISHING LICENSE This license is to fish in all inland waters and tidal waters of the Commonwealth during open season.	
Residents	$39.50
Nonresidents	$71.00
14. COMBINED SPORTFISHING TRIP LICENSE This license is to fish in all inland waters and tidal waters of the Commonwealth during open season for five consecutive days.	
Residents	$24.00
Nonresidents	$31.00
15. TIDAL BOAT SPORTFISHING LICENSE	
Residents	$126.00
Nonresidents	$201.00
16. LIFETIME SALTWATER RECREATIONAL FISHING LICENSES	
Individual Resident Lifetime License	$276.00
Individual Nonresident Lifetime License	$500.00
Individual Resident Lifetime License age 45 - 50	$132.00
Individual Nonresident Lifetime License age 45 - 50	$240.00
Individual Resident Lifetime License age 51 - 55	$99.00
Individual Nonresident Lifetime License 51 - 55	$180.00
Individual Resident Lifetime License age 56 - 60	$66.00
Individual Nonresident Lifetime License age 56 - 60	$120.00
Individual Resident Lifetime License age 61 - 64	$35.00
Individual Nonresident Lifetime License age 61 - 64	$60.00
Individual Resident Lifetime License age 65 and older	$5.00

VA.R. Doc. No. R21-6898; Filed July 28, 2021, 11:50 a.m.

Final Regulation

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

Title of Regulation: **4VAC20-1390. Pertaining to Shrimp (adding 4VAC20-1390-10 through 4VAC20-1390-90).**

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

Effective Date: August 1, 2021.

Agency Contact: Jennifer Farmer, Marine Resources Commission, 380 Fenwick Road, Fort Monroe, VA 23551, telephone (757) 247-2248, or email jennifer.farmer@mrc.virginia.gov.

Summary:

The action adds a new regulation, Pertaining to Shrimp (4VAC20-1390), to establish a commercial shrimp fishery, including trawl license and lottery; gear, season, and area restrictions; and commercial and recreational shrimp possession limits.

Chapter 1390
Pertaining to Shrimp

4VAC20-1390-10. Purpose.

The purpose of this regulation is to sustainably develop and manage shrimp fisheries in an ecologically conservative manner in the waters of Virginia.

4VAC20-1390-20. Definitions.

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

"Agent" means an individual who possesses the Commercial Fisherman Registration License, fishing gear license, or fishing permit of any registered commercial fisherman in order to fish that commercial fisherman's gear or sell that commercial fisherman's harvest.

"Commission" means the Virginia Marine Resources Commission.

"Fishing year" means the time period from October 1 of the current calendar year through January 31 of the following calendar year.

"Heads-on" means any shrimp possessed, landed, or sold with the head (carapace) intact.

"Shrimp" means any native penaeid shrimp species, including white shrimp (Penaeus setiferus), brown shrimp (Penaeus aztecus), pink shrimp (Penaeus duorarum), or the nonnative tiger shrimp (Penaeus monodon).

"Tails" means any shrimp possessed, landed, or sold with the head (carapace) removed.

"Virginia Beach Shrimp Trawl Harvest Area" means all tidal waters of the Atlantic Ocean that are bounded by a line beginning at a point on the Three Nautical Mile Limit, Latitude 36° 55.5436667' N, Longitude 75° 55.9015000' W; thence southerly following the Three Nautical Mile Limit to an intersection point on the Virginia-North Carolina state line, Latitude 36° 33.0224955' N, Longitude 75° 48.2662043' W; thence westerly to a point along the Virginia-North Carolina state line at its intersection with the mean low water line, Latitude 36° 33.0224003' N, Longitude 75° 52.0510498' W; thence northerly, following the mean low water line to the Rudee Inlet weir; thence easterly along the weir to the stone breakwater; thence following the stone breakwater to its northernmost point; thence northerly to the mean low water line at the most northeastern point of the northern stone jetty; thence westerly along the mean low water line of said stone jetty to the mean low water line along the shore; thence northerly following the mean low water line to a point, Latitude 36° 55.5781102' N, Longitude 76° 00.1530758' W, said point being the intersection of the mean low water line with the line from Cape Henry Lighthouse easterly to a point on the Three Nautical Mile Limit, Latitude 36° 55.5436667' N, Longitude 75° 55.9015000' W, said point being the point of beginning.

4VAC20-1390-30. Recreational fishing: general.

A. It shall be unlawful for any person fishing recreationally to take, attempt to take, catch, harvest, land, or possess shrimp by any gear or method not authorized for recreational use or without a recreational fishing license as described in §§ 28.2-302.1 and 28.2-226.1 of the Code of Virginia.

B. The daily recreational possession limit for shrimp shall be 20 quarts of shrimp with heads-on or 15 quarts of tails of shrimp per person or vessel whichever is more restrictive.

4VAC20-1390-40. Commercial fishing: general.

A. It shall be unlawful for any person to harvest or possess shrimp for commercial purposes without possessing a valid Commercial Fisherman Registration License and any necessary gear licenses or permits as required by Title 28.2 of the Code of Virginia.

B. It shall be unlawful for any commercial fisherman registration licensee to take, catch, harvest, land, or possess greater than 20 quarts of shrimp with heads-on or 15 quarts of tails of shrimp per person or vessel per day by any gear other than trawl or cast net.

C. Registered commercial fishermen, seafood landing licensees, and licensed seafood buyers shall allow those authorized by the commission to observe shrimp fishing or to sample harvest and seafood products associated with shrimp fishing aboard a vessel or at the place of landing to obtain biological information for scientific and management purposes.

4VAC20-1390-50. Shrimp trawl licensing and entry requirements.

A. The maximum number of Commercial Shrimp Trawl Licenses issued in any fishing year shall be 12.

B. Any individual who meets all of the following criteria shall be eligible for a Commercial Shrimp Trawl License:

1. The individual shall possess a valid Commercial Fisherman Registration License.

2. The individual shall complete and submit a Commercial Shrimp Trawl License Application annually that must be received by the Marine Resources Commission by August 31 of the current calendar year.

3. The individual shall meet one of the following criteria:

a. The individual shall have been a permit holder of a Virginia-issued Special Experimental Permit for shrimp trawl gear and reported a minimum shrimp harvest of 500 pounds to the Marine Resource Commission's Mandatory Harvest Reporting Program in any given year from 2017 through 2020.

b. The individual shall have possessed a Commercial Shrimp Trawl License and reported harvest of at least 500 pounds by shrimp trawl gear to the Marine Resource Commission's Mandatory Harvest Reporting Program in at least one of the previous two fishing years.

C. If the number of individuals eligible for a Commercial Shrimp Trawl License pursuant to subsection B of this section is fewer than 12 by September 1 in the current calendar year, a lottery will be conducted, including any individual who meets all of the following criteria:

1. The individual shall possess a valid Commercial Fisherman Registration License.

2. The individual shall complete and submit a Commercial Shrimp Trawl Application that must be received by the Marine Resources Commission by the advertised deadline of the current calendar year.

3. The individual shall have reported harvest to the Marine Resource Commission's Mandatory Harvest Reporting Program of at least 1,000 pounds of harvest per year in at least three of the previous five calendar years.

D. Any individual selected under subsection B or C of this section who fails to return a completed Commercial Shrimp Trawl License Acceptance Form provided by the commission indicating their acceptance within 14 days of selection shall forfeit their eligibility for the current fishing year and another individual shall be selected from the list of eligible individuals pursuant to subsection C of this section.

E. The commission shall approve all shrimp trawl gear, as referenced in 4VAC20-1390-60 prior to the issuance of a Commercial Shrimp Trawl License.

F. It shall be prohibited to transfer any Commercial Shrimp Trawl License.

G. The use of agents shall be prohibited for any Commercial Shrimp Trawl Licensee without written request to the Marine Resources Commission and approval by the commissioner or the commissioner's designee. Exceptions shall only be granted due to death, medical hardships, or military service.

H. Each Commercial Shrimp Trawl Licensee shall report to the Marine Resources Commission Fisheries Management Staff the harvest of shrimp in pounds, an estimate of total bycatch in pounds, and interactions with any protected or endangered species within 24 hours of landing of each trip.

4VAC20-1390-60. Shrimp trawl gear restrictions.

A. Any shrimp trawl placed, set, or used for fishing in Virginia shall be constructed as follows:

1. With a beam or fixed frame opening no larger than 4.0 feet in height and 16 feet in width.

2. With a minimum net mesh of 1.5 inches and maximum net mesh of 2.0 inches stretched mesh.

3. With a properly installed National Marine Fisheries Service or North Carolina Division of Marine Fisheries approved bycatch reduction device.

B. It shall be unlawful for any shrimp trawl tow to exceed 30 minutes in duration.

4VAC20-1390-70. Commercial shrimp trawl harvest limits, seasons, and areas.

A. It shall be unlawful for any Commercial Shrimp Trawl Licensee to harvest or land any Virginia quota managed species (Black Drum, Black Sea Bass, Bluefish, Atlantic Horseshoe Crab, Atlantic Menhaden, Scup, Speckled Sea Trout, Spiny and Smooth Dogfishes, Striped Bass, and Summer Flounder) caught by shrimp trawl.

B. It shall be unlawful to trawl for shrimp outside of the Virginia Beach Shrimp Trawl Harvest Area.

C. It shall be unlawful for any Commercial Shrimp Trawl Licensee to harvest shrimp caught by shrimp trawl from February 1 through September 30 of each calendar year.

D. It shall be unlawful to trawl for shrimp more than 30 minutes before sunrise or 30 minutes after sunset.

E. It shall be unlawful to trawl for shrimp within 100 yards of any marked commercial fishing gear.

F. It shall be unlawful to trawl for shrimp within 300 yards of any navigable inlet, public boat ramp, fishing pier, or beach.

4VAC20-1390-80. Penalty.

As set forth in § 28.2-903 of the Code of Virginia, any individual violating any provision of this chapter shall be guilty of a Class 3 misdemeanor, and a second or subsequent violation of any provision of this chapter committed by the same individual within 12 months of a prior violation is a Class 1 misdemeanor.

4VAC20-1390-90. Sanctions.

Any individual found guilty of violating any provision of this chapter may have his Commercial Shrimp Trawl License revoked at any time upon review by the commission as provided for in § 28.2-232 of the Code of Virginia.

NOTICE: The following forms used in administering the regulation have been filed by the agency. Amended or added forms are reflected in the listing and are published following the listing. Online users of this issue of the Virginia Register of Regulations may also click on the name to access a form. The forms are also available from the agency contact or may be viewed at the Office of Registrar of Regulations, 900 East Main Street, 11th Floor, Richmond, Virginia 23219.

FORMS (4VAC20-1390)

Shrimp Trawl License Acceptance Form (eff. 8/2021)

Shrimp Trawl Application Form (eff. 8/2021)

VA.R. Doc. No. R22-6897; Filed July 28, 2021, 2:45 p.m.

TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

BOARD OF JUVENILE JUSTICE

Fast-Track Regulation

Title of Regulation: **6VAC35-150. Regulation for Nonresidential Services (amending 6VAC35-150-335).**

Statutory Authority: §§ 16.1-233, 16.1-309.2, and 66-10 of the Code of Virginia.

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: September 15, 2021.

Effective Date: October 1, 2021.

Agency Contact: Kenneth Davis, Assistant Regulatory Coordinator, Department of Juvenile Justice, P.O. Box 1110, Richmond, VA 23218, telephone (804) 807-0486, FAX (804) 371-6497, or email kenneth.davis@djj.virginia.gov.

Basis: Section 16.1-233 of the Code of Virginia directs the board to promulgate regulations pertaining to the appointment and function of court service staffs and related supportive personnel to the end that uniform services, insofar as is practical, will be available to juvenile and domestic relations district courts throughout the Commonwealth. Additionally, the board is entrusted with general, discretionary authority to adopt regulations by § 66-10 of the Code of Virginia, which authorizes the board to promulgate such regulations as may be necessary to carry out the provisions of this title and other laws of the Commonwealth.

Purpose: Section 16.1-260 of the Code of Virginia sets out the statutory rules intake officers must follow when diverting eligible juvenile offenses. Currently, the statute allows an intake officer to delay the filing of a petition for a complaint alleging a child is in need of services, supervision, or delinquent, provided (i) the alleged offense is not a violent juvenile felony; and (ii) the juvenile has not had a previous felony offense diverted or has not been adjudicated delinquent for a previous felony offense. An intake officer who exercises the option to divert an eligible juvenile offense must develop a plan for the juvenile, which may include restitution, community service, treatment, and other alternatives that the juvenile must accomplish. Prior to July 1, 2020, § 16.1-260 established a 90-day deadline for completing the diversion plans for eligible truancy offenses, but did not impose any deadlines for other eligible diversions. Based on the statutory language, the department's regulatory provision addressing diversions, set out in 6VAC35-101-335, sets a 90-day cap on truancy diversion plans and a 120-day cap for all other offenses eligible for diversion.

During the 2020 legislative session, the department lobbied for legislation that would remove the 90-day statutory cap for completing the truancy diversion plan to enable the department to align its truancy diversion cap with the 120-day regulatory cap already in place for other diversions. The General Assembly voted unanimously in support of striking the statutory 90-day limitation, effective July 1, 2020.

Because the statute is now silent regarding the time limit for completing any eligible diversion, truancy or otherwise, and because 6VAC35-150-335, consistent with the stricken legislative language, sets the maximum time limit for truancy diversion plans at 90 days, the court service units remain subject to the 90-day cap on truancy diversion plans until the regulation is amended.

The department considers a regulatory change to remove the 90-day cap on truancy diversion plans necessary to assist youth eligible for diversions in successfully completing their plans. According to data maintained by the department, of the 2,872 truancy complaints that were assigned a diversion plan between Fiscal Year 2017 and Fiscal Year 2019, only 66.7% were completed successfully, compared to the 84.7% success rate for all other diverted complaints. The department believes the lower success rate for truancy diversions might be attributable to the shorter diversion period. Extending the time period for truancy diversions will give court service unit staff additional time to monitor the child and family's progress toward completing the plan and the youth additional time to meet the plan's requirements.

The General Assembly has demonstrated the Commonwealth's commitment to using diversion in appropriate circumstances in § 16.1-227 of the Code. That provision explains one of the purposes of the statutes governing juvenile and domestic relations district courts: that is to divert from the juvenile justice system (to the extent possible, consistent with the protection of public safety), those youth who can be cared for or treated through alternative programs. Having these diversion opportunities in place reduces the number of petitions that must be filed, and therefore, reduces the likelihood of a youth getting further and unnecessarily entrenched in the juvenile justice system. These diversion opportunities are futile if the Court Service Units staff responsible for administering and monitoring the resident's progress toward completing the plan and the youth responsible for carrying out its directives do not have sufficient time to meet these obligations. Amending the regulation to remove this 90-day cap will address this issue.

Rationale for Using Fast-Track Rulemaking Process: The department does not expect this rulemaking to be controversial. Section 16.1-260 of the Code of Virginia formed the basis for the 90-day cap, and the proposal to amend this statute met with unanimous support in both the House and Senate. Furthermore, allowing a 120-day period for truancy diversions is consistent with the maximum period permitted for diversions for more serious misdemeanor offenses.

Substance: The proposal amends 6VAC35-150-335 by striking the regulatory language that imposes a 90-day cap on diversions for truancy offenses. In so doing, the proposed

amendment extends the maximum diversion period for truancy offenses to 120 days.

Issues: The department expects this regulatory proposal to benefit the public by increasing the number of successful truancy diversions. Extending the timeframe for truancy diversions an additional 30 days makes it more likely that the youth subject to this diversion plan will successfully complete the diversion program, thereby reducing truancy in the Commonwealth. Successful completion of a truancy diversion plan also eliminates the need for the intake officer to file a petition. By reducing the number of petitions filed, the proposal supports the department's continued transformation efforts to reduce deeper system involvement for low-risk youth. Decreasing the number of petitions filed with the court also will benefit the juvenile courts by decreasing their workload and dockets. The department also hopes that an increase in successful truancy diversions will generate a decrease in crimes that may result indirectly from truancy.

The proposed action is not expected to disadvantage the public or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Juvenile Justice (Board) proposes to remove the 90-day deadline currently imposed on truancy diversion plans.

Background. Code of Virginia § 16.1-260[1] states that if a juvenile is alleged to be a truant pursuant to a complaint filed in accordance with § 22.1-258[2] and the school division's attendance officer has provided documentation to the intake officer, i.e. juvenile probation officer, that the relevant school division has complied with specified provisions, then the intake officer shall file a petition with the court.

The intake officer may defer filing the petition and proceed informally by developing a truancy diversion plan, provided that (i) the juvenile has not previously been proceeded against informally or adjudicated in need of supervision on more than two occasions for failure to comply with compulsory school attendance as provided in § 22.1-254[3] and (ii) the immediately previous informal action or adjudication occurred at least three calendar years prior to the current complaint.

The truancy diversion plan may include requirements that the juvenile and the juvenile's parent or guardian participate in programs, cooperate in treatment, or be subject to such conditions and limitations as necessary to ensure the juvenile's compliance with compulsory school attendance. In practice, the intake officer may ensure that the youth has an alarm clock or a phone with an alarm, make sure that a school bus is stopping where the juvenile is currently residing, or arrange for virtual instruction when appropriate, etc.[4] If at the end of the deferral period the juvenile has not successfully completed the truancy plan or the truancy program by regularly attending school, then the intake officer shall file the petition with the court, and the juvenile goes before a judge.

Prior to July 1, 2020, § 16.1-260 established a 90-day deadline for completing the diversion plans for eligible truancy offenses, but did not impose any deadlines for other eligible offense diversions. Based on the statutory language, 6VAC35-150 Regulation for Nonresidential Services (regulation) sets a 90-day cap on truancy diversion plans and a 120-day cap for all other offenses eligible for diversion.

During the 2020 legislative session, the Department of Juvenile Justice (DJJ) lobbied for legislation that would remove the 90-day statutory cap for completing the truancy diversion plan to enable the Board to align its truancy diversion cap with the 120-day regulatory cap already in place for other diversions. The General Assembly voted unanimously in support of striking the statutory 90-day limitation, effective July 1, 2020.[5]

The current regulation states that when an intake officer diverts an eligible juvenile offense, the maximum diversion period shall not exceed 120 days, with the exception that for juveniles alleged to be truant the maximum diversion period is 90 days. Now that the statutory cap of 90 days has been removed, the Board proposes to repeal the 90-day diversion maximum for truancy. Consequently, truancy would have a 120-day diversion maximum along with the other juvenile offenses.

Estimated Benefits and Costs. According to data maintained by DJJ, of the 2,872 truancy complaints that were assigned a diversion plan between Fiscal Year 2017 and Fiscal Year 2019, only 66.7% were completed successfully, compared to the 84.7% success rate for all other diverted complaints. DJJ believes the shorter diversion period contributes to the lower success rate for truancy diversions compared to other diversions. Extending the time period for truancy diversions would give intake officers additional time to monitor the child and family's progress toward completing the plan and the youth additional time to meet the plan's requirements.

Successful completion of diversion programs reduces the number of petitions that must be filed, and therefore, reduces the likelihood of a youth getting further entrenched in the juvenile justice system. This can be beneficial for the child and reduce court costs and other costs associated with the juvenile justice system. Successful completion of truancy diversion also means the youth is regularly attending school, which is also beneficial.

Businesses and Other Entities Affected. The proposal potentially affects intake officers, who work for court service units in the 32 judicial districts in the Commonwealth. The intake officers are DJJ employees in all judicial districts, except for Fairfax and Arlington where they are local employees. The proposal may also affect juvenile and domestic relations district courts by moderately reducing their receipt of petitions. To the extent that the proposal may moderately reduce truancy, it may also affect the 132 public school divisions in the Commonwealth. The proposal does not appear to have an adverse economic impact.[6]

Small Businesses[7] Affected. The proposal does not appear to adversely affect small businesses.

Localities[8] Affected.[9] The proposal applies statewide and may particularly affect those localities with relatively high rates of truancy. The proposal does not require additional expenditures for localities.

Projected Impact on Employment. The proposal does not appear to affect total employment.

Effects on the Use and Value of Private Property. The proposal does not appear to affect the use and value of private property or real estate development costs.

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[1]See https://law.lis.virginia.gov/vacode/title16.1/chapter11/section16.1-260/

[2]See https://law.lis.virginia.gov/vacode/22.1-258/

[3]See https://law.lis.virginia.gov/vacode/22.1-254/

[4]Source: Department of Juvenile Justice

[5]See https://lis.virginia.gov/cgi-bin/legp604.exe?201+sum+HB1324

[6]Adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined.

[7]Pursuant 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."

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

[9]§ 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

Agency's Response to Economic Impact Analysis: The agency has reviewed the Department of Planning and Budget (DPB) economic impact analysis. The agency is in agreement with the DPB analysis.

Summary:

Pursuant to Chapter 753 of the 2020 Acts of Assembly, the amendment removes the 90-day deadline currently imposed on youth alleged to be truant pursuant to a complaint filed in accordance with § 22.1-258 of the Code of Virginia and subject to a truancy diversion plan.

6VAC35-150-335. Diversion.

A. When an intake officer proceeds with diversion in accordance with subsection B of § 16.1-260 of the Code of Virginia, such supervision shall not exceed 120 days. ~~For a juvenile alleged to be a truant pursuant to a complaint filed in accordance with § 22.1-258 of the Code of Virginia, such supervision shall be limited to 90 days.~~

B. When a new complaint is filed against a juvenile who is currently under supervision in accordance with subsection A of this section, and the juvenile qualifies for diversion in accordance with subsection B of § 16.1-260 of the Code of Virginia, then the intake officer may proceed with diversion for an additional 120 days from the date of the subsequent complaint.

C. In no case shall a petition be filed by the CSU based on acts or offenses in the original complaint after 120 days from the date of the initial referral on the original complaint.

VA.R. Doc. No. R21-6522; Filed July 28, 2021, 9:57 a.m.

TITLE 9. ENVIRONMENT

STATE WATER CONTROL BOARD

Final Regulation

REGISTRAR'S NOTICE: The State Water Control Board is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 8 of the Code of Virginia, which exempts general permits issued by the State Water Control Board pursuant to the State Water Control Law (§ 62.1-44.2 et seq.) and Chapters 24 (§ 62.1-242 et seq.) and 25 (§ 62.1-254 et seq.) of Title 62.1 of the Code of Virginia if the board (i) provides a Notice of Intended Regulatory Action in conformance with the provisions of § 2.2-4007.01 of the Code of Virginia; (ii) following the passage of 30 days from the publication of the Notice of Intended Regulatory Action, forms a technical advisory committee composed of relevant stakeholders, including potentially affected citizens groups, to assist in the development of the general permit; (iii) provides notice and receives oral and written comment as provided in § 2.2-4007.03 of the Code of Virginia; and (iv) conducts at least one public hearing on the proposed general permit. The State Water Control Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **9VAC25-820. General Virginia Pollutant Discharge Elimination System (VPDES) Watershed Permit Regulation for Total Nitrogen and Total Phosphorus Discharges and Nutrient Trading in the Chesapeake Bay Watershed in Virginia (amending 9VAC25-820-40, 9VAC25-820-70).**

Statutory Authority: § 62.1-44.15 of the Code of Virginia.

Effective Date: January 1, 2022.

Agency Contact: Curtis Linderman, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4468, FAX (804) 698-4178, or email curtis.linderman@deq.virginia.gov.

Summary:

This action amends and reissues the existing general permit for total nitrogen and total phosphorus discharges and nutrient trading in the Chesapeake Bay watershed in Virginia that expires on December 31, 2021. The regulation provides for the permitting of total nitrogen and total phosphorus discharges in the Chesapeake Bay watershed

and allows for trading of nutrient credits to minimize costs to the regulated facilities and allow for future growth.

The amendments update and clarify compliance plan requirements, effective dates, consolidation of facilities, schedules of compliance, monitoring frequencies and sample types, registration statement requirements for certain facilities treating domestic sewage, and unit costs of credit acquisitions to the Nutrient Offset Fund.

9VAC25-820-40. Compliance plans.

~~A. By July 1, 2017, every owner of a facility identified in 9VAC25-820-80 and subject to a limit effective date after January 1, 2017, as defined in Part I C 1 of 9VAC25-820-70 shall either individually or through the Virginia Nutrient Credit Exchange Association submit compliance plans to the department for approval.~~

~~1. The compliance plans shall contain any capital projects and implementation schedules needed to achieve total nitrogen and phosphorus reductions sufficient to comply with the individual and combined wasteload allocations of all the permittees in the tributary as soon as possible. Permittees submitting individual plans are not required to account for other facilities' activities.~~

~~2. As part of the compliance plan development, permittees shall either:~~

~~a. Demonstrate that the additional capital projects anticipated by subdivision 1 of this subsection are necessary to ensure continued compliance with these allocations by the applicable deadline for the tributary to which the facility discharges (Part I C of the permit), or~~

~~b. Request that their individual wasteload allocations become effective on January 1, 2017.~~

~~3. The compliance plans may rely on the exchange of point source credits in accordance with this general permit, but not the acquisition of credits through payments into the Nutrient Offset Fund (§ 10.1-2128.2 of the Code of Virginia), to achieve compliance with the individual and combined wasteload allocations in each tributary.~~

~~B.~~ Every owner of a facility required to submit a registration statement shall either individually or through the Virginia Nutrient Credit Exchange Association submit annual compliance plan updates to the department for approval as required by Part I D of the general permit.

9VAC25-820-70. General permit.

Any owner whose registration statement is accepted by the board will receive the following general permit and shall comply with the requirements of the general permit.

General Permit No.: VAN000000
Effective Date: January 1, ~~2017~~ 2022
Expiration Date: December 31, ~~2021~~ 2026

GENERAL PERMIT FOR TOTAL NITROGEN AND TOTAL PHOSPHORUS DISCHARGES AND NUTRIENT TRADING IN THE CHESAPEAKE WATERSHED IN VIRGINIA
AUTHORIZATION TO DISCHARGE UNDER THE VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM AND THE VIRGINIA STATE WATER CONTROL LAW

In compliance with the provisions of the Clean Water Act, as amended, and pursuant to the State Water Control Law and regulations adopted pursuant to it, owners of facilities holding a VPDES individual permit or owners of facilities that otherwise meet the definition of an existing facility, with total nitrogen or total phosphorus discharges, or both to the Chesapeake Bay or its tributaries, are authorized to discharge to surface waters and exchange credits for total nitrogen or total phosphorus, or both.

The authorized discharge shall be in accordance with the registration statement filed with DEQ, this cover page, Part I-Special Conditions Applicable to All Facilities, Part II-Special Conditions Applicable to New and Expanded Facilities, and Part III-Conditions Applicable to All VPDES Permits, as set forth herein.

PART I
SPECIAL CONDITIONS APPLICABLE TO ALL FACILITIES

A. Authorized activities.

1. Authorization to discharge for owners of facilities required to register.

a. Every owner of a facility required to submit a registration statement to the department by November 1, ~~2016~~ 2021, and thereafter upon the reissuance of this general permit, shall be authorized to discharge total nitrogen and total phosphorus subject to the requirements of this general permit upon the department's approval of the registration statement.

b. Any owner of a facility required to submit a registration statement with the department at the time he makes application with the department for a new discharge or expansion that is subject to an offset or technology-based requirement in Part II of this general permit, shall be authorized to discharge total nitrogen and total phosphorus subject to the requirements of this general permit upon the department's approval of the registration statement.

c. Upon the department's approval of the registration statement, a facility will be included in the registration list maintained by the department.

2. Authorization to discharge for owners of facilities not required to register. Any owner of a facility authorized by a

VPDES permit and not required by this general permit to submit a registration statement shall be deemed to be authorized to discharge total nitrogen and total phosphorus under this general permit at the time it is issued. Owners of facilities that are deemed to be permitted under this subsection shall have no obligation under this general permit prior to submitting a registration statement and securing coverage under this general permit based upon such registration statement.

3. Continuation of permit coverage.

a. Any owner authorized to discharge under this general permit and who submits a complete registration statement for the reissued general permit by November 1, ~~2021~~ 2026, in accordance with Part III M or who is not required to register in accordance with Part I A 2 is authorized to continue to discharge under the terms of this general permit until such time as the board either:

(1) Issues coverage to the owner under the reissued general permit, or

(2) Notifies the owner that the discharge is not eligible for coverage under this general permit.

b. When the owner that was covered under the expiring or expired general permit has violated or is violating the conditions of that permit, the board may choose to do any or all of the following:

(1) Initiate enforcement action based upon the ~~2012~~ 2017 general permit,

(2) Issue a notice of intent to deny coverage under the reissued general permit. If the general permit coverage is denied, the owner would then be required to cease the discharges authorized by the administratively continued coverage under the terms of the ~~2012~~ 2017 general permit or be subject to enforcement action for operating without a permit, or

(3) Take other actions authorized by the State Water Control Law.

B. Wasteload allocations.

1. Wasteload allocations allocated to permitted facilities pursuant to 9VAC25-720-50 C, 9VAC25-720-60 C, 9VAC25-720-70 C, 9VAC25-720-110 C, and 9VAC25-720-120 C of the Water Quality Management Planning Regulation, or applicable TMDLs, or wasteload allocations acquired by owners of new and expanding facilities to offset new or increased delivered total nitrogen and delivered total phosphorus loads from a new discharge or expansion under Part II B of this general permit, and existing loads calculated from the permitted design capacity of expanding facilities not previously covered by this general permit, shall be incorporated into the registration list maintained by the department. The wasteload allocations contained in this list shall be enforceable as annual mass load limits in this general permit. Credits shall not be generated by facilities whose operations were previously authorized by a Virginia Pollution Abatement (VPA) permit that was issued before July 1, 2005.

2. Except as described in subdivisions 2 c and 2 d of this subsection, an owner of two or more facilities covered by this general permit and discharging to the same tributary may apply for and receive an aggregated mass load limit for delivered total nitrogen and an aggregated mass load limit for delivered total phosphorus reflecting the total of the water quality-based total nitrogen and total phosphorus wasteload allocations or permitted design capacities established for such facilities individually.

a. The permittee (and all of the individual facilities covered under a single registration) shall be deemed to be in compliance when the aggregate mass load discharged by the facilities is less than the aggregate load limit.

b. The permittee will be eligible to generate credits only if the aggregate mass load discharged by the facilities is less than the total of the wasteload allocations assigned to any of the affected facilities.

c. The aggregation of mass load limits shall not affect any requirement to comply with local water quality-based limitations.

d. Facilities whose operations were previously authorized by a Virginia Pollution Abatement (VPA) permit that was issued before July 1, 2005, cannot be aggregated with other facilities under common ownership or operation.

e. Operation under an aggregated mass load limit in accordance with this section shall not be deemed credit acquisition as described in Part I J 2 of this general permit.

3. An owner that consolidates two or more facilities discharging to the same tributary into a single regional facility may apply for and receive an aggregated mass load limit for ~~delivered~~ total nitrogen and an aggregated mass load limit for ~~delivered~~ total phosphorus, subject to the following conditions:

a. Aggregate mass limits will be calculated accounting for delivery factors in effect at the time of the consolidation.

b. If all of the affected facilities have wasteload allocations in 9VAC25-720-50 C, 9VAC25-720-60 C, 9VAC25-720-70 C, 9VAC25-720-110 C, and 9VAC25-720-120 C of the Water Quality Management Planning Regulation, the aggregate mass load limit shall be calculated by adding the wasteload allocations of the affected facilities. The regional facility shall be eligible to generate credits.

~~b.~~ c. If any, but not all, of the affected facilities has a wasteload allocation in 9VAC25-720-50 C, 9VAC25-720-60 C, 9VAC25-720-70 C, 9VAC25-720-110 C, and 9VAC25-720-120 C of the Water Quality Management Planning Regulation, the aggregate mass load limit shall be calculated by adding:

(1) Wasteload allocations of those facilities that have wasteload allocations in 9VAC25-720-50 C, 9VAC25-720-60 C, 9VAC25-720-70 C, 9VAC25-720-110 C, and 9VAC25-720-120 C of the Water Quality Management Planning Regulation;

(2) Permitted design capacities assigned to affected industrial facilities; and

(3) Loads from affected sewage treatment works that do not have a wasteload allocation in 9VAC25-720-50 C, 9VAC25-720-60 C, 9VAC25-720-70 C, 9VAC25-720-110 C, and 9VAC25-720-120 C of the Water Quality Management Planning Regulation, defined as the lesser of a previously calculated permitted design capacity, or the values calculated by the following formulae:

Nitrogen Load (lbs/~~day~~ year) = flow (MGD) x 8.0 mg/l x 8.345 x 365 days/year

Phosphorus Load (lbs/~~day~~ year) = flow (MGD) x 1.0 mg/l x 8.345 x 365 days/year

Flows used in the preceding formulae shall be the design flow of the treatment works from which the affected facility currently discharges.

The regional facility shall be eligible to generate credits.

~~c.~~ d. If none of the affected facilities have a wasteload allocation in 9VAC25-720-50 C, 9VAC25-720-60 C, 9VAC25-720-70 C, 9VAC25-720-110 C, and 9VAC25-720-120 C of the Water Quality Management Planning Regulation, the aggregate mass load limit shall be calculated by adding the respective permitted design capacities for the affected facilities.

~~d.~~ e. Facilities whose operations were previously authorized by a Virginia Pollution Abatement (VPA) permit that was issued before July 1, 2005, may be consolidated with other facilities under common ownership or operation, but their allocations cannot be transferred to the regional facility.

~~e.~~ f. Facilities whose operations were previously authorized by a VPA permit that was issued before July 1, 2005, can become regional facilities, but they cannot receive additional allocations beyond those permitted in Part II B 1 d of this general permit.

4. Unless otherwise noted, the nitrogen and phosphorus wasteload allocations assigned to permitted facilities are considered total loads, including nutrients present in the intake water from the river, as applicable. On a case-by-case basis, an industrial discharger may demonstrate to the satisfaction of the board that a portion of the nutrient load originates in its intake water. This demonstration shall be consistent with the assumptions and methods used to derive the allocations through the Chesapeake Bay models. In these cases, the board may limit the permitted discharge to the net nutrient load portion of the assigned wasteload allocation.

5. Bioavailability. Unless otherwise noted, the entire nitrogen and phosphorus wasteload allocations assigned to permitted facilities are considered to be bioavailable to organisms in the receiving stream. On a case-by-case basis, a discharger may demonstrate to the satisfaction of the board that a portion of the nutrient load is not bioavailable; this demonstration shall not be based on the ability of the nutrient to resist degradation at the wastewater treatment plant, but instead, on the ability of the nutrient to resist degradation within a natural environment for the amount of time that it is expected to remain in the Chesapeake Bay watershed. This demonstration shall also be consistent with the assumptions and methods used to derive the allocations through the Chesapeake Bay models. In these cases, the board may limit the permitted discharge to the bioavailable portion of the assigned wasteload allocation.

C. Schedule of compliance.

~~1. The following schedule of compliance pertaining to the load allocations for total nitrogen and total phosphorus applies to the facilities listed in 9VAC25-820-80.~~

~~a. Compliance shall be achieved as soon as possible, but no later than the following dates, subject to any compliance plan based adjustment by the board pursuant to subdivision 1 b of this subsection, for each upgrade phase:~~

~~Upgrade Phase~~	~~Limit Effective Date~~
~~Phase I Total Nitrogen~~	~~January 1, 2017~~
~~Phase 2 Total Nitrogen~~	~~January 1, 2022~~
~~Phase 2 Total Phosphorus~~	~~January 1, 2017~~

~~b. Following submission of compliance plans and compliance plan updates required by 9VAC25-820-40, the board shall reevaluate the schedule of compliance in subdivision 1 a of this subsection, taking into account the information in the compliance plans and the factors in § 62.1-44.19:14 C 2 of the Code of Virginia. When warranted based on such information and factors, the board shall adjust the schedule in subdivision 1 a of this subsection as appropriate by modification or reissuance of this general permit.~~

~~2. The registration list shall contain individual dates for compliance with wasteload allocations for dischargers, as follows:~~

~~a. Owners of facilities listed in 9VAC25-820-80 will have individual dates for compliance based on their respective compliance plans that may be earlier than the upgrade phase schedule listed in subdivision 1 of this subsection.~~

~~b. Owners of facilities listed in 9VAC25-820-80 that waive their compliance schedules in accordance with 9VAC25-820-40 A 2 b shall have an individual compliance date of January 1, 2017.~~

~~c. Upon completion of the projects contained in their compliance plans, owners of facilities listed in 9VAC25-820-80 may receive a revised individual compliance date of January 1 for the calendar year immediately following the year in which a Certificate to Operate was issued for the capital projects, but not later than the upgrade phase schedule listed in subdivision 1 of this subsection.~~

~~d. Owners of new and expanded facilities will have individual dates for compliance corresponding to the date that coverage under this general permit was extended to discharges from the facility.~~

~~3.~~ The significant dischargers in the James River Basin shall meet aggregate discharged wasteload allocations of 8,968,864 lbs/yr TN and 545,558 lbs/yr TP by January 1, 2023.

D. Annual update of compliance plan. Every owner of a facility required to submit a registration statement shall either individually or through the Virginia Nutrient Credit Exchange Association submit updated compliance plans to the department no later than February 1 of each year. The compliance plans shall contain sufficient information to document a plan to achieve and maintain compliance with applicable total nitrogen and total phosphorus individual wasteload allocations on the registration list and aggregate wasteload allocations in Part I C 3. Compliance plans for owners of facilities that were required to submit a registration statement with the department under Part I G 1 a may rely on the acquisition of point source credits in accordance with Part I J of this general permit, but not the acquisition of credits through payments into the Nutrient Offset Fund, to achieve compliance with the individual and combined wasteload allocations in each tributary. Compliance plans for expansions or new discharges for owners of facilities that are required to submit a registration statement with the department under Part I G 1 b and c may rely on the acquisition of allocation in accordance with Part II B of this general permit to achieve compliance with the individual and combined wasteload allocations in each tributary.

E. Monitoring requirements.

1. Discharges shall be monitored by the permittee during weekdays as specified in the table below unless the department determines that weekday only sampling results in a non-representative load. Weekend monitoring or alternative monthly load calculations to address production schedules or seasonal flows shall be submitted to the department for review and approval on a case-by-case basis. Facilities that exhibit instantaneous discharge flows that vary from the daily average discharge flow by less than 10% may submit a proposal to the department to use an alternative sample type; such proposals shall be reviewed and approved by the department on a case-by-case basis.

Parameter	Sample Type and Collection Frequency				
STP design flow	≥20.0 MGD	1.0 - 19.999 MGD	0.5 - 0.999 MGD	0.040 - 0.499 MGD	< 0.040 MGD
Effluent TN load limit for industrial facilities		≥100,000 ~~→ 350,000~~ lb/yr	50,000 - 99,999 lb/yr	487 - 49,999 lb/yr	< 487 lb/yr
Effluent TP load limit for industrial facilities		≥10,000 ~~→ 35,000~~ lb/yr	5,000 - 9,999 lb/yr	37 - 4,999 lb/yr	< 37 lb/yr
Flow	Totalizing, Indicating, and Recording				1/Day, see individual VPDES permit for sample type
Nitrogen Compounds (Total Nitrogen = TKN + NO_2- (as N) + NO_3- (as N))	24 HC 3 Days/Week	24 HC 2 Days/Week*	8 HC 2 Days/Week*	8 HC 2/Month, > 7 days apart	1/Month Grab
Total Phosphorus	24 HC 3 Days/Week	24 HC 2 Days/Week*	8 HC 2 Days/Week*	8 HC 2/Month, > 7 days apart	1/Month Grab
*Two flow composited samples taken in the same calendar week that are then composited by flow into a single weekly composite sample for analysis shall be considered to be in compliance with this requirement.					

2. Monitoring for compliance with effluent limitations shall be performed in a manner identical to that used to determine compliance with effluent limitations established in the individual VPDES permit unless specified otherwise in subdivisions 3, 4, and 5 of Part I E. Monitoring or sampling shall be conducted according to analytical laboratory methods approved under 40 CFR Part 136, unless other test or sample collection procedures have been requested by the permittee and approved by the department in writing. All analysis for compliance with effluent limitations shall be conducted in accordance with 1VAC30-45, Certification for Noncommercial Environmental Laboratories, or 1VAC30-46, Accreditation for Commercial Environmental Laboratories. Monitoring may be performed by the permittee at frequencies more stringent than listed in subdivision 1 of Part I E; however, the permittee shall report all results of such monitoring.

3. Loading values greater than or equal to 10 pounds reported in accordance with Part I E and F of this general permit shall be calculated and reported to the nearest pound without regard to mathematical rules of precision. Loading values of less than 10 pounds reported in accordance with Part I E and F of this general permit shall be calculated and reported to at least two significant digits with the exception that all complete calendar year annual loads shall be reported to the nearest pound.

4. Data shall be reported on a form provided by the department, by the same date each month as is required by the owner's individual VPDES permit. The total monthly load shall be calculated in accordance with the following formula:

$$ML = \left(\frac{\sum DL}{s} \right) \times d$$

where:

ML = total monthly load (lb/mo) = average daily load for the calendar month multiplied by the number of days of the calendar month on which a discharge occurred

DL = daily load = daily concentration (expressed as mg/l to the nearest 0.01 mg/l) multiplied by the flow volume of effluent discharged during the 24-hour period (expressed as MGD to at least the nearest 0.01 MGD and in no case less than two significant digits), multiplied by 8.345. Daily loads greater than or equal to 10 pounds may be rounded to the nearest whole number to convert to pounds per day (lbs/day). Daily loads less than or equal to 10 pounds may be rounded to no fewer than two significant figures.

s = number of days in the calendar month in which a sample was collected and analyzed

d = number of discharge days in the calendar month

For total phosphorus, all daily concentration data below the quantification level (QL) for the analytical method used shall be treated as half the QL. All daily concentration data equal to or above the QL for the analytical method used shall be treated as it is reported. If all data are below the QL, then the average shall be reported as half the QL.

For total nitrogen (TN), if none of the daily concentration data for the respective species (i.e., TKN, nitrates/nitrites) are equal to or above the QL for the respective analytical methods used, the daily TN concentration value reported shall equal one half of the largest QL used for the respective species. If one of the data is equal to or above the QL, the daily TN concentration value shall be treated as that data point as reported. If more than one of the data is above the QL, the daily TN concentration value shall equal the sum of the data points as reported.

The quantification levels shall be less than or equal to the following concentrations:

Parameter	Quantification Level
TKN	0.50 mg/l
Nitrite	0.10 mg/l
Nitrate	0.20 mg/l
Nitrite + Nitrate	0.20 mg/l

Higher QLs may be approved on a case-by-case basis where a higher QL routinely results in reportable results of the species in question or is otherwise technically appropriate based on standard lab practices.

The total year-to-date mass load shall be calculated in accordance with the following formula:

$$AL_{YTD} = \sum_{(Jan-present)} ML$$

where:

AL-YTD = calendar year-to-date annual load (lb/yr)

ML = total monthly load (lb/mo)

The total annual mass load shall be calculated in accordance with the following formula:

$$AL = \sum_{(Jan-Dec)} ML$$

where:

AL = calendar year annual load (lb/yr)

ML = total monthly load (lb/mo)

5. The department may authorize a chemical usage evaluation as an alternative means of determining nutrient loading for outfalls where the only source of nutrients is that found in the surface water intake and chemical additives used by the facility. Such an evaluation shall be submitted to the department for review and approval on a case-by-case basis. Implementation of approved chemical usage

evaluations shall satisfy the requirements specified under Part I E 1 and 2.

F. Annual reporting. On or before February 1, annually, each permittee shall file a discharge monitoring report with the department identifying the annual mass load of total nitrogen and the annual mass load of total phosphorus discharged by the permitted facility during the previous calendar year.

G. Requirement to register; exclusions.

1. The following owners are required to register for coverage under this general permit:

a. Every owner of an existing facility authorized by a VPDES permit to discharge 100,000 gallons or more per day from a sewage treatment work, or an equivalent load from an industrial facility, directly into tidal waters, or 500,000 gallons or more per day from a sewage treatment works, or an equivalent load from an industrial facility, directly into nontidal waters shall submit a registration statement to the department by November 1, 2016, and thereafter upon the reissuance of this general permit in accordance with Part III M. The conditions of this general permit will apply to such owner upon approval of a registration statement.

b. Any owner of a facility authorized by a Virginia Pollutant Discharge Elimination System permit to discharge 40,000 gallons or more per day from a sewage treatment works, or an equivalent load from an industrial facility, directly into tidal or nontidal waters shall submit a registration statement with the department at the time he makes application for an individual permit with the department for a new discharge or expansion that is subject to an offset requirement in Part II of this general permit or to a technology-based requirement in 9VAC25-40-70, and thereafter upon the reissuance of this general permit in accordance with Part III M. The conditions of this general permit will apply to such owner beginning January 1 of the calendar year immediately following approval of a registration statement and issuance or modification of the individual permit.

c. Any owner of a facility treating domestic sewage authorized by a VPDES permit with a discharge greater than 1,000 gallons per day up to and including 39,999 gallons per day that did not commence the discharge of pollutants prior to January 1, 2011, and is subject to offset requirements in accordance with Part II A 1 c of this general permit shall submit a registration statement with the department at the time ~~he~~ the owner makes application for an individual permit with the department or prior to commencing a discharge, whichever occurs first, and thereafter upon the reissuance of this general permit in accordance with Part III M.

2. All other categories of discharges are excluded from registration under this general permit.

H. Registration statement.

1. The registration statement shall contain the following information:

a. Name, mailing address and telephone number, email address, and fax number of the owner (and facility operator, if different from the owner) applying for permit coverage;

b. Name (or other identifier), address, city or county, contact name, phone number, email address, and fax number for the facility for which the registration statement is submitted;

c. VPDES permit numbers for all permits assigned to the facility, or pursuant to which the discharge is authorized;

d. If applying for an aggregated wasteload allocation in accordance with Part I B 2 of this permit, a list of all affected facilities and the VPDES permit numbers assigned to these facilities;

e. For new and expanded facilities, a plan to offset new or increased delivered total nitrogen and delivered total phosphorus loads, including the amount of wasteload allocation acquired. Wasteload allocations or credits sufficient to offset projected nutrient loads must be provided for period of at least five years; and

f. For existing facilities, the amount of a facility's wasteload allocation transferred to or from another facility to offset new or increased delivered total nitrogen and delivered total phosphorus loads from a new discharge or expansion.

2. The registration statement shall be submitted to the DEQ Central Office, Office of VPDES Permits. Following notification from the department of the start date for the required electronic submission of Notices of Intent to Discharge forms (i.e., registration statements), as provided for in 9VAC25-31-1020, such form submitted after that date shall be electronically submitted to the department in compliance with this section and 9VAC25-31-1020. At least three months' notice shall be provided between the notification from the department and the date after which such forms must be submitted electronically.

3. An amended registration statement shall be submitted to DEQ immediately upon the acquisition or transfer of a facility's wasteload allocation to offset new or increased delivered total nitrogen and delivered total phosphorus loads from a new discharge or expansion.

I. Public notice for registration statements proposing modifications or incorporations of new wasteload allocations or delivery factors.

1. All public notices issued pursuant to a proposed modification or incorporation of a (i) new wasteload allocation to offset new or increased delivered total nitrogen and delivered total phosphorus loads from a new discharge

or expansion or (ii) delivery factor shall be published once a week for two consecutive weeks in a local newspaper of general circulation serving the locality where the facility is located informing the public that the owner of the facility intends to apply for coverage under this general permit. At a minimum, the notice shall include:

a. A statement of the owner's intent to register for coverage under this general permit;

b. A brief description of the facility and its location;

c. The amount of wasteload allocation that will be acquired or transferred if applicable;

d. The delivery factor for a new discharge or expansion;

e. If applicable, any proposed nonpoint source to point source trading ratio less than 2:1 proposed under Part II B 1 b (1);

f. A statement that the purpose of the public participation is to acquaint the public with the technical aspects of the facility and how the standards and the requirements of this chapter will be met, to identify issues of concern, to facilitate communication, and to establish a dialogue between the owner and persons who may be affected by the discharge from the facility;

g. An announcement of a 30-day comment period and the name, telephone number, and address of the owner's representative who can be contacted by the interested persons to answer questions;

h. The name, telephone number, and address of the DEQ representative who can be contacted by the interested persons to answer questions, or where comments shall be sent; and

i. The location where copies of the documentation to be submitted to the department in support of this general permit notification and any supporting documents can be viewed and copied.

2. The owner shall place a copy of the documentation and support documents in a location accessible to the public in the vicinity of the proposed facility.

3. The public shall be provided 30 days to comment on the technical and the regulatory aspects of the proposal. The comment period will begin on the date the notice is published in the local newspaper.

J. Compliance with wasteload allocations.

1. Methods of compliance. The owner of the permitted facility shall comply with its wasteload allocation contained in the registration list maintained by the department. The owner of the permitted facility shall be in compliance with its wasteload allocation if:

a. The annual mass load is less than or equal to the applicable wasteload allocation assigned to the facility in this general permit (or permitted design capacity for expanded facilities without allocations);

b. The owner of the permitted facility acquires sufficient point source nitrogen or phosphorus credits in accordance with subdivision 2 of this subsection; provided, however, that the acquisition of nitrogen or phosphorus credits pursuant to this section shall not alter or otherwise affect the individual wasteload allocations for each permitted facility; or

c. In the event he is unable to meet the individual wasteload allocation pursuant to subdivision 1 a or 1 b of this subsection, the owner of the permitted facility acquires sufficient nitrogen or phosphorus credits through payments made into the Nutrient Offset Fund pursuant to subdivision 3 of this subsection; provided, however, that the acquisition of nitrogen or phosphorus credits pursuant to this section shall not alter or otherwise affect the individual wasteload allocations for each permitted facility.

2. Credit acquisition from owners of permitted facilities. A permittee may acquire point source nitrogen credits or point source phosphorus credits from one or more owners of permitted facilities only if:

a. The credits are generated and applied to a compliance obligation in the same calendar year;

b. The credits are generated by one or more permitted facilities in the same tributary, except that owners of permitted facilities in the Eastern Shore Basin may also acquire credits from owners of permitted facilities in the Potomac and Rappahannock tributaries. Owners of Eastern Shore Basin facilities may acquire credits from the owners of Potomac tributary facilities at a trading ratio of 1:1. A trading ratio of 1.3:1 shall apply to the acquisition of credits from the owners of a Rappahannock tributary facility by the owner of an Eastern Shore Basin facility;

c. The exchange or acquisition of credits does not affect any requirement to comply with local water quality-based limitations as determined by the board;

d. The credits are acquired no later than June 1 immediately following the calendar year in which the credits are applied;

e. The credits are generated by a facility that has been constructed, and has discharged from treatment works whose design flow or equivalent industrial activity is the basis for the facility's wasteload allocations (until a facility is constructed and has commenced operation, such credits are held, and may be sold, by the Nutrient Offset Fund; and

f. No later than June 1 immediately following the calendar year in which the credits are applied, the permittee certifies on a credit exchange notification form supplied by the department that he has acquired sufficient credits to satisfy his compliance obligations. The permittee shall comply with the terms and conditions contained in the

credit exchange notification form submitted to the department.

3. Credit acquisitions from the Nutrient Offset Fund. Until such time as the board finds that no allocations are reasonably available in an individual tributary, permittees that cannot meet their total nitrogen or total phosphorus effluent limit may acquire nitrogen or phosphorus credits through payments made into the Nutrient Offset Fund established in § 10.1-2128.2 of the Code of Virginia only if, no later than June 1 immediately following the calendar year in which the credits are to be applied, the permittee certifies on a form supplied by the department that he has diligently sought, but has been unable to acquire, sufficient credits to satisfy his compliance obligations through the acquisition of point source nitrogen or phosphorus credits with other permitted facilities, and that he has acquired sufficient credits to satisfy his compliance obligations through one or more payments made in accordance with the terms of this general permit. Such certification may include~~, but not be limited to,~~ providing a record of solicitation or demonstration that point source allocations are not available for sale in the tributary in which the permittee's facility is located. Payments to the Nutrient Offset Fund shall be in the amount of ~~$4.60~~ $5.08 for each pound of nitrogen and ~~$10.10~~ $11.15 for each pound of phosphorus and shall be subject to the following requirements:

a. The credits are generated and applied to a compliance obligation in the same calendar year.

b. The credits are generated in the same tributary, except that owners of permitted facilities in the Eastern Shore Basin may also acquire credits from the owners of facilities that discharge to the Potomac and Rappahannock tributaries. Owners of Eastern Shore Basin facilities may acquire credits from the owners of facilities that discharge to a Potomac tributary at a trading ratio of 1:1. A trading ratio of 1.3:1 shall apply to the acquisition of credits from owners of facilities that discharge to a Rappahannock tributary by the owners of an Eastern Shore Basin facility.

c. The acquisition of credits does not affect any requirement to comply with local water quality-based limitations, as determined by the board.

4. This general permit neither requires nor prohibits a municipality or regional sewerage authority's development and implementation of trading programs among industrial users, which are consistent with the pretreatment regulatory requirements at 40 CFR Part 403 and the municipality's or authority's individual VPDES permit.

Part II
SPECIAL CONDITIONS APPLICABLE TO NEW AND EXPANDED FACILITIES

A. Offsetting mass loads discharged by new and expanded facilities.

1. An owner of a new or expanded facility shall comply with the applicable requirements of this section as a condition of the facility's coverage under this general permit.

a. An owner of a facility authorized by a VPDES permit first issued before July 1, 2005, that expands the facility to discharge 40,000 gallons or more per day, or an equivalent load, shall demonstrate to the department that he has acquired wasteload allocations sufficient to offset any increase in his delivered total nitrogen and delivered total phosphorus loads resulting from any expansion beyond his permitted capacity as of July 1, 2005.

b. An owner of a facility authorized by a VPDES permit first issued on or after July 1, 2005, to discharge 40,000 gallons or more per day, or an equivalent load, shall demonstrate to the department that he has acquired wasteload allocations sufficient to offset his delivered total nitrogen and delivered total phosphorus loads.

c. An owner of a facility treating domestic sewage authorized by a VPDES permit with a discharge greater than 1,000 gallons per day up to and including 39,999 gallons per day that did not commence the discharge of pollutants prior to January 1, 2011, shall demonstrate to the department that he has acquired wasteload allocations sufficient to offset his delivered total nitrogen and delivered phosphorus loads prior to commencing the discharge, except when the facility is for short-term temporary use only as determined by the department or when treatment of domestic sewage is not the primary purpose of the facility.

2. Offset calculations shall address the proposed discharge that exceeds:

a. The applicable wasteload allocation assigned to discharges from the facility in this general permit, for expanding significant dischargers with a wasteload allocation listed in 9VAC25-720-50 C, 9VAC25-720-60 C, 9VAC25-720-70 C, 9VAC25-720-110 C, and 9VAC25-720-120 C of the Water Quality Management Planning Regulation;

b. The permitted design capacity, for all other expanding dischargers; and

c. Zero, for facilities with a new discharge.

3. An owner of multiple facilities that discharge into the same tributary, and assigned an aggregate mass load limit in accordance with Part I B 2 of this general permit, that undertakes construction of new or expanded facilities shall be required to acquire wasteload allocations sufficient to offset any increase in delivered total nitrogen and delivered total phosphorus loads resulting from any expansion beyond the aggregate mass load limit assigned these facilities.

B. Acquisition of wasteload allocations. ~~wasteload~~ Wasteload allocations required by this section to offset new or increased

delivered total nitrogen and delivered total phosphorus loads shall be acquired in accordance with this section.

1. Such allocations may be acquired from one or a combination of the following:

a. Acquisition of all or a portion of the wasteload allocations or point source nitrogen or point source phosphorus credits from the owners of one or more permitted facilities, based on delivered pounds by the respective trading parties as listed by the department;

b. Acquisition of credits certified by the board pursuant to § 62.1-44.19:20 of the Code of Virginia. Credits used to offset new or increased nutrient loads under this subdivision shall be:

(1) Subject to a trading ratio of two pounds reduced for every pound to be discharged if certified as a nonpoint source credit by the board pursuant to § 62.1-44.19:20 of the Code of Virginia. On a case-by-case basis the board may approve nonpoint source to source trading ratios of less than 2:1 (but not less than 1:1) when the applicant demonstrates factors that ameliorate the presumed 2:1 uncertainty ratio for credits generation by nonpoint sources such as:

(a) When direct and representative monitoring of the pollutant loadings from a nonpoint source is performed in a manner and at a frequency similar to that performed at VPDES point sources and there is consistency in the effectiveness of the operation of the nonpoint source best management practice (BMP) approaching that of a conventional point source.

(b) When nonpoint source credits are generated from land conservation that ensures permanent protection through a conservation easement or other instrument attached to the deed and when load reductions can be reliably determined;

(2) Calculated using best management practices efficiency rates and attenuation rates, as established by the latest science and relevant technical information, and approved by the board;

(3) Based on appropriate delivery factors, as established by the latest science and relevant technical information, and approved by the board;

(4) Demonstrated to have achieved reductions beyond those already required by or funded under federal or state law, or by Virginia's Chesapeake Bay TMDL Watershed Implementation Plan;

(5) Generated in accordance with conditions of the facility's individual VPDES permit; and

(6) In the case of credits generated by land use conversions and urban source reduction controls (BMPs), the credits shall represent nutrient reductions beyond those in place as of July 1, 2005;

c. Until such time as the board finds that no allocations are reasonably available in an individual tributary, acquisition of allocations through payments made into the Nutrient Offset Fund established in § 10.1-2128.2 of the Code of Virginia; or

d. Acquisition of allocations through such other means as may be approved by the department on a case-by-case basis. This includes allocations granted by the board to an owner of a facility that is authorized by a VPA permit to land apply domestic sewage if:

(1) The VPA permit was issued before July 1, 2005;

(2) The allocation does not exceed the facility's permitted design capacity as of July 1, 2005;

(3) The waste treated by the facility that is covered under the VPA permit will be treated and discharged pursuant to a VPDES permit for a new discharge; and

(4) The owner installs state-of-the-art nutrient removal technology at such a facility.

2. Acquisition of allocations or point source nitrogen or point source phosphorus credits is subject to the following conditions:

a. The allocations or credits shall be generated and applied to an offset obligation in the same calendar year in which the credit is generated;

b. The allocations or credits shall be generated in the same tributary;

c. Such acquisition does not affect any requirement to comply with local water quality-based limitations, as determined by the board;

d. The allocations are authenticated (i.e., verified to have been generated) by the permittee as required by the facility's individual VPDES permit, utilizing procedures approved by the board, no later than February 1 immediately following the calendar year in which the allocations are applied; and

e. If obtained from the owner of a permitted point source, the allocations shall be generated by a facility that has been constructed, and has discharged from treatment works whose design flow or equivalent industrial activity is the basis for the facility's wasteload allocations.

f. Such allocations or credits shall be secured for a period of five years with each registration under the general permit.

3. Priority of options. The board shall give priority to allocations or credits acquired in accordance with subdivisions 1 a, b, and d of this subsection. The board shall approve allocations acquired in accordance with subdivision 1 c of this subsection only after the owner has demonstrated that he has made a good faith effort to acquire sufficient allocations in accordance with subdivisions 1 a and 1 b of this subsection, and that such allocations are not reasonably available taking into account timing, cost and other relevant factors. Such demonstration may include~~, but not be limited to,~~ providing a record of solicitation, or other demonstration

that point source allocations or nonpoint source allocations are not available for sale in the tributary in which the permittee's facility discharge is located.

4. Annual allocation acquisitions from the Nutrient Offset Fund. The cost for each pound of nitrogen and each pound of phosphorus shall be determined at the time payment is made to the Nutrient Offset Fund, based on the higher of (i) the estimated cost of achieving a reduction of one pound of nitrogen or phosphorus at the facility that is securing the allocation, or comparable facility, for each pound of allocation acquired; or (ii) the average cost, as determined by the department on an annual basis, of reducing two pounds of nitrogen or phosphorus from nonpoint sources in the same tributary for each pound of allocation acquired.

Part III

CONDITIONS APPLICABLE TO ALL VPDES PERMITS

A. Monitoring.

1. Samples and measurements taken as required by this permit shall be representative of the monitored activity.

2. Monitoring shall be conducted according to procedures approved under 40 CFR Part 136 or alternative methods approved by the U.S. Environmental Protection Agency, unless other procedures have been specified in this permit.

3. The permittee shall periodically calibrate and perform maintenance procedures on all monitoring and analytical instrumentation at intervals that will ensure accuracy of measurements.

4. Samples taken as required by this permit shall be analyzed in accordance with 1VAC30-45 (Certification for Noncommercial Environmental Laboratories) or 1VAC30-46 (Accreditation for Commercial Environmental Laboratories).

B. Records.

1. Records of monitoring information shall include:

a. The date, exact place, and time of sampling or measurements;

b. The individuals who performed the sampling or measurements;

c. The dates and times analyses were performed;

d. The individuals who performed the analyses;

e. The analytical techniques or methods used; and

f. The results of such analyses.

2. Except for records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five years, the permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the registration statement for this permit, for a period of at least three years from the date of the sample, measurement, report, or request for coverage. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to the permittee or as requested by the board.

C. Reporting monitoring results.

1. The permittee shall submit the results of the monitoring required by this permit not later than the 10th day of the month after monitoring takes place, unless another reporting schedule is specified elsewhere in this permit. Monitoring results shall be submitted to the department's regional office.

2. Monitoring results shall be reported on a Discharge Monitoring Report (DMR) or on forms provided, approved, or specified by the department.

3. If the permittee monitors any pollutant specifically addressed by this permit more frequently than required by this permit using test procedures approved under 40 CFR Part 136 or using other test procedures approved by the U.S. Environmental Protection Agency or using procedures specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted on the DMR or reporting form specified by the department.

4. Calculations for all limitations that require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in this permit.

D. Duty to provide information. The permittee shall furnish to the department, within a reasonable time, any information that the board may request to determine whether cause exists for modifying, revoking and reissuing, or terminating coverage under this permit or to determine compliance with this permit. The board may require the permittee to furnish, upon request, such plans, specifications, and other pertinent information as may be necessary to determine the effect of the wastes from the discharge on the quality of state waters or such other information as may be necessary to accomplish the purposes of the State Water Control Law. The permittee shall also furnish to the department, upon request, copies of records required to be kept by this permit.

E. Compliance schedule reports. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date.

F. Unauthorized discharges. Except in compliance with this permit or another permit issued by the board, it shall be unlawful for any person to:

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; or

2. Otherwise alter the physical, chemical, or biological properties of such state waters and make them detrimental to the public health, to animal or aquatic life, or to the use of such waters for domestic or industrial consumption, for recreation, or for other uses.

G. Reports of unauthorized discharges. Any permittee that discharges or causes or allows a discharge of sewage, industrial waste, other wastes, or any noxious or deleterious substance into or upon state waters in violation of Part III F, or that discharges or causes or allows a discharge that may reasonably be expected to enter state waters in violation of Part III F, shall notify the department of the discharge immediately upon discovery of the discharge, but in no case later than 24 hours after said discovery. A written report of the unauthorized discharge shall be submitted to the department within five days of discovery of the discharge. The written report shall contain:

1. A description of the nature and location of the discharge;

2. The cause of the discharge;

3. The date on which the discharge occurred;

4. The length of time that the discharge continued;

5. The volume of the discharge;

6. If the discharge is continuing, how long it is expected to continue;

7. If the discharge is continuing, what the expected total volume of the discharge will be; and

8. Any steps planned or taken to reduce, eliminate, and prevent a recurrence of the present discharge or any future discharge not authorized by this permit.

Discharges reportable to the department under the immediate reporting requirements of other regulations are exempted from this requirement.

H. Reports of unusual or extraordinary discharges. If any unusual or extraordinary discharge including a bypass or upset should occur from a treatment works and the discharge enters or could be expected to enter state waters, the permittee shall promptly notify, in no case later than 24 hours, the department by telephone after the discovery of the discharge. This notification shall provide all available details of the incident, including any adverse effects on aquatic life and the known number of fish killed. The permittee shall reduce the report to writing and shall submit it to the department within five days of discovery of the discharge in accordance with Part III I 2. Unusual and extraordinary discharges include, but are not limited to, any discharge resulting from:

1. Unusual spillage of materials resulting directly or indirectly from processing operations;

2. Breakdown of processing or accessory equipment;

3. Failure or taking out of service some or all of the treatment works; and

4. Flooding or other acts of nature.

I. Reports of noncompliance. The permittee shall report any noncompliance that may adversely affect state waters or may endanger public health.

1. An oral report shall be provided within 24 hours from the time the permittee becomes aware of the circumstances. The following shall be included as information that shall be reported within 24 hours under this paragraph:

a. Any unanticipated bypass; and

b. Any upset that causes a discharge to surface waters.

2. A written report shall be submitted within five days and shall contain:

a. A description of the noncompliance and its cause;

b. The period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and

c. Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

The board may waive the written report on a case-by-case basis for reports of noncompliance under Part III I if the oral report has been received within 24 hours and no adverse impact on state waters has been reported.

3. The permittee shall report all instances of noncompliance not reported under Part III I 1 or 2, in writing, at the time the next monitoring reports are submitted. The reports shall contain the information listed in Part III I 2.

NOTE: The immediate (within 24 hours) reports required in Part III G, H, and I may be made to the department's regional office. Reports may be made by telephone, FAX, or online at ~~http://www.deq.virginia.gov/Programs/PollutionResponsePreparedness/MakingaReport.aspx~~ https://portal.deq.virginia.gov/prep/Report/Create. For reports outside normal working hours, a message may be left and this shall fulfill the immediate reporting requirement. For emergencies, the Virginia Department of Emergency Management maintains a 24-hour telephone service at 1-800-468-8892.

4. Where the permittee becomes aware that it failed to submit any relevant facts in a permit registration statement or submitted incorrect information in a permit registration statement or in any report to the department, the permittee shall promptly submit such facts or information.

J. Notice of planned changes.

1. The permittee shall give notice to the department as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

a. The permittee plans alteration or addition to any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced:

(1) After promulgation of standards of performance under § 306 of the Clean Water Act (33 USC § 1251 et seq.) that are applicable to such source; or

(2) After proposal of standards of performance in accordance with § 306 of the Clean Water Act that are applicable to such source, but only if the standards are promulgated in accordance with § 306 of the Clean Water Act within 120 days of their proposal;

b. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants that are subject neither to effluent limitations nor to notification requirements specified elsewhere in this permit; or

c. The alteration or addition results in a significant change in the permittee's sludge use or of disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or of disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan.

2. The permittee shall give advance notice to the department of any planned changes in the permitted facility or activity that may result in noncompliance with permit requirements.

K. Signatory requirements.

1. Registration statement. All registration statements shall be signed as follows:

a. For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy-making or decision-making functions for the corporation or (ii) the manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions that govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations and initiating and directing other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or other actions taken to gather complete and accurate information for permit registration requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

c. For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a public agency includes (i) the chief executive officer of the agency or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

2. Reports, etc. All reports required by permits and other information requested by the board shall be signed by a person described in Part III K 1 or by a duly authorized representative of that person. A person is a duly authorized representative only if:

a. The authorization is made in writing by a person described in Part III K 1;

b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. A duly authorized representative may thus be either a named individual or any individual occupying a named position; and

c. The written authorization is submitted to the department.

3. Changes to authorization. If an authorization under Part III K 2 is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of Part III K 2 shall be submitted to the department prior to or together with any reports, or information to be signed by an authorized representative.

4. Certification. Any person signing a document under Part III K 1 or 2 shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

L. Duty to comply. The permittee shall comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the State Water Control Law and the Clean Water Act, except that noncompliance with certain provisions of this permit may constitute a violation of the State Water Control Law but not the Clean Water Act. Permit noncompliance is grounds for enforcement action~~; for,~~ permit coverage termination, ~~revocation and reissuance, or modification;~~ or denial of a permit coverage renewal application.

The permittee shall comply with effluent standards or prohibitions established under § 307(a) of the Clean Water Act for toxic pollutants and with standards for sewage sludge use or disposal established under § 405(d) of the Clean Water Act within the time provided in the regulations that establish these standards or prohibitions or standards for sewage sludge use or disposal, even if this permit has not yet been modified to incorporate the requirement.

M. Duty to reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee shall submit a new registration statement at least 60 days before the expiration date of the existing permit, unless permission for a later date has been granted by the board. The board shall not grant permission for registration statements to be submitted later than the expiration date of the existing permit.

N. Effect of a permit. This permit does not convey any property rights in either real or personal property or any exclusive privileges, nor does it authorize any injury to private property or invasion of personal rights or any infringement of federal, state, or local law or regulations.

O. State law. Nothing in this permit shall be construed to preclude the institution of any legal action under, or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to, any other state law or regulation or under authority preserved by § 510 of the Clean Water Act. Except as provided in permit conditions on "bypassing" (Part III U) and "upset" (Part III V), nothing in this permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance.

P. Oil and hazardous substance liability. Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from responsibilities, liabilities, or penalties to which the permittee is or may be subject under §§ 62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law.

Q. Proper operation and maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) that are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also include effective plant performance, adequate funding, adequate staffing, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems that are installed by the permittee only when the operation is necessary to achieve compliance with the conditions of this permit.

R. Disposal of solids or sludges. Solids, sludges, or other pollutants removed in the course of treatment or management of pollutants shall be disposed of in a manner so as to prevent any pollutant from such materials from entering state waters.

S. Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit that has a reasonable likelihood of adversely affecting human health or the environment.

T. Need to halt or reduce activity not a defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

U. Bypass.

1. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility. The permittee may allow any bypass to occur that does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to ensure efficient operation. These bypasses are not subject to the provisions of Part III U 2 and 3.

2. Notice.

a. Anticipated bypass. If the permittee knows in advance of the need for a bypass, prior notice shall be submitted, if possible, at least 10 days before the date of the bypass.

b. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in Part III I.

3. Prohibition of bypass.

a. Bypass is prohibited, and the board may take enforcement action against a permittee for bypass, unless:

(1) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(2) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass that occurred during normal periods of equipment downtime or preventive maintenance; and

(3) The permittee submitted notices as required under Part III U 2.

b. The board may approve an anticipated bypass after considering its adverse effects if the board determines that it will meet the three conditions listed in Part III U 3 a.

V. Upset.

1. An upset, defined in 9VAC25-31-10, constitutes an affirmative defense to an action brought for noncompliance with technology-based permit effluent limitations if the requirements of Part III V 2 are met. A determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is not a final administrative action subject to judicial review.

2. A permittee who wishes to establish the affirmative defense of upset shall demonstrate through properly signed, contemporaneous operating logs, or other relevant evidence that:

a. An upset occurred and that the permittee can identify the cause or causes of the upset;

b. The permitted facility was at the time being properly operated;

c. The permittee submitted notice of the upset as required in Part III I; and

d. The permittee complied with remedial measures required under Part III S.

3. In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

W. Inspection and entry. The permittee shall allow the director, or an authorized representative, including an authorized contractor acting as a representative of the administrator, upon presentation of credentials and other documents as may be required by law, to:

1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

3. Inspect at reasonable times facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

4. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act and the State Water Control Law, substances or parameters at any location.

For purposes of this section, the time for inspection shall be deemed reasonable during regular business hours ~~and~~ or whenever the facility is discharging. Nothing contained herein shall make an inspection unreasonable during an emergency.

X. Permit actions. Permits may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, termination, or notification of planned changes or anticipated noncompliance does not stay any permit condition.

Y. Transfer of ~~permits~~ permit coverage. ~~Permits are~~ Permit coverage is not transferable to any person except after notice to the department. Coverage under this permit may be automatically transferred to a new permittee if:

1. The current permittee notifies the department within 30 days of the transfer of the title to the facility or property, unless permission for a later date has been granted by the board;

2. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and

3. The board does not notify the existing permittee and the proposed new permittee of its intent to deny the new permittee coverage under the permit. If this notice is not received, the transfer is effective on the date specified in the agreement described in Part III Y 2.

Z. Severability. The provisions of this permit are severable, and if any provision of this permit or the application of any provision of this permit to any circumstance is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

VA.R. Doc. No. R20-6288; Filed July 26, 2021, 9:21 a.m.

TITLE 10. FINANCE AND FINANCIAL INSTITUTIONS

STATE CORPORATION COMMISSION

Proposed Regulation

Title of Regulation: **10VAC5-230. Debt Settlement Services Providers (adding 10VAC5-230-10 through 10VAC5-230-80).**

Statutory Authority: §§ 6.2-2039 and 12.1-13 of the Code of Virginia.

Public Hearing Information: A public hearing will be held upon request.

Public Comment Deadline: September 3, 2021.

Agency Contact: Susan Hancock, Deputy Commissioner, Bureau of Financial Institutions, State Corporation Commission, P.O. Box 640, Richmond, VA 23218, telephone (804) 371-9703, FAX (804) 371-9416, or email susan.hancock@scc.virginia.gov.

Summary:

Pursuant to Chapter 20.1 (§ 6.2-2026 et seq.) of Title 6.2 of the Code of Virginia, the proposed new regulation establishes a licensing and regulatory framework for debt settlement services providers, including providing definitions for terms used in the regulation, specifying the required surety bond amount and minimum fidelity bond coverage, setting annual and other reporting requirements, setting the annual fee schedule, prescribing additional business requirements and restrictions, and establishing advertising rules.

AT RICHMOND, JULY 26, 2021

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. BFI-2021-00010

Ex Parte: In the matter of Adopting

Regulations Governing Debt Settlement

Services Providers under Chapter 20.1

of Title 6.2 of the Code of Virginia

ORDER TO TAKE NOTICE

Chapter 785 of the 2020 Virginia Acts of Assembly amended the Code of Virginia ("Code") by adding Chapter 20.1 of Title 6.2 (§ 6.2-2026 et seq.) of the Code ("Chapter 20.1"). Chapter 20.1 establishes a licensing and regulatory framework for debt settlement services providers, and it became effective on July 1, 2021. Section 6.2-2039 of the Code authorizes the State Corporation Commission ("Commission") to adopt such regulations as it deems appropriate to effect the purposes of Chapter 20.1.

The Bureau of Financial Institutions ("Bureau") has submitted to the Commission proposed regulations that, among other things, define certain terms, specify the required surety bond amount and minimum fidelity bond coverage, establish annual and other reporting requirements, set forth the annual fee schedule, and prescribe additional business requirements and restrictions as well as various advertising rules.

NOW THE COMMISSION, having considered the Bureau's proposal, is of the opinion and finds that the proposed regulations should be considered for adoption.

Accordingly, IT IS ORDERED THAT:

(1) The proposed regulations are attached hereto and made a part hereof.

(2) Comments or requests for a hearing on the proposed regulations must be submitted in writing to the Clerk of the Commission, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218 on or before September 3, 2021. Requests for a hearing shall state why a hearing is necessary and why the issues cannot be adequately addressed in written comments. All correspondence shall contain a reference to Case No. BFI-2021-00010. Interested persons desiring to submit comments or request a hearing electronically may do so by following the instructions available at the Commission's website: scc.virginia.gov/casecomments/Submit-Public-Comments.

(3) The Bureau shall file its response to any comments filed pursuant to Ordering Paragraph 2 on or before October 1, 2021.

(4) This Order and the attached proposed regulations shall be made available on the Commission's website: scc.virginia.gov/pages/Case-Information.

(5) The Commission's Division of Information Resources shall provide a copy of this Order and the proposed regulations to the Virginia Registrar of Regulations for publication in the Virginia Register of Regulations.

A COPY of this Order and the attached proposed regulations shall be sent by the Clerk of the Commission to the Commission's Office of General Counsel and to the Commissioner of Financial Institutions, who shall send by e-mail or U.S. mail a copy of this Order and the attached proposed regulations to every debt settlement services provider licensed under Chapter 20.1 and such other interested persons as he may designate.

Chapter 230

Debt Settlement Services Providers

10VAC5-230-10. Definitions.

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

"Advertisement" for purposes of Chapter 20.1 and this chapter means a commercial message in any medium that promotes, directly or indirectly, the offering of debt settlement services to any consumer. The term includes a communication sent to a consumer as part of a solicitation of business but excludes messages on promotional items, such as pens, pencils, notepads, hats, and calendars, as well as other information distributed or made available solely to other businesses.

"Affiliate" means an entity of which any of the voting shares or ownership interest is held, directly or indirectly, by a person that also owns, directly or indirectly, any of the voting shares or ownership interest of a licensee.

"Chapter 20.1" means Chapter 20.1 (§ 6.2-2026 et seq.) of Title 6.2 of the Code of Virginia.

"Owner" means a person who holds, directly or indirectly, any of the voting shares or ownership interest of a licensee.

"Subsidiary" means an entity of which any of the voting shares or ownership interest is held, directly or indirectly, by a licensee.

B. Other terms used in this chapter shall have the meanings set forth in § 6.2-100 or 6.2-2026 of the Code of Virginia.

10VAC5-230-20. Bond coverage.

A. Pursuant to § 6.2-2029 of the Code of Virginia, a surety bond shall be filed with the commissioner and continuously maintained thereafter in full force by each licensee. The form of the bond shall be prescribed and provided by the commissioner. The bond amount required for initial licensure shall be at least $25,000. After initial licensure, the bond amount required may be adjusted annually based on the volume of debt settlement services agreements maintained by a licensee during the preceding calendar year and any other factors deemed pertinent by the commissioner.

B. If a person has filed a surety bond with the commissioner, the bond shall be retained by the commissioner notwithstanding the occurrence of any of the following events:

1. The person's application for a license is withdrawn or denied;

2. The person's license is surrendered, suspended, or revoked; or

3. The person ceases engaging in the business of providing or offering to provide debt settlement services.

C. A licensee shall continuously maintain at least $250,000 in fidelity bond coverage.

10VAC5-230-30. Reporting requirements.

A. Within 15 days following the occurrence of any of the following events, a licensee shall file a written report with the commissioner describing the event and its expected impact upon the business of the licensee:

1. Bankruptcy, reorganization, or receivership proceedings are filed by or against the licensee.

2. Any local, state, or federal governmental authority institutes revocation, suspension, or other formal administrative, regulatory, or enforcement proceedings against the licensee.

3. Any local, state, or federal governmental authority (i) revokes or suspends the licensee's debt settlement services license or other license for a similar business; (ii) takes formal administrative, regulatory, or enforcement action against the licensee relating to its debt settlement services business or similar business; or (iii) takes any other action against the licensee relating to its debt settlement services business or similar business where the total amount of restitution or other payment from the licensee exceeds $5,000. A licensee shall not be required to provide the commissioner with information about such event to the extent that such disclosure is prohibited by the laws of another state.

4. Based on allegations by any local, state, or federal governmental authority that the licensee violated any law or regulation applicable to the conduct of its licensed debt settlement services business or similar business, the licensee enters into, or otherwise agrees to the entry of, a settlement or consent order, decree, or agreement with or by such governmental authority.

5. In lieu of threatened or pending license revocation, license suspension, or other administrative, regulatory, or enforcement action, the licensee surrenders its license to engage in (i) the business of providing or offering to provide debt settlement services in another state or (ii) any similar business in another state.

6. The licensee is denied a license to engage in (i) the business of providing or offering to provide debt settlement services in another state or (ii) any similar business in another state.

7. The licensee or any of its members, partners, directors, officers, principals, or employees is indicted for or convicted of a felony.

8. The Attorney General or any other Virginia governmental authority institutes an action against the licensee under the Virginia Consumer Protection Act (§ 59.1-196 et seq. of the Code of Virginia).

9. Such other events as may be prescribed by the commissioner.

B. Pursuant to § 6.2-2035 of the Code of Virginia, each licensee shall file an annual report with the commissioner on or before March 25. The annual report shall contain the following data regarding a licensee's business under Chapter 20.1 during the preceding calendar year:

1. The total number of agreements to provide debt settlement services maintained;

2. The total number of agreements to provide debt settlement services entered into;

3. The total principal amount of debt enrolled by consumers into the licensee's debt settlement services;

4. The total number of settled debts;

5. The total principal amount to be paid by consumers to satisfy settled debts;

6. The total amount of fees charged pursuant to § 6.2-2041 of the Code of Virginia;

7. The total amount of fees received pursuant to § 6.2-2041 of the Code of Virginia;

8. The total number of debt settlement services agreements terminated by consumers; and

9. Any additional information required by the commissioner.

10VAC5-230-40. Schedule of annual fees for the examination, supervision, and regulation of debt settlement services providers.

Pursuant to § 6.2-2038 of the Code of Virginia, the commission sets the following schedule of annual fees to be paid by persons licensed under Chapter 20.1. The fees are to defray the costs of examination, supervision, and regulation of licensees by the bureau.

The annual fee shall be $1,000 per licensee plus $3.44 per debt settlement services agreement maintained by the licensee during the calendar year preceding the year of assessment. In cases where a licensee was not licensed under Chapter 20.1 as of December 31 of the calendar year preceding the year of the assessment, the annual fee shall be $0.

The fee assessed using the schedule set forth in this section shall be rounded down to the nearest whole dollar.

Fees shall be assessed on or before June 1 for the current calendar year. The fee shall be paid on or before July 1.

The information supplied in the annual report due March 25 each year of each licensee provides the basis for its assessment.

Fees prescribed and assessed by this schedule are apart from and do not include the reimbursement for expenses permitted by subsection B of § 6.2-2038 of the Code of Virginia.

10VAC5-230-50. Additional business requirements and restrictions; acquisitions.

A. A licensee shall continuously maintain the requirements and standards for licensure prescribed in § 6.2-2031 of the Code of Virginia.

B. A licensee shall not provide or offer to provide debt settlement services in connection with a debt settlement services agreement that has been set up or established by any other person except for a credit counselor of the licensee.

C. A licensee shall not sell or otherwise assign a debt settlement services agreement to another person unless the purchaser or assignee is licensed or exempt from licensure under Chapter 20.1.

D. A licensee shall not refer or direct a consumer for whom the licensee is providing debt settlement services to any creditor that is an affiliate, owner, or subsidiary of the licensee.

E. A licensee shall comply with all state and federal laws and regulations applicable to the conduct of its business, including the Standards for Safeguarding Customer Information (16 CFR Part 314).

F. A licensee or person required to be licensed under Chapter 20.1 shall not provide any information to the bureau that is false, misleading, or deceptive.

G. A licensee or person required to be licensed under Chapter 20.1 shall not provide any information to a consumer that is false, misleading, or deceptive.

H. A licensee or person required to be licensed under Chapter 20.1 shall not engage in any activity that directly or indirectly results in an evasion of the provisions of Chapter 20.1 or this chapter.

I. A person shall remain subject to the provisions of Chapter 20.1 and this chapter applicable to licensees in connection with all debt settlement services provided or offered to be provided while licensed under Chapter 20.1 notwithstanding the occurrence of any of the following events:

1. The person's license is surrendered, suspended, or revoked; or

2. The person ceases providing debt settlement services.

J. Any person submitting an application to acquire, directly or indirectly, 25% or more of the voting shares of a corporation or 25% or more of the ownership of any other person licensed to conduct business under Chapter 20.1 shall pay a nonrefundable application fee of $500.

10VAC5-230-60. Advertising.

A. A licensee shall disclose the following information in its advertisements:

1. The name of the licensee as set forth in the license issued by the commission.

2. A statement that the licensee is "licensed by the Virginia State Corporation Commission."

3. The license number assigned by the commission to the licensee (i.e., DSP-XXX).

B. A licensee shall not deliver or cause to be delivered to a consumer any envelope or other written material that gives the false impression that the mailing or written material is an official communication from a governmental entity.

C. Every licensee shall retain for at least three years after it is last published, delivered, transmitted, or made available, a copy of every advertisement used, including solicitation letters, print media proofs, commercial scripts, recordings of all radio and television broadcasts, and Internet web pages. A licensee may retain copies of its advertisements in electronic form.

10VAC5-230-70. Enforcement; civil penalties.

A. Failure to comply with any provision of Chapter 20.1 or this chapter may result in civil penalties, license suspension, license revocation, the entry of a cease and desist order, or other appropriate enforcement action.

B. Pursuant to § 6.2-2046 of the Code of Virginia, a person shall be subject to a civil penalty of up to $1,000 for every violation of Chapter 20.1 or this chapter. Furthermore, if a

person violates any provision of Chapter 20.1 or this chapter in connection with multiple debt settlement services agreements, the person shall be subject to a separate civil penalty for each debt settlement services agreement. For example, if a licensee enters into five debt settlement services agreements and the licensee violates two provisions of this chapter in connection with each of the five debt settlement services agreements, there would be a total of 10 violations and the licensee would be subject to a maximum civil penalty of $10,000.

10VAC5-230-80. Commission authority.

The commission may at its discretion waive or grant exceptions to any provision of this chapter for good cause shown.

VA.R. Doc. No. R21-6865; Filed July 26, 2021, 12:43 p.m.

TITLE 12. HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Forms

REGISTRAR'S 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.

Title of Regulation: **12VAC30-122. Community Waiver Services for Individuals with Developmental Disabilities.**

Agency Contact: Emily McClellan, Director, Policy Division, Department of Medical Assistance Services, 600 East Broad Street, Richmond, VA 23219, telephone (804) 371-4300, or email emily.mcclellan@dmas.virginia.gov.

FORMS (12VAC30-122)

Supports Intensity Scale - Adult Version™ (ages 16 and up), SIS-A, copyright 2015, American Association on Intellectual and Developmental Disabilities

Supports Intensity Scale - Children's Version™ (ages 5-16), SIS-C, copyright 2016, American Association on Intellectual and Developmental Disabilities

Virginia Supplemental Questions (eff. 10/2014)

Skill Competencies for Professionals and Direct Support Staff in Virginia Supporting Adolescents and Adults with Autism, developed by Virginia Autism Council, June 1, 2014, DMAS-P201 (filed 1/2019)

Medicaid Long-Term Care Communication Form, DMAS-225 (rev. 12/2015)

Virginia Individual Developmental Disabilities Eligibility Survey - Infants' Version, DMAS-P235 (eff. 3/2016)

Virginia Individual Developmental Disabilities Eligibility Survey - Children's Version, DMAS-P236 (eff. 4/2016)

Virginia Individual Developmental Disabilities Eligibility Survey - Adult Version, DMAS-P237 (eff. 3/2016)

Behavioral Support Competencies for Direct Support Providers and Professionals in Virginia Supporting Individuals with Developmental Disabilities, developed by the Virginia Department of Behavioral Health and Developmental Services, August 2015, DMAS-P240a (filed 1/2019)

~~Virginia's Competencies for Direct Professionals and Supervisors Who Support Individuals with Developmental Disabilities - DSP and Supervisor's Competencies Checklist, DMAS-P241a (eff. 6/2016)~~

~~Direct Support Professional Assurance for Non-DBHDS-Licensed Providers to Confirm Successful Completion of Testing and Competency Requirements for the DD Waivers, DMAS-P243a (eff. 6/2016)~~

Developmental Disabilities DSP and Supervisor Competencies Checklist, DMAS 241a (eff. 5/2021)

Direct Support Professional Assurance to Confirm Successful Completion of Training and Testing Requirements for the DD Waivers, DMAS P242a (eff. 5/2021)

Virginia's Health Competencies for Direct Support Professionals and Supervisors Who Support Individuals with Developmental Disabilities - Health Competencies Checklist, DMAS-P244a (eff. 6/2016)

~~Supervisor Assurance for DBHDS-licensed Providers to Confirm Successful Completion of Training, Testing, and Competency Requirements for the DD Waivers, DMAS-P245a (eff. 7/2016)~~

~~Supervisor Assurance for Non-DBHDS-Licensed Services to Confirm Successful Completion of Training and Testing Requirements for the DD Waivers, DMAS-P245a (eff. 7/2016)~~

Supervisor Assurance to Confirm Successful Completion of Training and Testing Requirements for the DD Waivers, DMAS P245a (eff. 5/2021)

Community Housing Guide: Housing Road Map (form date 10/2019)

Community Housing Guide: Tenant Screening (form date 10/2019)

FIS Request for Supervision Hours in Personal Assistance, DMAS-P257 (05/28)

CL Request for Supervision Hours in Personal Assistance, DMAS-P257 (05/28)

VA.R. Doc. No. R21-6890; Filed July 23, 2021, 1:30 p.m.

Final Regulation

REGISTRAR'S NOTICE: The Department of Medical Assistant Services is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 3, which excludes regulations that consist only of changes in style or form or corrections of technical errors. The department will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **12VAC30-130. Amount, Duration and Scope of Selected Services (amending 12VAC30-130-600, 12VAC30-130-620).**

Statutory Authority: § 32.1-325 of the Code of Virginia; 42 USC § 1396 et seq.

Effective Date: September 17, 2021.

Agency Contact: Emily McClellan, Regulatory Supervisor, Policy Division, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-4300, FAX (804) 786-1680, or email emily.mcclellan@dmas.virginia.gov.

Summary:

The amendments update the name of the DMAS-122 Form (Adjustment Process) to DMAS-225 Form (Long-Term Care Communication).

Part IX
~~DMAS-122~~ DMAS-225 Adjustment Process

12VAC30-130-600. Definitions.

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

"DMAS" or "the department" means the Virginia Department of Medical Assistance Services.

"~~DMAS-122~~ DMAS-225" means the Medicaid Communication form used ~~to determine patient pay amounts and to request~~ for the provider and the DSS eligibility worker to report changes including requests for adjustments to the patient pay.

"DSS" means the ~~Virginia~~ local Department of Social Services.

"Facility" means a nursing facility, intermediate care facility for the mentally retarded, or a long-stay acute care hospital enrolled in the Medicaid program.

"Medical necessity" means an item or service provided for the diagnosis or treatment of a patient's condition consistent with community standards of medical practice and in accordance with Medicaid policy.

"Preauthorization" means obtaining the approval necessary for receipt of a specified service from a specified provider for a specified recipient before the requested service is performed.

12VAC30-130-620. Limitations.

A. A ~~DMAS-122~~ DMAS-225 adjustment request shall always be used as the last source of payment. If a recipient has other sources of possible payment (i.e., Medicare, major medical insurance, prescription insurance, dental insurance, etc.), payment must be sought first from those other sources.

B. The maximum amount for noncovered medically necessary items or services that can be allowed as adjustments to the patient pay amount for nursing facility residents shall be the amount specified in 12VAC30-40-235.

C. Only the cost of medically necessary, resident-specific, customized, noncovered items or services may be deducted from patient pay. This shall include, but not necessarily be limited to, electric, motorized, or customized wheelchairs and other equipment not regularly supplied to residents by the facility as part of the cost of care. Supplies, equipment, or services used in the direct care and treatment of residents are covered services and must be provided by the facility. Covered items and services include, but are not necessarily limited to, standard wheelchairs, recliners, geriatric chairs, special mattresses, humidifiers, cots, and routine podiatry care (e.g., trimming nails for onychauxis, cleaning and soaking the feet, and other services performed in the absence of localized illness, injury, or symptoms involving the foot). Expenses incurred by the facility for covered items and services are considered "allowable expenses" and are covered by Medicaid as part of reimbursement to the facility for the resident's care; these costs cannot be deducted from patient pay.

D. Extenuating circumstances shall be considered for the provision of podiatry care when corrective trimming is performed to prevent further complications in a patient who has a systemic condition that has resulted in severe circulation deficits or areas of desensitization in the legs or feet. Trimming of nails for a systemic condition is limited to once every 60 days and must be medically necessary. In such cases, the facility is not responsible for routine podiatry care.

E. ~~DMAS-122~~ DMAS-225 adjustments shall be allowed for the cost of medically or remedially necessary services provided prior to Medicaid eligibility or prior to admission. Any decision made by DMAS or DSS to deny a service may be appealed to DMAS. Appeals must be made in writing by the resident or his legally appointed representative, as provided for in DMAS Client Appeals Regulations (12VAC30-110).

F. The facility shall monitor the proper care of the resident's medical supplies and equipment. Requests for adjustment made because an item is lost or broken by facility staff must include documentation on the resident's interdisciplinary plan of care regarding proper care and treatment of the item. When loss or breakage is incurred as a result of facility staff following improper practices, the facility must replace the item.

G. All requests for ~~DMAS-122~~ DMAS-225 adjustments submitted by providers to either DMAS or DSS shall include:

1. The recipient's correct Medicaid identification number;

2. The current physician's orders for the noncovered service (not required for replacement of hearing aid batteries or eyeglass frames or for repair to hearing aids or eyeglasses);

3. Medical justification for the service being requested (see subsection H of this section);

4. The service description;

5. Actual cost information;

6. Documentation that the recipient continues to need the equipment for which a repair, replacement, or battery is requested;

7. A statement of proof of denial or noncoverage by other insurance; and

8. A copy of the most current, fully completed Minimum Data Set (MDS) and quarterly review.

H. Medical justification documentation as specified in subdivision G 3 of this section shall include the following:

1. Physician prescription;

2. Identification of the diagnosis related to the reason for the request;

3. Identification of the resident's functional limitation;

4. Identification of the quantity needed, frequency of use, estimated length of use; and

5. Identification of how the item or service will be used in the resident's environment.

I. Adjustments of a recipient's patient pay amount may only be authorized by DMAS or DSS.

VA.R. Doc. No. R21-6292; Filed July 16, 2021, 9:49 a.m.

◆ ◆

TITLE 13. HOUSING

BOARD OF HOUSING AND COMMUNITY DEVELOPMENT

Final Regulation

Title of Regulation: **13VAC5-21. Virginia Certification Standards (amending 13VAC5-21-10, 13VAC5-21-31 through 13VAC5-21-61).**

Statutory Authority: § 36-137 of the Code of Virginia.

Effective Date: September 16, 2021.

Agency Contact: Kyle Flanders, Senior Policy Analyst, Department of Housing and Community Development, Main Street Centre, 600 East Main Street, Suite 300, Richmond, VA 23219, telephone (804) 786-6761, FAX (804) 371-7090, TDD (804) 371-7089, or email kyle.flanders@dhcd.virginia.gov.

Summary:

The amendments in the proposed regulation were technical and included updating a list and correcting a typo. Changes since proposed include (i) updating the list of defined terms; (ii) removing the requirements for certificate applicants to receive endorsements from supervisors, code officials, or the code official's supervisor; (iii) updating department contact information; (iv) reducing to four years the amount of training that must have been completed prior to submitting an application; (v) clarifying the statuses of certificates as either active or inactive and clarifying when a certificate holder will be considered out of compliance with the requirements for maintaining active certificate status; and (vi) clarifying that the issuance of noncompliance notices is not a function of the board.

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

[13VAC5-21-10. Definitions.

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

"Active certificate" means a certificate that is not revoked, suspended, or inactive.

"Applicant" means a person seeking a certificate.

"BCAAC" means the Building Code Academy Advisory Committee appointed pursuant to subdivision 7 of § 36-137 of the Code of Virginia.

"BHCD" means the Virginia Board of Housing and Community Development.

"Certificate" means a certificate of competence issued pursuant to subdivision 6 of § 36-137 of the Code of Virginia concerning the content, application, and intent of specified subject areas of the building and fire prevention regulations promulgated by the BHCD and issued to present or prospective personnel of local governments and to any other persons seeking to become qualified to perform inspections pursuant to Chapter 6 (§ 36-97 et seq.) of Title 36 of the Code of Virginia, Chapter 9 (§ 27-94 et seq.) of Title 27 of the Code of Virginia, and any regulations adopted thereunder, who have completed training programs or in other ways demonstrated adequate knowledge.

"Certificate holder" means a person to whom a certificate has been issued.

"Code academy" means the Virginia Building Code Academy established under subdivision 14 of § 36-139 of the Code of Virginia or individual or regional training academies accredited by the department pursuant to subdivision 7 of § 36-137 of the Code of Virginia.

"Department" means the Virginia Department of Housing and Community Development.

~~"Nongovernmental employee" means any person not employed by a locality collecting and transmitting the fee levy to the department in accordance with subdivision 7 of § 36-137 of the Code of Virginia.~~

"Inactive certificate" means a certificate where the certificate holder has not attended the periodic training courses designated by the department or has not met the continuing education requirements.

"Provisional certificate" means a temporary certificate issued in accordance with 13VAC5-21-51 C.

"SFPC" means the Virginia Statewide Fire Prevention Code (13VAC5-51).

"State Review Board" means the Virginia State Building Code Technical Review Board established under § 36-108 of the Code of Virginia.

"USBC" means the Virginia Uniform Statewide Building Code (13VAC5-63).

"VADR" means the Virginia Amusement Device Regulations (13VAC5-31).

B. Words and terms used in this chapter that are defined in the USBC, VADR, or SFPC and that are not defined in this chapter shall have the meaning ascribed to them in those regulations unless the context clearly indicates otherwise.

13VAC5-21-31. Qualification and examination requirements.

~~A. An applicant for a certificate in categories associated with the USBC or the SFPC shall provide a written or electronic endorsement from the code official or the code official's supervisor in the locality in which they are employed certifying that the applicant complies with the qualification section in the USBC or the SFPC for each type of certificate sought. When the applicant for a certificate in categories associated with the USBC or the SFPC is a nongovernmental employee, the applicant shall provide written or electronic documentation that the applicant complies with the qualification section in the USBC or the SFPC as it would relate to the applicant's job responsibilities for each type of certificate sought.~~

~~B. An applicant for a certificate in categories associated with the VADR shall provide a written endorsement from the applicant's supervisor or a person having a similar relationship to the applicant certifying that the applicant is generally qualified to conduct activities related to the VADR.~~

~~C.~~ Applicants for all certificates shall provide proof of successful completion of approved examinations for each certificate sought based on current certification examination requirements. Applications submitted with passing grades on approved examinations older than six years from the date of passing will be denied except where the applicant can demonstrate the maintenance of a current certification issued by the approved testing agency. The department may consider related certifications maintained by the certifying entity. The department shall maintain a list of approved testing agencies and examinations that meet nationally accepted standards for each certificate offered. For information on approved testing agencies and examinations contact the department's ~~Training and Certification Office~~ Virginia Building Code Academy Office, 600 East Main Street, Suite 300, Richmond, VA 23219, telephone (804) 371-7180.]

13VAC5-21-41. Certification categories and training requirements.

A. The department maintains a list of all certificates offered and the list sets out the ~~required~~ training ~~necessary to attend and complete~~ required to be completed to obtain ~~a~~ each certificate. Alternatives to the training requirements set out in 13VAC5-21-45 shall be considered for all certificates offered except that no alternative shall be accepted for the code academy core module.

B. Applicants for certificates shall attend and complete the code academy core module. After the completion of the core module, applicants are required to attend and complete the code academy training as set out in a list maintained by the department, except as provided for in 13VAC5-21-45. All required training must [~~be~~ have been] completed within no more than [~~six~~ four] years prior to the date the application is submitted [~~and the~~. The] requirements for training are based on those in effect at the time of application.

13VAC5-21-45. Alternatives to training requirements.

Upon written request, alternative training or a combination of training, education or experience to satisfy the training requirements of 13VAC5-21-41 may be approved, provided that such alternatives or combinations are determined to be equivalent to that required. However, as provided in 13VAC5-21-41, no substitutions shall be approved for the code academy core module. The types of combinations of education and experience may include military training, college classes, technical schools or long-term work experiences, except that long-term work experiences shall not be approved as the sole substitute to satisfy the training requirements. BCAAC may be consulted ~~with~~ in any such consideration.

[13VAC5-21-51. Issuance and maintenance of certificates.

A. Certificates will be issued when an applicant has complied with the current applicable requirements of this chapter. ~~Certificate holders~~ Certificates will be classified as active~~,~~ or inactive~~, or lapsed~~. ~~An active certificate holder is a person who is certified and who has attended all periodic training courses designated by the department and complied with all continuing education requirements subsequent to becoming certified. An inactive certificate holder is a person who is certified and has either attended the periodic training courses designated by the~~

~~department or met the continuing education requirements, but not both~~ An inactive certificate will be considered out of compliance and a noncompliance notice will be issued to the certificate holder. In such cases, notification shall also be provided to the locality or company employing the certificate holder. Exceptions to the issuance of a noncompliance notice may be considered where there is a separation from employment by medical or military leave for 12 consecutive months or more during the continuing education period. An inactive certificate ~~holder~~ may ~~request reinstatement~~ be reinstated as an active certificate ~~holder~~ after completing makeup training courses ~~authorized~~ designed by the department. ~~A lapsed certificate holder is a person who is certified but has not attended all periodic training courses designated by the department and who has not complied with all continuing education requirements. A lapsed certificate holder may request reinstatement as an active certificate holder after completing makeup training courses or examinations, or both, as authorized by the department. Provisional certificates may also be issued in accordance with subsection C of this section. Requirements for periodic training courses and continuing education requirements are set out in subsection D of this section.~~

B. All certificates issued since June 1978 are ~~considered to be~~ valid unless revoked or suspended, except that provisional certificates shall remain valid as set out under subsection C of this section.

C. A provisional certificate may be issued to (i) a person who has been directed by the department to obtain a certificate; (ii) an applicant requesting a certificate under the alternative training provisions of 13VAC5-21-45; (iii) an applicant when the required training has not been provided or offered; (iv) an inactive ~~or lapsed~~ certificate holder when the issuance of a provisional certificate is determined to be warranted by the department; or (v) a person who, due to extenuating and warranting circumstances either on behalf of the code academy or beyond the person's control, has not fully complied with the eligibility requirements of training and competency established herein.

Such a provisional certificate may be issued when the applicant or person has ~~(i) provided the written endorsement or documentation required by 13VAC5-21-31, (ii)~~ satisfactorily completed the code academy core module, and ~~(iii)~~ completed any training through the code academy or through other providers determined to warrant the issuance of the provisional certificate.

The provisional certificate is valid for a period of one year after the date of issuance and shall only be issued once to any individual, except that a provisional certificate shall remain valid when the required training has not been provided or offered.

D. All certificate holders shall attend periodic maintenance training as designated by the department and shall attend 16 hours of continuing education every two years as approved by the department. If a certificate holder possesses more than one certificate, the 16 hours shall satisfy the continuing education requirement for all certificates.

13VAC5-21-61. ~~Sanctions~~ Board sanctions.

When the BHCD determines a certificate holder has failed to (i) comply with an order issued by the State Review Board, (ii) meet the required training or testing requirements, or (iii) attend periodic maintenance training or continuing education, or both, a warning letter may be issued to the certificate holder or a certificate may be revoked or suspended by the BHCD. ~~In such cases, a noncompliance notice shall be issued to the certificate holder and notification shall be provided to the locality or company employing the certificate holder. Exceptions to the issuance of a noncompliance notice for failing to comply with the continuing education requirements may be considered where there is a separation from employment by medical or military leave for 12 consecutive months or more during the continuing education period~~. A record of any action taken pursuant to this section shall be permanently retained in the training record of the certificate holder.]

VA.R. Doc. No. R19-5980; Filed July 23, 2021, 11:26 a.m.

Final Regulation

Title of Regulation: **13VAC5-95. Virginia Manufactured Home Safety Regulations (amending 13VAC5-95-10, 13VAC5-95-20, 13VAC5-95-60).**

Statutory Authority: § 36-85.7 of the Code of Virginia

Effective Date: September 16, 2021.

Agency Contact: Kyle Flanders, Senior Policy Analyst, Department of Housing and Community Development, Main Street Centre, 600 East Main Street, Suite 300, Richmond, VA 23219, telephone (804) 786-6761, FAX (804) 371-7090, TDD (804) 371-7089, or email kyle.flanders@dhcd.virginia.gov.

Summary:

The amendments are for consistency with federal Housing and Urban Development Manufactured Home Installation Standards. The amendments (i) add a definition for "certificate of installation"; (ii) update the definition of "installer"; (iii) require installers to provide a copy of the certificate of installation to homeowners or local building officials; and (iv) as a change to the proposed regulation, include provisions for inspections of manufactured home sales lots by the administrator, consumer complaint handling by the administrator, and details the responsibilities of local building officials in approving manufactured home installations.

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

13VAC5-95-10. Definitions.

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

"Administrator" means the Director of DHCD or his designee.

"Certificate of installation" means the certificate provided by the Virginia Department of Professional and Occupational Regulation licensed installer, under the Virginia Manufactured Home Safety Regulations, indicating that a manufactured home has been installed in compliance with the federal installation standards.

"DHCD" means the Virginia Department of Housing and Community Development.

"Dealer" means any person engaged in the sale, lease, or distribution of manufactured homes primarily to persons who in good faith purchase or lease a manufactured home for purposes other than resale.

"Defect" means a failure to comply with an applicable federal manufactured home construction and safety standard that renders the manufactured home or any part of the home unfit for the ordinary use of which it was intended, but does not result in an imminent risk of death or severe personal injury to occupants of the affected home.

"Distributor" means any person engaged in the sale and distribution of manufactured homes for resale.

"Federal Act" means the National Manufactured Housing Construction and Safety Standards Act of 1974, as amended (42 USC § 5401 et seq.).

"Federal installation standards" means the federal Model Manufactured Home Installation Standards (24 CFR Part 3285).

"Federal regulations" means the federal Manufactured Home Procedural and Enforcement Regulations (24 CFR Part 3282).

"HUD" means the United States Department of Housing and Urban Development.

"Imminent safety hazard" means a hazard that presents an imminent and unreasonable risk of death or severe personal injury that may or may not be related to failure to comply with an applicable federal manufactured home construction or safety standard.

"Installation" means completion of work to include, but not be limited to, stabilizing, supporting, anchoring, and closing up a manufactured home and joining sections of a multi-section manufactured home, when any such work is governed by the federal installation standards.

"Installer" means the person or entity, licensed through the Virginia Department of Professional and Occupational Regulation, with the Manufactured Home Contractor (MHC) license designation, who is retained to engage in or who engages in the business of directing, supervising, controlling, or correcting the ~~initial~~ installation of a manufactured home.

"Label," "certification label," or "HUD label" means the certification label prescribed by the federal standards.

"Local building official" means the officer or other designated authority charged with the administration and enforcement of USBC, or duly authorized representative.

"Manufactured home" means a structure subject to federal regulation, which is transportable in one or more sections; is eight body feet or more in width and 40 body feet or more in length in the traveling mode, or is 320 or more square feet when erected on site; is built on a permanent chassis; is designed to be used as a single-family dwelling, with or without a permanent foundation, when connected to the required utilities; and includes the plumbing, heating, air conditioning, and electrical systems contained in the structure.

"Manufacturer" means any person engaged in manufacturing or assembling manufactured homes, including any person engaged in importing manufactured homes.

"Noncompliance" means a failure of a manufactured home to comply with a federal manufactured home construction or safety standard that does not constitute a defect, serious defect, or imminent safety hazard.

"Purchaser" means the first person purchasing a manufactured home in good faith for purposes other than resale.

"Secretary" means the Secretary of HUD.

"Serious defect" means any failure to comply with an applicable federal manufactured home construction and safety standard that renders the manufactured home or any part thereof not fit for the ordinary use for which it was intended and which results in an unreasonable risk of injury or death to occupants of the affected manufactured home.

"Standards" or "federal standards" means the federal Manufactured Home Construction and Safety Standards (24 CFR Part 3280) adopted by HUD, in accordance with authority in the Federal Act. The standards were enacted December 18, 1975, and amended May 11, 1976, to become effective June 15, 1976.

"State administrative agency" or "SAA" means DHCD, which is responsible for the administration and enforcement of Chapter 4.1 (§ 36-85.2 et seq.) of Title 36 of the Code of Virginia throughout Virginia and of the plan authorized by § 36-85.5 of the Code of Virginia.

"USBC" means the Virginia Uniform Statewide Building Code (13VAC5-63).

B. Terms defined within the federal regulations and federal standards shall have the same meanings in this chapter.

[13VAC5-95-20. Application and enforcement.

A. This chapter shall apply to manufactured homes as defined in 13VAC5-95-10 and as set out in this section.

B. Enforcement of this chapter shall be in accordance with the federal regulations 24 CFR 3285, 24 CFR 3286, and 24 CFR 3288.

C. Manufactured homes produced on or after June 15, 1976, shall conform to all the requirements of the federal standards, as amended.

D. DHCD is delegated all lawful authority for the enforcement of the federal standards pertaining to manufactured homes by the administrator according to § 36-85.5 of the Code of Virginia. The Division of Building and Fire Regulation of DHCD is designated as a state administrative agency in the HUD enforcement program, and shall act as an agent of HUD. The administrator is authorized to perform the activities required of an SAA by the HUD enforcement plan including~~, but not limited to,~~ investigation, citation of violations, handling of complaints, conducting hearings, supervising remedial actions, monitoring, making such reports as may be required, and seeking enforcement of the civil and criminal penalties established by § 36-85.12 of the Code of Virginia.

E. In accordance with § 36-85.11 of the Code of Virginia, all local building officials are authorized to and shall enforce the provisions of this chapter within the limits of their jurisdiction and shall be responsible for the following:

1. Verify through inspection that a manufactured home displays the required HUD label and data plate;

2. Determine whether the manufactured home has been damaged during transit. If the manufactured home has been damaged, then the local building official is authorized to require tests, in accordance with the federal standards, for tightness of plumbing systems and gas piping and an operational test to ensure that all luminaries and receptacles are operable. If a manufactured home has sustained damage to the structural components, the local building official shall require the appropriate design approval primary inspection agency approval on any repairs or designs;

3. Prevent the use of a manufactured home that in the opinion of the local building official contains a serious defect or imminent safety hazard, and notify the administrator immediately;

4. Notify the administrator of any apparent violations of this chapter, to include defects and noncompliance that occurred during the manufacturing process and any alterations that occurred during installation; and

5. Verify through inspection that the installation is in accordance with the federal installation standards. Where the local building official finds that the installation of the manufactured home is not in accordance with the federal installation standards, the local building official shall order the home to be brought into compliance within a reasonable time. If the order is not complied with, then the local building official shall notify the administrator.

F. In accordance with § 36-85.11 of the Code of Virginia, site preparation, utility connection, and skirting installation for manufactured homes shall meet the requirements of the USBC. In addition, as a requirement of this chapter and the USBC, administrative provisions of the USBC, such as requirements for permits, inspections, and certificates of occupancy, and the specific requirements of § ~~425~~ 429 of Part I of the USBC (13VAC5-63-220 L through 13VAC5-63-220 Q), shall also be applicable.]

13VAC5-95-60. Installations.

~~Distributors, installers, or dealers~~ Installers setting up a manufactured home shall perform such installation in accordance with the manufacturer's installation instructions and shall provide a copy of the certificate of installation to the homeowner and when requested, to the local building official prior to issuance of the certificate of occupancy.

VA.R. Doc. No. R19-5981; Filed July 23, 2021, 11:28 a.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD FOR BARBERS AND COSMETOLOGY

Fast-Track Regulation

Title of Regulation: **18VAC41-20. Barbering and Cosmetology Regulations (amending 18VAC41-20-10, 18VAC41-20-20, 18VAC41-20-30).**

Statutory Authority: § 54.1-201 of the Code of Virginia.

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: September 15, 2021.

Effective Date: October 1, 2021.

Agency Contact: Stephen Kirschner, Executive Director, Board for Barbers and Cosmetology, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8590, FAX (866) 245-9693, or email barbercosmo@dpor.virginia.gov.

Basis: Section 54.1-201.5 of the Code of Virginia gives authority to the board to promulgate regulations. It states, in part, that the board has the power and duty to promulgate regulations in accordance with the Administrative Process Act

(§ 2.2-4000 et seq.) as necessary to assure continued competency, to prevent deceptive or misleading practices by practitioners, and to effectively administer the regulatory system administered by the regulatory board.

Purpose: The purpose of this action is to provide an alternative method of qualifying for the cosmetology, barber, nail, and waxing licenses when applicants with out-of-state training are unable to demonstrate their training is substantially equivalent to Virginia's training requirements. Currently, these applicants are required to repeat a portion of the Virginia training, even when they have been successfully practicing in that field for, in some cases, decades.

The board's Standing Committee on Training reviewed this area in response to requests from the public, failed 2019 legislation covering the same issue, and as part of its general goal of reviewing its training requirements to ensure best practices and minimally burdensome regulations. The committee reviewed best practices among the 50 states regarding training requirements for out-of-state trained applicants. About 40 states allow experience to substitute for equivalent training in some form or another. To conform Virginia's requirements to national best practices, as well as ensure that individuals who have demonstrated professional competence in other states are not overly burdened, the board desires to allow five years of licensed experience to substitute for substantially equivalent training.

This change is essential to protect the health, safety, and welfare of citizens in the least burdensome way possible. The board also proposes to eliminate several subsections of its entry requirements, using simplified language and clear requirements in lieu of the current highly specific requirements using undefined terms. This change is also in line with the 2018 Regulatory Reduction Pilot Program requested by the General Assembly to streamline regulations and reduce regulatory burdens on entry into the profession.

Rationale for Using Fast-Track Rulemaking Process: The board initiated this change based on a recommendation from its Standing Committee on Training. The committee received comments regarding the difficulty for individuals with out-of-state training in obtaining a Virginia cosmetology license. Often, individuals practicing cosmetology in other states for decades are unable to qualify for the Virginia license because their training is not substantially equivalent to Virginia's. The committee, recognizing the statutory requirement that any abridgement to the right to engage in cosmetology must be no greater than necessary, determined that five years of licensed experience in another state was a sufficient substitute for Virginia's training requirements.

This rulemaking is expected to be noncontroversial because it is reducing a regulatory burden for applicants without disrupting the protection of the health, safety, and welfare.

Substance: Proposed amendments are as follows:

18VAC41-20-10. Definitions. Definitions of substantially equivalent training and substantially equivalent examinations are added.

18VAC41-20-20. General requirement for license. The language is simplified and repetitive language is eliminated. Requirement of six months of work experience for those with substantially equivalent training, but less than the required hours is removed. A provision to allow those who completed a training program that was not substantially equivalent, whether conducted in the United States or outside the country, to obtain a license based on five years of licensed experienced in that profession in the United States is added.

18VAC41-20-30. Endorsement. The language is clarified. A provision allowing endorsement for those who completed a training program that was not substantially equivalent, whether conducted in the United States or outside the country, to substitute five years of licensed experienced in that profession in the United States for substantially equivalent training is added.

Issues: The primary advantage to the public is the economic opportunity it provides by allowing otherwise qualified individuals to be able to move to and work in Virginia without having to complete additional training. It allows individuals moving to Virginia, particularly military spouses, to begin working quickly, without incurring time or expenses for additional training. This also allows employers to more easily transfer employees into Virginia. There are no disadvantages to the public.

The Commonwealth will benefit by becoming a more welcoming environment for out-of-state practitioners and increase its competitiveness among employers. The agency will benefit with a reduction in staff time in handling these applications, as applicants in this situation are usually unhappy with the current board requirements and frequently involve multiple staff and supervisors in trying to argue that their experience should qualify them for the license. There are no disadvantages to the agency.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board for Barbers and Cosmetology (Board) is proposing amendments to improve licensure reciprocity by allowing individuals who have five years of licensed experience in another state to substitute their experience for the current requirement of "substantially equivalent training." The board would also define this term as well as "substantially equivalent exam."

Background. The board's Standing Committee on Training received several comments regarding the difficulty faced by individuals with out-of-state training who seek to obtain a Virginia cosmetology license. Individuals who have practiced cosmetology in other states for an extended period of time have been unable to qualify for the Virginia license because their training has not been considered "substantially equivalent,"

even though this term has not been defined in the regulation. Thus, the board seeks to make a number of changes that largely serve to clarify the requirements out-of-state licensees must meet in order to obtain licenses in Virginia. As per the current regulation, there are two main pathways by which an applicant with an out-of-state license may obtain a Virginia license as a barber, master barber, cosmetologist, nail technician, or wax technician: either by endorsement or by exam. To qualify by endorsement, an applicant must have a current license to practice (from another state), complete a "substantially equivalent training" program, and complete a "substantially equivalent exam." To obtain licensure by exam, applicants must first qualify to sit for a Board-approved exam and then complete the exam. In order to qualify to sit for the exam, the applicant has to either complete an approved training program or else demonstrate they have previously obtained "substantially equivalent training" that provided a certain number of required training hours based on their profession.[1] If an applicant's prior training provided fewer training hours than the regulation required, they can instead submit documentation of six months of work experience.[2] Although the term "substantially equivalent" is used in multiple instances, it is not currently defined in the regulation. To clarify the board's interpretation of "substantially equivalent," the board established a policy on May 13, 2013, to define "substantially equivalent training" as it applies to licensure by endorsement as follows: (i) a substantially equivalent training program, (ii) a substantially equivalent exam, (iii) 80% of required training hours, and (iv) six months experience in the past three years.[3] The board then issued a guidance document on August 11, 2014, that defines "substantial equivalence in relation to licensure endorsement" as "80% of the required hours in Virginia; this definition applies to all four professions."[4] The guidance document provides further clarifications on the requirements, including more detail for barber and cosmetologist licenses in particular. Finally, effective April 1, 2019, the minimum number of hours required for a barber to qualify for the exam was reduced from 1500 to 1100.[5] The board's proposed changes would supersede any requirements contained in the guidance document and are intended to simplify the process for applicants with out-of-state licenses (for all four professions). Specifically, the board proposes to:

1. Define "substantially equivalent training" to mean at least 80% of the required hours in Virginia, and also curriculum content that covers Virginia's scope of practice for that profession;

2. Define "substantially equivalent exam" to mean an examination administered by the licensing entity which covers Virginia's scope of practice for that profession; Allow out-of-state applicants for endorsement and for exam to meet the training hour requirement if they have five years" work experience in the U.S.;

3. Reduce the minimum training hours for an out-of-state applicant to qualify for the exam with no work experience from 1500 to 1200 for a master barber and cosmetologist, 1100 to 880 for a barber, 150 to 120 for a nail technician, and, 115 to 92 for a wax technician; and

4. Eliminate the option for an out-of-state barber, cosmetologist, and master barber to qualify for the exam with a minimum of 1200 hours and six months of experience OR with a minimum of 1000 hours and six months of experience if they have completed the "general" or "intro" portions of the curriculum of an approved Virginia program.

Estimated Benefits and Costs. The proposed amendments would primarily benefit barbers, cosmetologists, and nail and wax technicians from other states who seek to obtain licensure and practice in Virginia by reducing the minimum training hours for an out-of-state applicant to qualify for the exam with no work experience and making the requirements easier to understand and follow. Although it may appear that the number of options for demonstrating training equivalency have been reduced, any individuals who qualified under any of the options previously listed in guidance documents would also qualify under the current requirements.

The proposed amendments do not appear to impose any new costs on applicants for licensure, either within the state or from outside the state. The board expects roughly 20 such applicants each year initially, potentially increasing to 50 applicants per year in the future across all four types of licensees. The board reports that 324 barbers, 2,509 master barbers, 41,762 cosmetologists, 8,803 nail technicians, and 1,575 wax technicians are currently licensed in Virginia, for a total of 54,973.[6] The number of out-of-state applicants each year is thus likely to be a small fraction (0.04% to 0.09%) of the total number of current licensees, and thus would not significantly increase competition, and is unlikely to impose any indirect costs to other applicants or current licensees.

Businesses and Other Entities Affected. The proposed amendments primarily benefit the individual barber, cosmetologist, nail technician, and wax technician applicants who have been licensed by other states, or hold licenses in other countries and are seeking licensure in Virginia. The board reports that approximately 20 applicants per year would be affected by the regulatory change. The number of potential applicants who are affected by these proposed changes may increase in the future; the board expects the number out-of-state applicants to increase to roughly 50 per year. The proposed amendments could also benefit businesses that employ barbers, master barbers, cosmetologists, nail technicians, and wax technicians by increasing the supply of qualified individuals from which these firms may hire.

Small Businesses[7] Affected. Small businesses that employ barbers, cosmetologists, or nail technicians, or wax technicians may be positively affected by the proposal in that there may be a moderate increase in the supply of qualified individuals from which to hire.

Localities[8] Affected.[9] The proposed amendments would not likely disproportionately affect any particular localities, nor introduce costs for local governments.

Projected Impact on Employment. The proposed amendments would directly contribute to the employment of those who have a license from another state or country and seek to become licensed in Virginia. The Board expects roughly 20 such applicants each year initially, potentially increasing to 50 applicants per year in the future.

Effects on the Use and Value of Private Property. The proposed amendments may moderately increase the supply of barbers, master barbers, cosmetologists, nail technicians, and wax technicians, making it perhaps moderately easier for firms that offer these services to find qualified staff. Consequently, the proposal may moderately increase the value of such firms. Real estate development costs would not be affected.

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[1]The regulation requires a minimum of 1100 training hours for a barber, 1500 for a master barber and cosmetologist, 150 for a nail technician, and 115 for a wax technician.

[2]Although the regulation establishes the minimum number of required hours, it does not clarify how many hours would be acceptable to qualify if the applicant is under the required hours. It states that if under the required hours, the applicant would need six months of work experience and would need to have completed a "substantially equivalent training program."

[3]See https://www.townhall.virginia.gov/L/GetFile.cfm?File=Meeting\134\18569\Minutes_DPOR_18569_v2.pdf, pages 15 and 16.

[4]For the guidance document, see https://townhall.virginia.gov/L/ViewGDoc.cfm?gdid=5503.

[5]These reductions were only made for barbers as part of the introduction of two-tier licensing for the profession. See https://townhall.virginia.gov/l/ViewStage.cfm?stageid=8318 and https://townhall.virginia.gov/l/viewmandate.cfm?mandateid=898.

[6]As of October 1, 2020. See http://www.dpor.virginia.gov/uploadedFiles/MainSite/Content/Records_and_Documents/REG_POP(1).pdf.

[7]Pursuant 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."

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

[9]§ 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

Agency's Response to Economic Impact Analysis: The Board for Barbers and Cosmetology concurs with the economic impact analysis performed by the Department of Planning and Budget.

Summary:

The amendments provide a definition of "substantially equivalence" for training and examinations and allow individuals who have five years of licensed experience in another state to substitute their experience for substantially equivalent training.

18VAC41-20-10. Definitions.

The following words and terms when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise. All terms defined in Chapter 7 (§ 54.1-700 et seq.) of Title 54.1 of the Code of Virginia are incorporated in this chapter.

"Barber school" means a place or establishment licensed by the board to accept and train students and that offers a barber, master barber, or dual barber/master barber curriculum approved by the board.

"Business entity" means a sole proprietorship, partnership, corporation, limited liability company, limited liability partnership, or any other form of organization permitted by law.

"Direct supervision" means that a Virginia licensed barber, cosmetologist, nail technician, or wax technician shall be present in the barbershop, cosmetology salon, nail salon, or waxing salon at all times when services are being performed by a temporary permit holder or registered apprentice.

"Endorsement" means a method of obtaining a license by a person who is currently licensed in another state.

"Firm" means any business entity recognized under the laws of the Commonwealth of Virginia.

"Licensee" means any person, sole proprietorship, partnership, corporation, limited liability company, limited liability partnership, or any other form of organization permitted by law holding a license issued by the Board for Barbers and Cosmetology, as defined in § 54.1-700 of the Code of Virginia.

"Post-secondary educational level" means an accredited college or university that is approved or accredited by the Southern Association of Colleges and Schools Commission on Colleges or by an accrediting agency that is recognized by the U.S. Secretary of Education.

"Reciprocity" means a conditional agreement between two or more states that will recognize one another's regulations and laws for equal privileges for mutual benefit.

"Reinstatement" means having a license or certificate restored to effectiveness after the expiration date has passed.

"Renewal" means continuing the effectiveness of a license or certificate for another period of time.

"Responsible management" means the following individuals:

1. The sole proprietor of a sole proprietorship;
2. The partners of a general partnership;
3. The managing partners of a limited partnership;
4. The officers of a corporation;
5. The managers of a limited liability company;

6. The officers or directors of an association or both; and

7. Individuals in other business entities recognized under the laws of the Commonwealth as having a fiduciary responsibility to the firm.

"Sole proprietor" means any individual, not a corporation, who is trading under his own name, or under an assumed or fictitious name pursuant to the provisions of §§ 59.1-69 through 59.1-76 of the Code of Virginia.

"Substantially equivalent exam" means an examination administered by the licensing entity which covers Virginia's scope of practice for that profession.

"Substantially equivalent training" means at least 80% of the required hours in Virginia and curriculum content covering Virginia's scope of practice for that profession.

"Virginia state institution" for the purposes of this chapter means any institution approved by the Virginia Department of Education or the Virginia Department of Corrections.

18VAC41-20-20. General requirements for a barber, master barber, cosmetologist, nail technician, or wax technician license.

A. Any individual wishing to engage in barbering, cosmetology, nail care, or waxing shall obtain a license in compliance with § 54.1-703 of the Code of Virginia and shall meet the following qualifications:

1. The applicant shall be in good standing as a licensed barber, master barber, cosmetologist, nail technician, or wax technician in Virginia and all other jurisdictions where licensed. The applicant shall disclose to the board at the time of application for licensure, any disciplinary action taken in Virginia and all other jurisdictions in connection with the applicant's practice as a barber, master barber, cosmetologist, nail technician, or wax technician. This includes monetary penalties, fines, suspensions, revocations, surrender of a license in connection with a disciplinary action, or voluntary termination of a license. The applicant shall disclose to the board at the time of application for licensure if he has been previously licensed in Virginia as a barber, master barber, cosmetologist, nail technician, or wax technician.

Upon review of the applicant's prior disciplinary action, the board, in its discretion, may deny licensure to any applicant wherein the board deems the applicant is unfit or unsuited to engage in barbering, cosmetology, nail care, or waxing. The board will decide each case by taking into account the totality of the circumstances. Any plea of nolo contendere or comparable plea shall be considered a disciplinary action for the purposes of this section. The applicant shall provide a certified copy of a final order, decree, or case decision by a court, regulatory agency, or board with the lawful authority to issue such order, decree, or case decision, and such copy shall be admissible as prima facie evidence of such disciplinary action.

2. The applicant shall disclose his physical address. A post office box is not acceptable.

3. The applicant shall sign, as part of the application, a statement certifying that the applicant has read and understands the Virginia barber and cosmetology license laws and this chapter.

4. In accordance with § 54.1-204 of the Code of Virginia, each applicant shall disclose the following information regarding criminal convictions in Virginia and all other jurisdictions:

a. All misdemeanor convictions involving moral turpitude, sexual offense, drug distribution, or physical injury within two years of the date of the application; and

b. All felony convictions within 20 years of the date of application.

Any plea of nolo contendere shall be considered a conviction for purposes of this subsection. The record of a conviction received from a court shall be accepted as prima facie evidence of a conviction or finding of guilt. The board, in its discretion, may deny licensure to any applicant in accordance with § 54.1-204 of the Code of Virginia.

5. The applicant shall provide evidence satisfactory to the board that the applicant has passed the board-approved examination, administered either by the board or by independent examiners.

B. Eligibility to sit for board-approved examination.

1. Training in the Commonwealth of Virginia. Any person completing an approved barber, master barber, cosmetology, nail technician, or wax technician training program in a Virginia licensed barber, cosmetology, nail technician, or wax technician school, respectively, or a Virginia public school's barber, master barber, cosmetology, nail technician, or wax technician program approved by the Virginia Department of Education shall be eligible for examination.

2. Training outside of the Commonwealth of Virginia, but within the United States and its territories.

~~a.~~ Any person completing a barber, master barber, cosmetology, nail care, or waxing training program that is substantially equivalent to the Virginia program but is outside of the Commonwealth of Virginia must submit to the board documentation of the ~~successful completion of 1,100 hours of~~ substantially equivalent training to be eligible for examination. ~~If less than 1,100 hours of barber training was completed, an applicant must submit a certificate, diploma, or other documentation acceptable to the board verifying the completion of a substantially equivalent barber course and documentation of six months of barber work experience in order to be eligible for examination~~ Applicants who completed a training program that is not substantially equivalent to Virginia's training, including out of country training, may substitute five years of work experience for training. Applicants should provide their work history demonstrating five years

of experience as a licensed barber, master barber, cosmetologist, nail technician, or wax technician in any other state or jurisdiction of the United States on a form provided by the board.

~~b. Any person completing a master barber or cosmetology training program that is substantially equivalent to the Virginia program but is outside of the Commonwealth of Virginia must submit to the board documentation of the successful completion of 1,500 hours of training to be eligible for examination. If less than 1,500 hours of master barber or cosmetology training was completed, an applicant must submit a certificate, diploma, or other documentation acceptable to the board verifying the completion of a substantially equivalent master barber or cosmetology course and documentation of six months of master barber or cosmetology work experience in order to be eligible for examination.~~

~~c. Any person completing a nail technician training program that is substantially equivalent to the Virginia program but is outside of the Commonwealth of Virginia must submit to the board documentation of the successful completion of 150 hours of training to be eligible for examination. If less than 150 hours of nail technician training was completed, an applicant must submit a certificate, diploma, or other documentation acceptable to the board verifying the completion of a substantially equivalent nail technician course and documentation of six months of nail technician work experience in order to be eligible for the nail technician examination.~~

~~d. Any person completing a wax technician training program that is substantially equivalent to the Virginia program but is outside of the Commonwealth of Virginia must submit to the board documentation of the successful completion of 115 hours of training to be eligible for examination. If less than 115 hours of wax technician training was completed, an applicant must submit a certificate, diploma, or other documentation acceptable to the board verifying the completion of a substantially equivalent wax technician course and documentation of six months of wax technician work experience in order to be eligible for the wax technician examination.~~

18VAC41-20-30. License by endorsement.

A. Upon proper application to the board, any person currently licensed to practice as a barber, master barber, cosmetologist, nail technician, or wax technician ~~who is a barber, master barber, cosmetologist, nail technician, or wax technician instructor,~~ or who is a licensed instructor in the respective profession in any other state or jurisdiction of the United States and who has completed both a training program and a written and practical examination that is substantially equivalent to that required by this chapter, may be issued a barber, master barber, cosmetologist, nail technician, or wax technician license or ~~a barber, master barber, cosmetology, nail technician, or wax technician~~ the respective instructor certificate~~, respectively,~~ without an examination. The applicant must also meet the requirements set forth in 18VAC41-20-20 A and 18VAC41-20-100.

B. Applicants for licensure by endorsement who completed a training program that is not substantially equivalent to Virginia's training but otherwise meet all the requirements listed in subsection A of this section, may substitute five years of work experience for training. Applicants should provide their work history demonstrating five years of licensed experience in any other state or jurisdiction of the United States on a form provided by the board.

NOTICE: The following forms used in administering the regulation have been filed by the agency. Amended or added forms are reflected in the listing and are published following the listing. Online users of this issue of the Virginia Register of Regulations may also click on the name to access a form. The forms are also available from the agency contact or may be viewed at the Office of Registrar of Regulations, 900 East Main Street, 11th Floor, Richmond, Virginia 23219.

FORMS (18VAC41-20)

Barber – Barber Instructor Examination & License Application, A450-1301_02EXLIC-v14 (rev. 4/2019)

~~Master Barber Examination & License Application, A450-1301EXLIC-v1 (eff. 4/2019)~~

~~Cosmetology – Cosmetology Instructor Examination & License Application, A450-1201_04EXLIC-v16 (rev. 2/2017)~~

~~Nail Technician – Nail Technician Instructor Examination & License Application, A450-1206_07EXLIC-v14 (rev. 2/2017)~~

~~Wax Technician – Wax Technician Instructor Examination & License Application, A450-1214_15EXLIC-v13 (rev. 2/2017)~~

Master Barber Examination & License Application, A450-1301EXLIC-v16 (eff. 1/2021)

Nail Technician – Nail Technician Instructor Examination & License Application, A450-1206_07EXLIC-v17 (rev. 1/2021)

Wax Technician – Wax Technician Instructor Examination & License Application, A450-1214_15EXLIC-v16 (rev. 1/2021)

Cosmetology – Cosmetology Instructor Examination & License Application, A450-1201_04EXLIC-v19 (rev.1/2021)

Temporary Permit Application, A450-1213TEMP-v2 (rev. 2/2017)

~~License by Endorsement Application, A450-1213END-v11 (rev. 4/2019)~~

License by Endorsement Application, A450-1213END-v16 (rev. 1/2021)

Training & Experience Verification Form, A450-1213TREXP-v6 (eff. 2/2017)

Individuals – Reinstatement Application, A450-1213REI-v9 (rev. 2/2017)

Salon, Shop, Spa & Parlor License/Reinstatement Application A450-1213BUS-v9 (rev. 2/2017)

Salon, Shop & Spa Self Inspection Form, A450-1213_SSS_INSP-v2 (eff. 5/2016)

Instructor Certification Application, A450-1213INST-v9 (rev. 1/2018)

Student Instructor – Temporary Permit Application A450-1213ST_TEMP-v2 (rev. 2/2017)

School License Application, A450-1213SCHL-v10 (rev. 2/2017)

School Reinstatement Application A450-1213SCHL-REIN-v3 (eff. 2/2017)

School Self-Inspection Form, A450-1213_SCH_INSP-v4 (eff. 5/2016)

Licensure Fee Notice, A450-1213FEE-v7 (rev. 1/2017)

Change of Responsible Management Application, A450-1213CRM-v1 (rev. 2/2017)

Training Substitution Form, A450-1213TR_SUB-v1 (rev. 1/2021)

VA.R. Doc. No. R21-6508; Filed July 23, 2021, 1:25 p.m.

BOARD OF MEDICINE

Final Regulation

REGISTRAR'S NOTICE: The Board of Medicine is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved. The board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **18VAC85-50. Regulations Governing the Practice of Physician Assistants (amending 18VAC85-50-10, 18VAC85-50-40, 18VAC85-50-101, 18VAC85-50-110, 18VAC85-50-115).**

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

Effective Date: September 15, 2021.

Agency Contact: William L. Harp, M.D., Executive Director, Board of Medicine, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4558, FAX (804) 527-4429, or email william.harp@dhp.virginia.gov.

Summary:

Pursuant to Chapter 210 of the 2021 Acts of Assembly, Special Session I, the amendments clarify that a physician assistant can have a practice agreement with one or more patient care team physicians and that the physician is not ultimately responsible for the acts of the assistant.

18VAC85-50-10. Definitions.

A. The following words and terms shall have the meanings ascribed to them in § 54.1-2900 of the Code of Virginia:

"Board."

"Collaboration."

"Consultation."

"Patient care team physician."

"Patient care team podiatrist."

"Physician assistant."

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

"Group practice" means the practice of a group of two or more doctors of medicine, osteopathy, or podiatry licensed by the board who practice as a partnership or professional corporation.

"Institution" means a hospital, nursing home or other health care facility, community health center, public health center, industrial medicine or corporation clinic, a medical service facility, student health center, or other setting approved by the board.

"NCCPA" means the National Commission on Certification of Physician Assistants.

"Practice agreement" means a written or electronic agreement developed by ~~the~~ one or more patient care team ~~physician~~ physicians or ~~podiatrist~~ podiatrists and the physician assistant that defines the relationship between the physician assistant and the ~~physician~~ physicians or ~~podiatrist~~ podiatrists, the prescriptive authority of the physician assistant, and the circumstances under which ~~the~~ a physician or podiatrist will see and evaluate the patient.

18VAC85-50-40. General requirements.

A. No person shall practice as a physician assistant in the Commonwealth of Virginia except as provided in this chapter.

B. All services rendered by a physician assistant shall be performed only in accordance with a practice agreement with ~~a doctor~~ one or more doctors of medicine, osteopathy, or podiatry licensed by this board to practice in the Commonwealth.

18VAC85-50-101. Requirements for a practice agreement.

A. Prior to initiation of practice, a physician assistant and ~~his~~ one or more patient care team ~~physician~~ physicians or ~~podiatrist~~ podiatrists shall enter into a written or electronic practice agreement that spells out the roles and functions of the

assistant and is consistent with provisions of § 54.1-2952 of the Code of Virginia.

1. ~~The patient care team physician or podiatrist shall be a doctor of medicine, osteopathy, or podiatry licensed in the Commonwealth who has accepted responsibility for the service that a physician assistant renders.~~

~~2.~~ Any such practice agreement shall take into account such factors as the physician assistant's level of competence, the number of patients, the types of illness treated by the ~~physician~~ physicians or ~~podiatrist~~ podiatrists, the nature of the treatment, special procedures, and the nature of the ~~physician~~ physicians' or ~~podiatrist~~ podiatrists' availability in ensuring direct physician or podiatrist involvement at an early stage and regularly thereafter.

~~3.~~ 2. The practice agreement shall also provide an evaluation process for the physician assistant's performance, including a requirement specifying the time period, proportionate to the acuity of care and practice setting, within which the ~~physician~~ physicians or ~~podiatrist~~ podiatrists shall review the record of services rendered by the physician assistant.

~~4.~~ 3. The practice agreement may include requirements for periodic site visits by licensees who supervise and direct the patient care team ~~physician~~ physicians or ~~podiatrist~~ podiatrists to collaborate and consult with physician assistants who provide services at a location other than where the ~~physician~~ physicians or ~~podiatrist~~ podiatrists regularly ~~practices~~ practice.

B. The board may require information regarding the degree of collaboration and consultation by the patient care team ~~physician~~ physicians or ~~podiatrist~~ podiatrists. The board may also require ~~the~~ a patient care team physician or podiatrist to document the physician assistant's competence in performing such tasks.

C. If the role of the physician assistant includes prescribing drugs and devices, the written practice agreement shall include those schedules and categories of drugs and devices that are within the scope of practice and proficiency of the patient care team ~~physician~~ physicians or ~~podiatrist~~ podiatrists.

D. If the initial practice agreement did not include prescriptive authority, there shall be an addendum to the practice agreement for prescriptive authority.

E. If there are any changes in consultation and collaboration, authorization, or scope of practice, a revised practice agreement shall be entered into at the time of the change.

18VAC85-50-110. Responsibilities of the patient care team physician or podiatrist.

~~The~~ A patient care team physician or podiatrist shall:

1. Review the clinical course and treatment plan for any patient who presents for the same acute complaint twice in a single episode of care and has failed to improve as expected. ~~The~~ A physician or podiatrist shall be involved with any patient with a continuing illness as noted in the written or electronic practice agreement for the evaluation process.

2. ~~Be responsible for all invasive procedures.~~

~~a. Under supervision, a physician assistant may insert a nasogastric tube, bladder catheter, needle, or peripheral intravenous catheter, but not a flow-directed catheter, and may perform minor suturing, venipuncture, and subcutaneous intramuscular or intravenous injection.~~

~~b. All other invasive procedures not listed in subdivision 2 a of this section must be performed under supervision with the physician in the room unless, after directly observing the performance of a specific invasive procedure three times or more, the patient care team physician or podiatrist attests on the practice agreement to the competence of the physician assistant to perform the specific procedure without direct observation and supervision.~~

~~3. Be responsible for all prescriptions issued by the physician assistant and attest to the competence of the assistant to prescribe drugs and devices.~~

~~4.~~ Be available at all times to collaborate and consult with the physician assistant.

18VAC85-50-115. Responsibilities of the physician assistant.

A. The physician assistant shall not render independent health care and shall:

1. Perform only those medical care services that are within the scope of the practice and proficiency of the patient care team ~~physician~~ physicians or ~~podiatrist~~ podiatrists as prescribed in the physician assistant's practice agreement. When a physician assistant is working outside the scope of specialty of the patient care team ~~physician~~ physicians or ~~podiatrist~~ podiatrists, then the physician assistant's functions shall be limited to those areas not requiring specialized clinical judgment, unless a separate practice agreement has been executed for ~~that~~ an alternate patient care team physician or podiatrist.

2. Prescribe only those drugs and devices as allowed in Part V (18VAC85-50-130 et seq.) of this chapter.

3. Wear during the course of performing his duties identification showing clearly that he is a physician assistant.

B. ~~An alternate patient care team physician or podiatrist shall be a member of the same group, professional corporation, or partnership of any licensee who is the patient care team physician or podiatrist for a physician assistant or shall be a member of the same hospital or commercial enterprise with the patient care team physician or podiatrist. Such alternating physician or podiatrist shall be a physician or podiatrist~~

~~licensed in the Commonwealth who has accepted responsibility for the service that a physician assistant renders.~~

~~C.~~ If, due to illness, vacation, or unexpected absence, ~~the~~ a patient care team physician or podiatrist or alternate physician or podiatrist is unable to supervise the activities of his physician assistant, such patient care team physician or podiatrist may temporarily delegate the responsibility to another doctor of medicine, osteopathic medicine, or podiatry.

Temporary coverage may not exceed four weeks unless special permission is granted by the board.

~~D.~~ C. With respect to physician assistants employed by institutions, the following additional regulations shall apply:

1. No physician assistant may render care to a patient unless the physician or podiatrist responsible for that patient ~~has signed the practice agreement to act as patient care team physician or podiatrist for~~ is available for collaboration and consultation with that physician assistant.

2. Any such practice agreement as described in subdivision 1 of this subsection shall delineate the duties which said patient care team physician or podiatrist authorizes the physician assistant to perform.

~~E.~~ D. Practice by a physician assistant in a hospital, including an emergency department, shall be in accordance with § 54.1-2952 of the Code of Virginia.

VA.R. Doc. No. R21-6847; Filed July 27, 2021, 10:06 a.m.

BOARD OF PHARMACY

Final Regulation

REGISTRAR'S NOTICE: The Board of Pharmacy is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 13 of the Code of Virginia, which exempts amendments to regulations of the board to schedule a substance in Schedule I or II pursuant to subsection D of § 54.1-3443 of the Code of Virginia. The board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **18VAC110-20. Regulations Governing the Practice of Pharmacy (amending 18VAC110-20-322).**

Statutory Authority: §§ 54.1-2400 and 54.1-3443 of the Code of Virginia.

Effective Date: September 15, 2021.

Agency Contact: Caroline Juran, RPh, Executive Director, Board of Pharmacy, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4456, FAX (804) 527-4472, or email caroline.juran@dhp.virginia.gov.

Summary:

The amendments add three compounds into Schedule I of the Drug Control Act as recommended by the Department of Forensic Science pursuant to § 54.1-3443 of the Code of Virginia. These compounds added by regulatory action will remain in effect for 18 months or until the compounds are placed in Schedule I by legislative action of the General Assembly.

18VAC110-20-322. Placement of chemicals in Schedule I.

A. Pursuant to subsection D of § 54.1-3443 of the Code of Virginia, the Board of Pharmacy places the following in Schedule I of the Drug Control Act:

1. Synthetic opioids.

a. N-[2-(dimethylamino)cyclohexyl]-N-phenylfuran-2-carboxamide (other name: Furanyl UF-17), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation.

b. N-[2-(dimethylamino)cyclohexyl]-N-phenylpropionamide (other name: UF-17), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation.

2. Research chemicals.

a. 5-methoxy-N,N-dibutyltryptamine (other name: 5-methoxy-DBT), its optical, position, and geometric isomers, salts, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

b. 1-(1,3-benzodioxol-5-yl)-2-(ethylamino)-1-butanone (other name: Eutylone, bk-EBDB), its optical, position, and geometric isomers, salts, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

c. 1-(1,3-benzodioxol-5-yl)-2-(butylamino)-1-pentanone (other name: N-butylpentylone), its optical, position, and geometric isomers, salts, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

d. N-benzyl-3,4-dimethoxyamphetamine (other name: N-benzyl-3,4-DMA), its optical, position, and geometric isomers, salts, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

e. 3,4-methylenedioxy-N-benzylcathinone (other name: BMDP), its optical, position, and geometric isomers, salts, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

3. Cannabimimetic agents.

a. Ethyl 2-({1-[(4-fluorophenyl)methyl]-1H-indazole-3-carbonyl}amino)-3-methylbutanoate (other name: EMB-FUBINACA), its salts, isomers, and salts of isomers

whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

b. Methyl 2-[1-4-fluorobutyl)-1H-indazole-3-carboxamido]-3,3-dimethylbutanoate (other name: 4-fluoro-MDMB-BUTINACA), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

The placement of drugs listed in this subsection shall remain in effect until June 10, 2021, unless enacted into law in the Drug Control Act.

B. Pursuant to subsection D of § 54.1-3443 of the Code of Virginia, the Board of Pharmacy places the following in Schedule I of the Drug Control Act:

1. Synthetic opioids.

a. N-phenyl-N-[1-(2-phenylmethyl)-4-piperidinyl]-2-furancarboxamide (other name: N-benzyl Furanyl norfentanyl), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation.

b. 1-[2-methyl-4-(3-phenyl-2-propen-1-yl)-1-piperazinyl]-1-butanone (other name: 2-methyl AP-237), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation.

2. Research chemicals.

a. N-hexyl-3,4-dimethoxyamphetamine (other names: N-hexyl-3.4-DMA), its optical, position, and geometric isomers, salts, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

b. N-heptyl-3,4-dimethoxyamphetamine (other names: N-heptyl-3.4-DMA), its optical, position, and geometric isomers, salts, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

c. 2-(isobutylamino)-1-phenylhexan-1-one (other names: N-Isobutyl Hexedrone, α-isobutylaminohexanphenone), its optical, position, and geometric isomers, salts, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

d. 1-(benzo[d][1,3]dioxol-5-yl)-2-(sec-butylamino)pentan-1-one (other name: N-sec-butyl Pentylone), its optical, position, and geometric isomers, salts, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

e. 2-fluoro-Deschloroketamine (other name: 2-(2-fluorophenyl)-2-(methylamino)-cyclohexanone), its optical, position, and geometric isomers, salts, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

3. Cannabimimetic agents.

a. Methyl 2-[1-(5-fluoropentyl)-1H-indole-3-carboxamido]-3-methylbutanoate (other name: MMB 2201), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

b. Methyl 2-[1-(4-penten-1-yl)-1H-indole-3-carboxamido]-3-methylbutanoate (other names: MMB022, MMB-4en-PICA), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

c. Methyl 2-[1-(5-fluoropentyl)-1H-indole-3-carboxamido]-3-phenylpropanoate (other name: 5-fluoro-MPP-PICA), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

d. 1-(5-fluoropentyl)-N-(1-methyl-1-phenylethyl)-1H-indole-3-carboxamide (other name: 5-fluoro CUMYL-PICA), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

The placement of drugs listed in this subsection shall remain in effect until February 4, 2022, unless enacted into law in the Drug Control Act.

C. Pursuant to subsection D of § 54.1-3443 of the Code of Virginia, the Board of Pharmacy places the following in Schedule I of the Drug Control Act:

1. Synthetic opioids.

a. N-phenyl-N-(4-piperidinyl)-propanamide (other name: Norfentanyl), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation.

b. N,N-diethyl-2-(2-(4-isopropoxybenzyl)-5-nitro-1H-benzimidazol-1-yl)ethan-1-amine (other name: Isotonitazene), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation.

2. Research chemicals.

a. (2-ethylaminopropyl)benzofuran (other name: EAPB), its optical, position, and geometric isomers, salts, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

b. 2-(ethylamino)-1-phenylheptan-1-one (other name: N-ethylheptedrone), its optical, position, and geometric isomers, salts, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

c. 4-ethyl-2,5-dimethoxy-N-[(2-hydroxyphenyl)methyl]-benzeneethanamine (other name: 25E-NBOH), its optical, position, and geometric isomers, salts, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

d. 4-hydroxy-N-ethyl-N-propyltryptamine (other name: 4-hydroxy-EPT), its optical, position, and geometric isomers, salts, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

e. N-ethyl-1-(3-hydroxyphenyl)cyclohexylamine (other name: 3-hydroxy-PCE), its optical, position, and geometric isomers, salts, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

f. 1-cyclopropionyl lysergic acid diethylamide (other name: 1cP-LSD), its optical, position, and geometric isomers, salts, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

g. 1-(4-methoxyphenyl)-N-methylpropan-2-amine (other names: para-Methoxymethamphetamine, PMMA), its optical, position, and geometric isomers, salts, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

3. Cannabimimetic agents.

a. Methyl 2-[1-(pent-4-enyl)-1H-indazole-3-carboxamindo]-3,3-dimethylbutanoate (other name: MDMB-4en-PINACA), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

b. N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-butylindazole-3-carboxamide (other name: ADB-BUTINACA), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

c. N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(5-chloropentyl)indazole-3-carboxamide (other name: 5-chloro-AB-PINACA), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

d. Methyl 2-({1-[(4-fluorophenyl)methyl]-1H-indole-3-carbonyl}amino)-3-methylbutanoate (other names: MMB-FUBICA, AMB-FUBICA), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

The placement of drugs listed in this subsection shall remain in effect until May 24, 2022, unless enacted into law in the Drug Control Act.

D. Pursuant to subsection D of § 54.1-3443 of the Code of Virginia, the Board of Pharmacy places the following in Schedule I of the Drug Control Act:

1. Synthetic opioid. N,N-diethyl-2-[(4-methoxyphenyl)methyl]-1H-benzimidazole-1-ethanamine (other name: Metodesnitazene), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation.

2. Compounds expected to have hallucinogenic properties.

a. 4-fluoro-3-methyl-alpha-pyrrolidinovalerophenone (other name: 4-fluoro-3-methyl-alpha-PVP), its salts, isomers (optical, position, and geometric), and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

b. 4-fluoro-alpha-methylamino-valerophenone (other name: 4-fluoropentedrone), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers (optical, position, and geometric), and salts of isomers is possible within the specific chemical designation.

c. N-(1,4-dimethylpentyl)-3,4-dimethoxyamphetamine (other name: N-(1,4-dimethylpentyl)-3,4-DMA), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers (optical, position, and geometric), and salts of isomers is possible within the specific chemical designation.

d. 4,5-methylenedioxy-N,N-diisopropyltryptamine (other name: 4,5-MDO-DiPT), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers (optical, position, and geometric), and salts of isomers is possible within the specific chemical designation.

e. Alpha-pyrrolidinocyclohexanophenone (other name: alpha-PCYP), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers (optical, position, and geometric), and salts of isomers is possible within the specific chemical designation.

f. 3,4-methylenedioxy-alpha-pyrrolidinoheptiophenone (other name: MDPV8), its salts, isomers, and salts of

isomers whenever the existence of such salts, isomers (optical, position, and geometric), and salts of isomers is possible within the specific chemical designation.

3. Compounds expected to have depressant properties.

a. Bromazolam, its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

b. Deschloroetizolam, its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

c. 7-chloro-5-(2-fluorophenyl)-1,3-dihydro-1,4-benzodiazepin-2-one (other name: Norfludiazepam), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

4. Cannabimimetic agents.

a. Methyl 2-[1-(4-fluorobutyl)-1H-indole-3-carboxamido]-3,3-dimethylbutanoate (other name: 4-fluoro-MDMB-BUTICA), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

b. Ethyl 2-[1-(5-fluoropentyl)-1H-indole-3-carboxamido]-3-methylbutanoate (other name: 5-fluoro-EMB-PICA), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

The placement of drugs listed in this subsection shall remain in effect until October 27, 2022, unless enacted into law in the Drug Control Act.

E. Pursuant to subsection D of § 54.1-3443 of the Code of Virginia, the Board of Pharmacy places the following in Schedule I of the Drug Control Act:

1. Synthetic opioids.

a. 1-{1-[1-(4-bromophenyl)ethyl]-4-piperidinyl}-1,3-dihydro-2H-benzimidazol-2-one (other name: Brorphine), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation.

b. N-(4-chlorophenyl)-N-[1-(2-phenylethyl)-4-piperidinyl]-propanamide (other names: para-chlorofentanyl, 4-chlorofentanyl), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation.

c. 2-[(4-methoxyphenyl)methyl]-N,N-diethyl-5-nitro-1H-benzimidazole-1-ethanamine (other name: Metonitazene), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation.

d. N,N-diethyl-2-{[(4-ethoxyphenyl) methyl]-1H-benzimidazol-1-yl}-ethan-1-amine (other name: Etazene, Desnitroetonitazene), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation.

2. Depressant.

5-(2-chlorophenyl)-1,3-dihydro-3-methyl-7-nitro-2H-1,4-benzodiazepin-2-one (other name: Meclonazepam), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

3. Cannabimimetic agent.

Ethyl-2-[1-(5-fluoropentyl)-1H-indole-3-carboxamido]-3,3-dimethylbutanoate (other name: 5-fluoro EDMB-PICA), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

The placement of drugs listed in this subsection shall remain in effect until December 23, 2022, unless enacted into law in the Drug Control Act.

F. Pursuant to subsection D of § 54.1-3443 of the Code of Virginia, the Board of Pharmacy places the following in Schedule I of the Drug Control Act:

1. Compound expected to have hallucinogenic properties.

4-chloro-alpha-methylaminobutiophenone (other name: 4-chloro Buphedrone), its salts, isomers (optical, position, and geometric), and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

2. Cannabimimetic agents.

a. Ethyl-2-[1-(5-fluoropentyl)-1H-indazole-3-carboxamido]-3-methylbutanoate (other names: 5-fluoro-EMB-PINACA, 5F-AEB), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

b. N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(pent-4-enyl)indazole-3-carboxamide (other name: ADB-4en-PINACA), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

The placement of drugs listed in this subsection shall remain in effect until March 14, 2023, unless enacted into law in the Drug Control Act.

VA.R. Doc. No. R21-6713; Filed July 27, 2021, 11:12 a.m.

Proposed Regulation

Title of Regulation: **18VAC110-20. Regulations Governing the Practice of Pharmacy (amending 18VAC110-20-425, 18VAC110-20-500; adding 18VAC110-20-505).**

Statutory Authority: §§ 54.1-2400 and 54.1-3307 of the Code of Virginia.

Public Hearing Information:

September 24, 2021 - noon - Department of Health Professions, Conference Center, 2nd Floor, 9960 Mayland Drive, Henrico, VA 23233

Public Comment Deadline: October 15, 2021.

Agency Contact: Caroline Juran, RPh, Executive Director, Board of Pharmacy, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4456, FAX (804) 527-4472, or email caroline.juran@dhp.virginia.gov.

Basis: Regulations are promulgated under the general authority of § 54.1-2400 of the Code of Virginia, which provides the Board of Pharmacy the authority to promulgate regulations to administer the regulatory system. The specific authority for the board to regulate the dispensing of prescription drugs is found in § 54.1-3307 of the Code of Virginia.

Purpose: The regulation will allow an interested hospital to utilize these newer and proven technologies that facilitate efficiencies in the management and dispensing of drugs without the cost and burden of applying for an innovative pilot program; allow these proven technologies to be used to verify drug accuracy, which decreases risk of human error associated with manual pharmacist verifications; and allow pharmacists more time to focus on patient-centered clinical activities.

The purpose of this regulatory action is to update regulations for utilization of newer technologies in the practice of pharmacy in a hospital system and for facilitating time for pharmacists to be more involved in direct patient care. Technologies such as medication carousels and radio-frequency identification (RFID) components of a robotic pharmacy system have already been approved for use as innovative pilot programs and have been shown to protect the health and safety of the drug supply and patients in hospitals.

Substance: Amendments are proposed for 18VAC110-20-425 on robotic pharmacy systems to allow for medication carousels used in a hospital to store and guide the selection of drugs to be dispensed or removed from the pharmacy. A pharmacist will not be required to manually check the accuracy of a drug removed from the carousel by a pharmacy technician when the technology is used, in compliance with the regulation, to verify accuracy. Because medication carousels rely on the use of barcode scanning to verify drug accuracy, certain safeguards are adopted to include a verification check by a pharmacist for the accuracy of the barcode assignment to an individual drug.

A new section, 18VAC110-20-505, is added to incorporate another technology already approved for innovative pilot programs the use of RFID to verify the accuracy of drugs placed into a kit for licensed emergency medical services personnel or other kits used as floor stock throughout a hospital. The regulation specifies the responsibilities of a pharmacist and the duties of a pharmacy technician in the use of RFID technology.

Issues: The advantage to the public and the hospital systems is the use of new technology that accurately and efficiently prepares medications for dispensing from a pharmacy to patients on the floor or to persons receiving emergency services by emergency management services agencies. There are no disadvantages. There are ample safeguards to ensure the accuracy and integrity of the drugs dispensed through use of medication carousels or RFID technology. There are no advantages or disadvantages to this agency or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Pharmacy (Board) proposes to amend 18VAC110-20 Regulations Governing the Practice of Pharmacy (regulation) in order to incorporate certain practices that are currently only authorized as part of pilot programs in select hospitals. Specifically, the board seeks to (i) amend section 425 Robotic Pharmacy Systems to add the conditions under which medication carousels may be utilized and (ii) create a new section regarding the use of Radio Frequency Identification (RFID).

Background. In order to facilitate the adoption of new technologies in the practice of pharmacy, the board can authorize select hospital systems to implement new technologies under pilot programs. The Department of Health Professions (DHP) reports that 26 approved pilot programs are currently active, of which nine use medication carousels, three use RFID technology, and the rest address other issues unrelated to this action. DHP also reports that the earliest medication carousel pilot was authorized in 2012, and the earliest RFID pilot was authorized in 2014. Since then, no incidents of error or harm have been reported to the board, as is required of pilot programs. Thus, the board proposes to amend the regulation so that these technologies can be adopted by hospital systems without having to first secure authorization for a pilot program.

Medication carousels. Medication carousels are containers consisting of several long horizontal shelves secured behind glass. Several bins of medication sit on each shelf, and an operator can rotate the shelves until the desired bin and medication are presented. The carousel could be operated by a pharmacist or pharmacy technician, and access to the medications in a carousel can be restricted to the specific authorized staff. In a hospital setting, medications may be removed from the pharmacy carousel on a physician's order for a specific patient, or they may be placed in an automatic drug dispensing system, which is essentially a smaller medication carousel located in an emergency room or an in-patient floor.

Medication carousels are often used in conjunction with a robotic pharmacy system, which automatically dispenses barcoded unit-doses based on information entered into the dispensing software. According to DHP, along with barcode labeling and scanning, the use of medication carousels has reduced medication errors and made inventory management more accurate and efficient. Thus, the board seeks to add language regarding medication carousels to section 425 Robotic Pharmacy Systems rather than create a new section.

The proposed amendments, which largely specify the oversight responsibilities of the pharmacist, are conditioned on the extent to which automation software is already in use. For example, a pharmacist would not be required to verify the accuracy of a patient-specific drug removed from a medication carousel (i) if the order was entered into the dispensing software by a pharmacist and transmitted electronically to the medication carousel and (ii) if the dispensed medication is scanned by both the pharmacy technician retrieving the medication and the nurse or other staff who is authorized to administer the medication. The requirements for medications to be retrieved from the carousel and placed in an automatic drug dispenser are analogous; a pharmacist would not need to check every dose of every medication transferred from the carousel to the dispenser by the pharmacy tech (i) if the pharmacist entered the order in the dispensing system and (ii) if the barcode on the medication was scanned by the pharmacy tech and again by the person administering the drug.

Finally, a pharmacist would be required to verify the accuracy of all drugs that are manually removed by a pharmacy technician without the use of barcode scanning technology. A pharmacist would also be required to perform a daily random check of five percent of drugs that were prepared that day utilizing the medication carousel technology and maintain a record with the date, a description of any discrepancies, and their initials. Such records would need to be maintained for a minimum of two years and be available for inspection or audit within 48 hours of a request by the board.

RFID technology. RFID technology has been used in inventory management for crash carts and kits used by emergency services since about 2011.[1] RFID tags (which are similar to barcodes but can be encoded with much more information) are affixed to every medication placed in an emergency kit or on a crash cart tray. Entire kits or trays are placed in a scanner that "reads" all the RFID tags and can indicate which medications need replacement. Prior to the adoption of this technology, pharmacy technicians would have to check each item in each kit or tray, which took much longer and resulted in higher error rates.

The board proposes to create a new section 505, Use of radio-frequency identification, containing the responsibilities of pharmacists and pharmacy technicians using RFID technology. Specifically, a pharmacist would be required to update, develop and maintain the RFID database, issue tags to specific drugs, and develop lists for each kit. Pharmacy technicians would be allowed to place RFID tags on drugs, retrieve tagged drugs from the hospital's inventory to place onto kits, and utilize the scanning device that verifies that the kit contains the drugs it is supposed to as per the list programmed by the pharmacist. A pharmacist would be required to verify that all drugs have been accurately tagged prior to storage in the hospital's inventory and perform a daily random check of five percent of all kits that were prepared that day using the RFID technology. The pharmacist would need to maintain a record of the daily checks, including the date of verification, a description of any discrepancies and their initials and maintain these records for one year. Pharmacies using RFID technology would also be exempt from certain verification requirements contained in other sections of the regulation, since they would now be redundant.[2]

Estimated Benefits and Costs. Adding language regarding the use of these new technologies to the regulation would directly benefit the hospital systems currently engaged in the pilot programs since they would no longer have to pay the renewal fee of $260 per renewal period (generally two years) or pay for any unannounced inspections. Hospitals wanting to implement these technologies would also benefit by not having to apply for a pilot program or pay the initial application fee of $325. In general, having the requirements in the regulation would also benefit hospitals weighing whether to adopt these new technologies by making the cost of future regulatory compliance more transparent. In addition, hospitals that have implemented the pilot programs as well as those choosing to adopt these technologies in the future would benefit from the cost-savings offered by the technologies directly: more efficient inventory control, less staff time spent verifying medications being dispensed or re-stocking kits. Staff and patients would similarly benefit from lower error rates in medication dispensing or the re-stocking of emergency medical kits. The cost of technology adoption largely falls on the hospitals choosing to do so, although some portion of such costs would likely be passed on to payers. Developers and providers of the technology would also benefit to the extent that the proposed amendments encourage more hospitals to adopt these technologies.

Businesses and Other Entities Affected. The proposed amendments primarily affect hospitals and hospital systems, which are generally not-for-profit. DHP reports that these technologies are more likely to be adopted by large hospital systems as compared to smaller independent hospitals, since they are more easily able to absorb the fixed costs of adopting a new technology and more likely to find it cost-effective. Smaller hospitals will likely adopt the use of the technology as technology-related costs decrease; clear regulation from the board regarding how the technology may be used may also encourage adoption. As mentioned previously, businesses providing these new technologies would also be affected to the extent that the proposed amendments lead to a greater demand for their products and services. Consumers or payers would be

affected to the extent that costs of adopting the new technologies are passed on to them.

Small Businesses[3] Affected. The proposed amendments are unlikely to adversely affect any small businesses. Any small businesses in Virginia that provide these technologies to hospitals would benefit from the proposed amendments if it increases the demand for their services; the number of such firms is unknown.

Localities[4] Affected.[5] The proposed amendments do not introduce new costs for local governments and are unlikely to affect any locality in particular.

Projected Impact on Employment. The proposed amendments are unlikely to affect the employment of pharmacists or pharmacy technicians in hospitals. DHP reports that the use of this technology was purported to free time for pharmacists to perform more clinical-related functions.

Effects on the Use and Value of Private Property. To the extent that the proposed amendments increase demand for the new technologies, the value of the providers of the technology may increase. Real estate development costs are not affected.

[1]The University of Maryland Medical Center, one of the first to implement the use of RFID technology in emergency kits, reported lower re-stocking times and reduced error rates. See https://www.baltimoresun.com/health/bs-hs-rfid-for-crash-carts-20120727-story.html and https://kitcheck.com/blog/university-maryland-presentation-ashp-fewer-errors-efficiency-kit-check/.

[2]Specifically, the proposed language indicates that, "Pharmacies engaged in RFID tagging of drugs shall be exempt from the requirements in subsection C of 18VAC110-20-490, subsection A of 18VAC110-20-460, and subsection A of 18VAC110-20-355."

[3]Pursuant 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."

[4]"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.

[5]§ 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

Agency's Response to Economic Impact Analysis: The Board of Pharmacy concurs with the economic impact analysis of the Department of Planning and Budget.

Summary:

The proposed amendments for 18VAC110-20-425 allow any interested hospital to use technology commonly referred to as medication carousels to store and guide the selection of drugs to be dispensed or removed from the pharmacy. A pharmacist will not be required to manually check the accuracy of a drug removed from the carousel by a pharmacy technician when the technology is used in compliance with the regulation to verify accuracy. Because medication carousels rely on the use of barcode scanning to verify drug accuracy, certain safeguards are included in the proposed amendments regarding a verification check by a pharmacist for the accuracy of the barcode assignment to an individual drug.

The proposed amendments also add a new section, 18VAC110-20-505, to incorporate another technology already approved for innovative pilot programs: the use of radio-frequency identification (RFID) to verify the accuracy of drugs placed into a kit for licensed emergency medical services personnel or other kits used as floor stock throughout a hospital. The responsibilities of a pharmacist and the duties of a pharmacy technician in the use of RFID technology are included in the proposed amendments.

18VAC110-20-425. Robotic pharmacy systems.

A. Consistent with 18VAC110-20-420, a pharmacy providing services to a hospital or a long-term care facility and operating a robotic pharmacy system that dispenses drugs in barcoded unit dose or compliance packaging is exempted from 18VAC110-20-270 C, provided the accuracy of the final dispensed prescription product complies with a written quality assurance plan and requirements of this chapter. The following requirements for operation of a robotic pharmacy system shall apply:

1. Pharmacists shall review for accuracy and appropriateness of therapy all data entry of prescription orders into the computer operating the system.

2. The packaging, repackaging, stocking, and restocking of the robotic pharmacy system shall be performed by pharmacy technicians or pharmacists.

3. Pharmacists shall verify and check for the accuracy of all drugs packaged or repackaged for use by the robot by a visual check of both labeling and contents prior to stocking the drugs in the robotic pharmacy system. A repackaging record shall be maintained in accordance with 18VAC110-20-355 A, and the verifying pharmacist shall initial the record. Packaging and labeling, including the appropriate beyond-use date, shall conform to requirements of this chapter and current USP-NF standards.

4. A written policy and procedure must be maintained and complied with and shall include at a minimum procedures for ensuring:

a. Accurate packaging and repackaging of all drugs for use in the robotic pharmacy system, to include properly labeled barcodes, and method for ensuring pharmacist verification of all packaged and repacked drugs compliant with this chapter and assigned barcodes;

b. Accurate stocking and restocking of the robotic pharmacy system;

c. Removing expired drugs;

d. Proper handling of drugs that may be dropped by the robotic pharmacy system;

e. Performing routine maintenance of robotic pharmacy system as indicated by manufacturer's schedules and recommendations;

f. Accurate dispensing of drugs via robotic pharmacy system for cart fills, first doses, and cart fill updates during normal operation and during any scheduled or unscheduled downtime;

g. Accurate recording of any scheduled or unanticipated downtime with an explanation of the problem to include the time span of the downtime and the resolution;

h. Appropriately performing an analysis to investigate, identify, and correct sources of discrepancies or errors associated with the robotic pharmacy system; and

i. Maintaining quality assurance reports.

5. All manual picks shall be checked by pharmacists.

6. If it is identified that the robot selected an incorrect medication, the pharmacy shall identify and correct the source of discrepancy or error in compliance with the pharmacy's policies and procedures prior to resuming full operations of the robot. An investigation of the cause of the event shall be completed, and the outcome of the corrective action plan shall be summarized and documented in a readily retrievable format.

7. Quarterly quality assurance reports demonstrating the accuracy of the robot shall be maintained. At a minimum, these reports shall include a summary indicating the date and description of all discrepancies that include discrepancies involving the packaging, repackaging, and dispensing of drugs via the robotic pharmacy system found during that quarter plus a cumulative summary since initiation of the robotic pharmacy system.

~~8. All records required by this section shall be maintained at the address of the pharmacy for a minimum of two years. Records may be maintained in offsite storage or as an electronic image that provides an exact image of the document that is clearly legible provided such offsite or electronic storage is retrievable and made available for inspection or audit within 48 hours of a request by the board or an authorized agent.~~

B. Intravenous admixture robotics may be utilized to compound drugs in compliance with § 54.1-3410.2 of the Code of Virginia and 18VAC110-20-321; however, a pharmacist shall verify the accuracy of all compounded drugs pursuant to ~~18VAVC110-20-270~~ 18VAC110-20-270 B.

C. Medication carousels functioning with or without a robotic pharmacy system in a hospital may be utilized to store and guide the selection of drugs to be dispensed or removed from the pharmacy under the following conditions:

1. The entry of drug information into the barcode database for assignment of a barcode to an individual drug shall be performed by a pharmacist who shall verify the accuracy of the barcode assignment.

2. A pharmacist is not required to verify the accuracy of a patient-specific drug removed from a medication carousel if:

a. The entry of the order for a patient-specific drug into the pharmacy's dispensing software is verified by a pharmacist for accuracy and is electronically transmitted to the medication carousel; and

b. The patient-specific drug removed from the medication carousel by a pharmacy technician is verified for accuracy by the pharmacy technician who shall scan each drug unit removed from the medication carousel prior to dispensing, and a nurse or other person authorized to administer the drug scans each drug unit using barcode technology to verify the accuracy of the drug prior to administration of the drug to the patient.

3. A pharmacist is not required to verify the accuracy of the drug removed from the medication carousel by a pharmacy technician if that drug is intended to be placed into an automated drug dispensing system as defined in § 54.1-3401 of the Code of Virginia or distributed to another entity legally authorized to possess the drug if:

a. The list of drugs to be removed from the medication carousel for loading or replenishing an individual automated dispensing system is electronically transmitted to the medication carousel; and

b. The drug removed from the medication carousel is verified for accuracy by the pharmacy technician by scanning each drug unit removed from the medication carousel prior to leaving the pharmacy and delivering the drug to the automated drug dispensing system or distributed to another entity, and a nurse or other person authorized to administer the drug scans each drug unit using barcode technology to verify the accuracy of the drug prior to administration of the drug to the patient. If the drug is placed into an automated drug dispensing system located within a hospital, or the entity receiving the distributed drug, wherein a nurse or other person authorized to administer the drug will not be able to scan each drug unit using barcode technology to verify the accuracy of the drug prior to patient administration, then a second verification for accuracy shall be performed by a pharmacy technician by scanning each drug unit at the time of placing the drugs into the automated dispensing system.

4. A pharmacist shall verify the accuracy of all drugs that are manually removed from the medication carousel by a pharmacy technician without the use of barcode scanning technology to verify the accuracy of the selection of the drug product prior to dispensing those drugs or those drugs leaving the pharmacy.

5. A pharmacist shall perform a daily random check for verification of the accuracy of 5.0% of drugs prepared that day utilizing the medication carousel technology. A manual or electronic record, from which information can be readily retrieved, shall be maintained and shall include:

a. The date of verification;

b. A description of all discrepancies identified, if any; and

c. The initials of the pharmacist verifying the accuracy of the process.

D. All records required by this section shall be maintained at the address of the pharmacy for a minimum of two years. Records may be maintained in offsite storage or as an electronic image that provides an exact image of the document that is clearly legible, provided such offsite or electronic storage is retrievable and made available for inspection or audit within 48 hours of a request by the board or an authorized agent of the board.

18VAC110-20-500. Licensed emergency medical services (EMS) agencies ~~program~~.

A. The pharmacy may prepare a kit for a licensed EMS agency provided:

1. The PIC of the hospital pharmacy shall be responsible for all prescription drugs and Schedule VI controlled devices contained in this kit. ~~A~~ Except as authorized in 18VAC110-20-505, a pharmacist shall check each kit after filling and initial the filling record certifying the accuracy and integrity of the contents of the kit.

2. The kit is sealed, secured, and stored in such a manner that it will deter theft or loss of drugs and devices and aid in detection of theft or loss.

a. The hospital pharmacy shall have a method of sealing the kits such that once the seal is broken, it cannot be reasonably resealed without the breach being detected.

b. If a seal is used, it shall have a unique numeric or alphanumeric identifier to preclude replication or resealing. The pharmacy shall maintain a record of the seal identifiers when placed on a kit and maintain the record for a period of one year.

c. In lieu of a seal, a kit with a built-in mechanism preventing resealing or relocking once opened except by the provider pharmacy may be used.

3. Drugs and devices may be administered by an EMS provider upon an oral or written order or standing protocol of an authorized medical practitioner in accordance with § 54.1-3408 of the Code of Virginia. Oral orders shall be reduced to writing by the EMS provider and shall be signed by a medical practitioner. Written standing protocols shall be signed by the operational medical director for the EMS agency. A current copy of the signed standing protocol shall be maintained by the pharmacy participating in the kit exchange. The EMS provider shall make a record of all drugs and devices administered to a patient.

4. When the drug kit has been opened, the kit shall be returned to the pharmacy and exchanged for an unopened kit. The record of the drugs administered shall accompany the opened kit when exchanged. An accurate record shall be maintained by the pharmacy on the exchange of the drug kit for a period of one year. A pharmacist, pharmacy technician, or nurse shall reconcile the Schedule II, III, IV, or V drugs in the kit at the time the opened kit is returned. A record of the reconciliation, to include any noted discrepancies, shall be maintained by the pharmacy for a period of two years from the time of exchange. The theft or any other unusual loss of any Schedule II, III, IV, or V controlled substance shall be reported in accordance with § 54.1-3404 of the Code of Virginia.

5. Accurate records of the following shall be maintained by the pharmacy on the exchange of the drug kit for a period of one year:

a. The record of filling and verifying the kit to include the drug contents of the kit, the initials of the pharmacist verifying the contents, the date of verification, a record of an identifier if a seal is used, and the assigned expiration date for the kit, which shall be no later than the expiration date associated with the first drug or device scheduled to expire.

b. The record of the exchange of the kit to include the date of exchange and the name of EMS agency and EMS provider receiving the kit.

6. Destruction of partially used Schedules II, III, IV, and V drugs shall be accomplished by two persons, one of whom shall be the EMS provider and the other shall be a pharmacist, nurse, prescriber, pharmacy technician, or a second EMS provider. Documentation shall be maintained in the pharmacy for a period of two years from the date of destruction.

7. The record of the drugs and devices administered shall be maintained as a part of the pharmacy records pursuant to state and federal regulations for a period of not less than two years.

8. Intravenous and irrigation solutions provided by a hospital pharmacy to an emergency medical services agency may be stored separately outside the kit.

9. Any drug or device showing evidence of damage or tampering shall be immediately removed from the kit and replaced.

10. In lieu of exchange by the hospital pharmacy, the PIC of the hospital pharmacy may authorize the exchange of the kit by the emergency department. Exchange of the kit in the emergency department shall only be performed by a pharmacist, nurse, or prescriber if the kit contents include Schedule II, III, IV, or V drugs.

B. A licensed EMS agency may obtain a controlled substances registration pursuant to § 54.1-3423 D of the Code of Virginia for the purpose of performing a one-to-one exchange of Schedule VI drugs or devices.

1. The controlled substances registration may be issued to a single agency or to multiple agencies within a single jurisdiction.

2. The controlled substances registration issued solely for this intended purpose does not authorize the storage of drugs within the agency facility.

3. Pursuant to § 54.1-3434.02 of the Code of Virginia, the EMS provider may directly obtain Schedule VI drugs and devices from an automated drug dispensing device.

4. If such drugs or devices are obtained from a nurse, pharmacist, or prescriber, it shall be in accordance with the procedures established by the pharmacist-in-charge, which shall include a requirement to record the date of exchange, name of licensed person providing drug or device, name of the EMS agency and provider receiving the drug or device, and assigned expiration date. Such record shall be maintained by the pharmacy for one year from the date of exchange.

5. If an EMS agency is performing a one-to-one exchange of Schedule VI drugs or devices, Schedule II, III, IV, or V drugs shall remain in a separate, sealed container and shall only be exchanged in accordance with provisions of subsection A of this section.

18VAC110-20-505. Use of radio-frequency identification.

A hospital pharmacy may use radio-frequency identification (RFID) to verify the accuracy of drugs placed into a kit for licensed emergency medical services pursuant to 18VAC110-20-500 or other kits used as floor stock throughout the hospital under the following conditions:

1. A pharmacist shall be responsible for performing and verifying the accuracy of the following tasks:

a. The addition, modification, or deletion of drug information into the RFID database for assignment of a RFID tag to an individual drug; and

b. The development of the contents of the kit in the RFID database and the associated drug-specific RFID tags.

2. A pharmacy technician may place the RFID tag on the drugs, and a pharmacist shall verify that all drugs have been accurately tagged prior to storing the drugs in the pharmacy's inventory.

3. A pharmacy technician may remove RFID-tagged drugs from the pharmacy's inventory whose RFID tags have been previously verified for accuracy by a pharmacist and place the drugs into the kit's container. A pharmacy technician may then place the container into the pharmacy's device that reads the RFID tags to verify if the correct drugs have been placed into the container as compared to the list of the kit's contents in the RFID database.

4. A pharmacist shall perform a daily random check for verification of the accuracy of 5.0% of all kits prepared that day utilizing the RFID technology. A manual or electronic record from which information can be readily retrieved, shall be maintained that includes:

a. The date of verification;

b. A description of all discrepancies identified, if any; and

c. The initials of pharmacist verifying the accuracy of the process.

5. Pharmacies engaged in RFID tagging of drugs shall be exempt from the requirements in subsection C of 18VAC110-20-490, subsection A of 18VAC110-20-460, and subsection A of 18VAC110-20-355.

6. All records required by this subsection shall be maintained for a period of one year from the date of verification by the pharmacist.

VA.R. Doc. No. R21-6271; Filed July 22, 2021, 4:19 p.m.

Proposed Regulation

Title of Regulation: **18VAC110-30. Regulations for Practitioners of the Healing Arts to Sell Controlled Substances (amending 18VAC110-30-10, 18VAC110-30-20, 18VAC110-30-21, 18VAC110-30-40, 18VAC110-30-270).**

Statutory Authority: §§ 54.1-2400 and 54.1-3304.1 of the Code of Virginia.

Public Hearing Information:

September 24, 2021 - noon - Department of Health Professions, Conference Center, 2nd Floor, 9960 Mayland Drive, Henrico, VA 23233

Public Comment Deadline: October 15, 2021.

Agency Contact: Caroline Juran, RPh, Executive Director, Board of Pharmacy, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 527-4456, FAX (804) 527-4472, or email caroline.juran@dhp.virginia.gov.

Basis: Regulations are promulgated under the general authority of § 54.1-2400 of the Code of Virginia, which provides the Board of Pharmacy the authority to promulgate regulations to administer the regulatory system. The specific statutory provisions for regulations governing issuance of a limited-use license for a practitioner at a nonprofit facility are found in §§ 54.1-3304.1 and 54.1-3467 of the Code of Virginia.

Purpose: The purpose of the regulation is to expand access to certain Schedule VI drugs and hypodermic needles and syringes for the administration of these drugs to underserved persons who seek services from nonprofit clinics. Limited licenses will only be issued for dispensing of Schedule VI drugs, so no drugs scheduled by the Drug Enforcement Administration can be dispensed. There is accountability to the Board of Pharmacy for the facility permit and to the Boards of Medicine and Nursing for the limited license issued to the practitioner. Therefore, there are sufficient protections for the

health and safety of the drugs and the citizens of the Commonwealth.

Substance: Amendments to 18VAC110-30 will (i) amend the term practitioner to include nurse practitioners or physician assistants for the purpose of issuance of a limited-use license; and (ii) include the allowance for issuance of a limited-use permit for nonprofit facilities for the sale of Schedule VI drugs, excluding the combination of misoprostol and methotrexate, and hypodermic needles and syringes used in administration of such drugs. The allowance set out in § 54.1-3304.1 excludes the sale of a combination of misoprostol and methotrexate, so that is also excluded in regulation.

Issues: The advantage to the public will be the expansion of access to and availability of certain prescription drugs and hypodermic needles and syringes for administration of these drugs at nonprofit clinics. Some of those clinics are run by nurse practitioners or physician assistants who are otherwise not eligible for a practitioner of the healing arts to sell controlled substances license. There are no disadvantages to the public. There are no advantages or disadvantages to this agency or the Commonwealth.

Department of Planning and Budget Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Pursuant to Chapters 609 and 610 of the 2020 Acts of Assembly (legislation), an emergency regulation became effective on January 4, 2021, that: 1) amended the term "practitioner" to include nurse practitioners or physician assistants for the purpose of issuing a limited-use license, and 2) added a limited-use license for practitioners to sell Schedule VI controlled substances (excluding the combination of misoprostol and methotrexate), and hypodermic syringes and needles for the administration of prescribed controlled substances from a nonprofit facility, and 3) specify that a limited-use facility permit may be issued to a nonprofit facility for the purpose of dispensing the same.

The emergency regulation will expire on July 3, 2022. Also pursuant to the legislation, the Board proposes to replace the emergency regulation with an identical permanent regulation.

Background. Practitioner of the Healing Arts: "Practitioner" or "practitioner of the healing arts" is currently defined as "a doctor of medicine, osteopathic medicine or podiatry who possesses a current active license issued by the Board of Medicine." The Board proposes to add the following sentence to the definition: "For the purpose of a limited-use permit for a nonprofit facility, a "practitioner" or "practitioner of the healing arts" may also mean a physician assistant with a current active license issued by the Board of Medicine or a nurse practitioner with a current active license issued by the Joint Boards of Nursing and Medicine."

Licenses: Both the current (pre-emergency) regulation and the proposed regulation require that prior to engaging in the sale of controlled substances, practitioners must be issued a license for this purpose by the board. The board proposes to add the following statement:

Prior to engaging in the sale of Schedule VI controlled substances, excluding the combination of misoprostol and methotrexate, and hypodermic syringes and needles for the administration of prescribed controlled substances from a nonprofit facility, a doctor of medicine, osteopathic medicine or podiatry, a nurse practitioner, or a physician assistant shall make application on a form provided by the board and be issued a limited-use license.

The statement is essentially straight from the legislation.

Permits: The current (pre-emergency) regulation and the proposed regulation both require that any location at which practitioners of the healing arts are to sell controlled substances must first obtain a permit issued by the Board. Both the current and proposed regulations also state the following concerning limited-use permits:

> B. For good cause shown, the board may issue a limited-use facility permit when the scope, degree, or type of services provided to the patient is of a limited nature. The permit to be issued shall be based on conditions of use requested by the applicant or imposed by the board in cases where certain requirements of this chapter may be waived.
>
> 1. The limited-use facility permit application shall list the regulatory requirements for which a waiver is requested, if any, and a brief explanation as to why each requirement should not apply to that practice.
>
> 2. A policy and procedure manual detailing the type and volume of controlled substances to be sold and safeguards against diversion shall accompany the application.
>
> 3. The issuance and continuation of a limited-use facility permit shall be subject to continuing compliance with the conditions set forth by the board.

The Board proposes to add:

> 4. A limited-use facility permit may be issued to a nonprofit facility for the purpose of dispensing Schedule VI controlled substances, excluding the combination of misoprostol and methotrexate, and hypodermic syringes and needles for the administration of prescribed controlled substances.

Thus, under the current (pre-emergency) regulation, facilities may already obtain a limited-use permit when the practitioner is a doctor of medicine, osteopathic medicine or podiatry. Combining the proposed new sentence for the definition of "practitioner" or "practitioner of the healing arts" with the proposed added text on permits, subdivision B 4, limited-use permits could also be issued for the specific purpose described in subdivision B 4 when the practitioner is a physician assistant or a nurse practitioner.

Schedule VI Controlled Substances: The U.S. Drug Enforcement Administration (DEA) classifies drugs, substances, and certain chemicals used to make drugs into five

categories based on their abuse potential.[1] States generally follow the DEA classifications with some exceptions.[2] Virginia adds a sixth category known as "Schedule VI" for controlled substances with the lowest abuse potential. Schedule VI includes:[3]

> Any compound, mixture, or preparation containing any stimulant or depressant drug that is exempt from the first five categories.
>
> Any potentially toxic drug not included in the first five categories that has not yet been determined safe except under supervision of a licensed practitioner.
>
> Any drug not included in the first five categories that is otherwise restricted by federal law.

Examples of Schedule VI controlled substances include blood pressure and cholesterol lowering agents, antibiotics, birth control, diabetes medications, etc.[4]

Estimated Benefits and Costs. The primary impacts of the legislation and the proposal are that: 1) physician assistants and nurse practitioners may be issued a limited-use license to sell Schedule VI controlled substances, excluding the combination of misoprostol and methotrexate, and hypodermic syringes and needles for the administration of prescribed controlled substances from a nonprofit facility, and 2) nonprofit facilities may be issued a limited-use facility permit where physician assistants and nurse practitioners may make such sales. Under the current (pre-emergency) regulation, physician assistants and nurse practitioners cannot sell controlled substances.

Some nonprofit clinics are run by nurse practitioners or physician assistants. The proposal would newly allow Schedule VI controlled substances, excluding the combination of misoprostol and methotrexate, and hypodermic syringes and needles for the administration of prescribed controlled substances to be sold at such clinics. Free clinics are among nonprofit clinics that could be affected; thus the proposal could potentially increase access to needed medication for their clients.

Through the first five months of the emergency regulation being in effect, the Department of Health Professions has not received any applications for either the limited-use license from nurse practitioners or physician assistants or the limited-use facility permit issued to a nonprofit facility for the purpose of dispensing Schedule VI controlled substances. Based on this evidence, it does not appear that the legislation and the proposal will have a large impact.

Businesses and Other Entities Affected. The proposal would potentially affect nurse practitioners and physician assistants who provide care in nonprofit health clinics who wish to dispense Schedule VI controlled substances and hypodermic syringes and needles for the administration of prescribed controlled substances. The proposal would also potentially affect such nonprofit clinics. To the extent that nurse practitioners and physician assistants obtain the limited-use license and do dispense in nonprofit health clinics, some poor citizens of the Commonwealth may get increased access to needed medications. Since through the first five months of the emergency regulation being in effect no nurse practitioners or physician assistants have applied for the limited-use license, and no nonprofit facilities have applied for the associated limited-use permit, it does not appear that many entities will be affected in practice.

The proposal does not produce any costs.

Small Businesses[5] Affected. The proposed amendments do not appear to adversely affect small businesses.

Localities[6] Affected.[7] The proposed amendments apply throughout the Commonwealth, but may particularly affect poorer localities since free clinics are expected to be among the entities most affected. The proposed amendments do not 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 proposal is unlikely to substantively affect the use and value of private property. The proposed amendments do not affect real estate development costs.

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[1]See https://www.dea.gov/drug-information/drug-scheduling

[2]For example, Gabapentin was classified as Schedule VI in Virginia until July 1, 2019, when the Virginia General Assembly reassigned it to Schedule V although it is not currently on the DEA Schedule. See https://www.deadiversion.usdoj.gov/drug_chem_info/gabapentin.pdf

https://www.dhp.virginia.gov/pharmacy/docs/Gabapentin06172019.pdf

https://www.carlislemedical.com/2019/06/gabapentin-to-become-a-controlled-substance-in-virginia/

https://lis.virginia.gov/cgi-bin/legp604.exe?191%2Bful%2BCHAP0214%2Bhil

[3]See https://law.lis.virginia.gov/vacode/title54.1/chapter34/section54.1-3455/

[4]Source: Department of Health Professions

[5]Pursuant 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."

[6]"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.

[7]§ 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

Agency's Response to Economic Impact Analysis: The Board of Pharmacy concurs with the economic impact analysis of the Department of Planning and Budget.

Summary:

Pursuant to Chapters 609 and 610 of the 2020 Acts of Assembly, the proposed amendments (i) define the term "practitioner" to include nurse practitioners or physician assistants for the purpose of issuance of a limited-use license and (ii) include the allowance for issuance of a limited-use permit for nonprofit facilities for the sale of Schedule VI drugs and devices used in administration of such drugs.

18VAC110-30-10. 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 Pharmacy.

"Controlled substance" means a drug, substance or immediate precursor in Schedules I through VI of the Drug Control Act.

"Licensee" means a practitioner who is licensed by the Board of Pharmacy to sell controlled substances.

"Personal supervision" means the licensee must be physically present and render direct, personal control over the entire service being rendered or acts being performed. Neither prior nor future instructions shall be sufficient nor shall supervision be rendered by telephone, written instructions, or by any mechanical or electronic methods.

"Practitioner" or "practitioner of the healing arts" means a doctor of medicine, osteopathic medicine or podiatry who possesses a current active license issued by the Board of Medicine. For the purpose of a limited-use permit for a nonprofit facility, a "practitioner" or "practitioner of the healing arts" may also mean a physician assistant with a current active license issued by the Board of Medicine or a nurse practitioner with a current active license issued by the Joint Boards of Nursing and Medicine.

"Sale" means barter, exchange, or gift, or offer thereof, and each such transaction made by any person, whether as an individual, proprietor, agent, servant or employee. It does not include the gift of manufacturer's samples to a patient.

"Special packaging" means packaging that is designed or constructed to be significantly difficult for children under five years of age to open or obtain a toxic or harmful amount of the controlled substance contained therein within a reasonable time and not difficult for normal adults to use properly, but does not mean packaging which all such children cannot open or obtain a toxic or harmful amount within a reasonable time.

"U.S.P.-N.F." means the United States Pharmacopeia-National Formulary.

18VAC110-30-20. Application for licensure.

A. Prior to engaging in the sale of controlled substances, a practitioner shall make application on a form provided by the board and be issued a license. After June 7, 2016, the practitioner shall engage in such sale from a location that has been issued a facility permit.

B. ~~In order to be eligible for a license to sell controlled substances, a practitioner shall possess a current, active license to practice medicine, osteopathic medicine, or podiatry issued by the Virginia Board of Medicine.~~ Prior to engaging in the sale of Schedule VI controlled substances, excluding the combination of misoprostol and methotrexate, and hypodermic syringes and needles for the administration of prescribed controlled substances from a nonprofit facility, a doctor of medicine, osteopathic medicine, or podiatry, a nurse practitioner, or a physician assistant shall make application on a form provided by the board and be issued a limited-use license.

C. Any disciplinary action taken by the Board of Medicine, or in the case of a nurse practitioner, by the Joint Boards of Nursing and Medicine, against the practitioner's license to practice shall constitute grounds for the board to deny, restrict, or place terms on the license to sell.

18VAC110-30-21. Application for facility permit.

A. After June 7, 2016, any location at which practitioners of the healing arts sell controlled substances shall have a permit issued by the board in accordance with § 54.1-3304.1 of the Code of Virginia. A licensed practitioner of the healing arts shall apply for the facility permit on a form provided by the board.

B. For good cause shown, the board may issue a limited-use facility permit when the scope, degree, or type of services provided to the patient is of a limited nature. The permit to be issued shall be based on conditions of use requested by the applicant or imposed by the board in cases where certain requirements of this chapter may be waived.

1. The limited-use facility permit application shall list the regulatory requirements for which a waiver is requested, if any, and a brief explanation as to why each requirement should not apply to that practice.

2. A policy and procedure manual detailing the type and volume of controlled substances to be sold and safeguards against diversion shall accompany the application.

3. The issuance and continuation of a limited-use facility permit shall be subject to continuing compliance with the conditions set forth by the board.

4. A limited-use facility permit may be issued to a nonprofit facility for the purpose of dispensing Schedule VI controlled substances, excluding the combination of misoprostol and methotrexate, and hypodermic syringes and needles for the administration of prescribed controlled substances.

C. The executive director may grant a waiver of the security system when storing and selling multiple strengths and formulations of no more than five different topical Schedule VI drugs intended for cosmetic use.

18VAC110-30-40. Acts to be performed by the licensee.

A. The selection of the controlled substance from the stock, any preparation or packaging of a controlled substance or the preparation of a label for a controlled substance to be transferred to a patient shall be the personal responsibility of the licensee.

1. Any compounding of a controlled substance shall be personally performed by the licensee or a registered pharmacy technician under the supervision of the licensee.

2. A licensee may supervise one person who may be present in the storage and selling area to assist in performance of pharmacy technician tasks, as set forth in § 54.1-3321 of the Code of Virginia, provided such person is not licensed to sell controlled substances and is either:

a. A pharmacy technician registered with the board; or

b. A licensed nurse or physician assistant who has received training in technician tasks consistent with training required for pharmacy technicians.

3. Unless using one of the board-approved training courses for pharmacy technicians, a licensee who uses a nurse or physician assistant to perform pharmacy technician tasks shall develop and maintain a training manual and shall document that such licensee has successfully completed general training in the following areas:

a. The entry of prescription information and drug history into a data system or other recordkeeping system;

b. The preparation of prescription labels or patient information;

c. The removal of the drug to be dispensed from inventory;

d. The counting or measuring of the drug to be dispensed to include pharmacy calculations;

e. The packaging and labeling of the drug to be dispensed and the repackaging thereof;

f. The stocking or loading of automated dispensing devices or other devices used in the dispensing process, if applicable; and

g. Applicable laws and regulations related to dispensing.

4. A licensee who employs or uses pharmacy technicians, licensed nurses or physician assistants to assist in the storage and selling area shall develop and maintain a site-specific training program and manual for training to work in that practice. The program shall include training consistent with that specific practice to include~~, but not be limited to,~~ training in proper use of site-specific computer programs and equipment, proper use of other equipment used in the practice in performing technician duties, and pharmacy calculations consistent with the duties in that practice.

5. A licensee shall maintain documentation of successful completion of the site-specific training program for each pharmacy technician, nurse or physician assistant for the duration of the employment and for a period of two years from date of termination of employment. Documentation for currently employed persons shall be maintained on site or at another location where the records are readily retrievable upon request for inspection. After employment is terminated, such documentation may be maintained at an off-site location where it is retrievable upon request.

B. Prior to the dispensing, the licensee shall:

1. Conduct a prospective drug review and offer to counsel a patient in accordance with provisions of § 54.1-3319 of the Code of Virginia; and

2. Inspect the prescription product to verify its accuracy in all respects, and place his initials on the record of sale as certification of the accuracy of, and the responsibility for, the entire transaction.

C. If the record of sale is maintained in an automated data processing system as provided in 18VAC110-30-200, the licensee shall personally place his initials with each entry of a sale as a certification of the accuracy of, and the responsibility for, the entire transaction.

18VAC110-30-270. Grounds for disciplinary action.

In addition to those grounds listed in § 54.1-3316 of the Code of Virginia, the board may revoke, suspend, refuse to issue or renew a license to sell controlled substances or may deny any application if it finds that the licensee or applicant has had his license to practice medicine, osteopathic medicine, or podiatry or license as a physician assistant or nurse practitioner suspended or revoked in Virginia or in any other state or no longer holds a current active license to practice in the Commonwealth of Virginia.

VA.R. Doc. No. R21-6380; Filed July 22, 2021, 4:09 p.m.

BOARD OF VETERINARY MEDICINE

Fast-Track Regulation

Title of Regulation: **18VAC150-20. Regulations Governing the Practice of Veterinary Medicine (amending 18VAC150-20-115, 18VAC150-20-121).**

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

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: September 15, 2021.

Effective Date: October 1, 2021.

Agency Contact: Leslie L. Knachel, Executive Director, Board of Veterinary Medicine, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 597-4130, FAX (804) 527-4471, or email leslie.knachel@dhp.virginia.gov.

Basis: Regulations are promulgated under the general authority of § 54.1-2400 of the Code of Virginia, which provides the Board of Veterinary Medicine the authority to promulgate regulations to administer the regulatory system. Specific authority to regulate veterinary technicians is found in §§ 54.1-3805 and 54.1-3806 of the Code of Virginia.

Purpose: The purpose of this regulatory action is to ensure that veterinary nurse degree holders are not excluded from licensure as veterinary technicians due solely to their program's terminology. The educational program in veterinary technology and the examination taken by graduates is the same

for veterinary technicians or veterinary nurses, so there is no difference in their preparation for practice or their demonstration of competency. Therefore, the health and safety of animals in Virginia would be equally protected in the care of persons with either degree or title.

Rationale for Using Fast-Track Rulemaking Process: The rulemaking is concurring with the American Veterinary Medical Association in accepting veterinary nurse designations as the same as veterinary technician designations. The action does not change the term veterinary technician nor does it affect veterinary technology programs in the Commonwealth. Since the intent is to expand access and availability to the profession and since the scope of practice is not affected, it is not expected to be controversial.

Substance: The substantive provisions of this regulatory action allow applicants to apply for registration as a veterinary technician with the board with a college or school transcript designating the words veterinary nurse or nursing and to allow applicants to apply for licensure by endorsement with the board if they have veterinary nurse credentials, licensing, or registration from another jurisdiction.

Issues: The primary advantage is the removal of any barriers to qualified applicants for licensure as veterinary technicians. Virginia has a shortage of technicians, who are vital to veterinary practices, so amendments that remove potential barriers are advantageous to persons who utilize veterinary services. There are no disadvantages to the public. The primary advantage to the department is continued recognition of qualified persons applying for licensure. The board approved the position statement on Veterinary Technician Terminology of the American Veterinary Medical Association, recognizing the use of the term veterinary nurse as a veterinary technician.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Veterinary Medicine (Board) proposes to amend the Regulations Governing the Practice of Veterinary Medicine to specify that a degree in "veterinary nursing" from an accredited program in veterinary technology may be accepted in satisfaction of the education required to gain licensure by either examination or endorsement as a veterinary technician. Also, for veterinary technician licensure by endorsement, the Board proposes to amend the regulation to specify that it would accept the experience of a person who has been practicing in another jurisdiction as a veterinary nurse.

Background. According to the Department of Health Professions (DHP), several accredited veterinary technology programs have changed the name of the degree awarded from "veterinary technology" to "veterinary nurse."[1] It has merely been a change in nomenclature, without changing the contents of the educational programs or the examination taken by graduates.[2]

Estimated Benefits and Costs. DHP has already implemented these clarifications in practice and accepts a veterinary nursing degree for veterinary technician licensure, and the experience of a person who has been practicing in another jurisdiction as a veterinary nurse for veterinary technician licensure by endorsement.[3] Thus, beyond preventing potential confusion among readers of the regulation, the proposal would not have substantial impact.

Businesses and Other Entities Affected. The proposed amendments potentially affect readers of the regulation. Also, the proposal particularly pertains to people who are interested in becoming licensed as a veterinary technician in the Commonwealth who have or are considering obtaining a degree in veterinary nursing, and people who have experience practicing as a veterinary nurse in another jurisdiction. According to DHP, thus far it has received fewer than five applications from persons with a "veterinary nurse" designation. However, as more programs adopt that title, this number is likely to increase.

The proposal does not produce any costs.

Small Businesses[4] Affected. The proposed amendments do not appear adversely affect small businesses.

Localities[5] Affected.[6] The proposed amendments do not disproportionately affect any particular localities. The proposed amendments do not introduce costs for local governments.

Projected Impact on Employment. The proposed amendments do not affect total employment.

Effects on the Use and Value of Private Property. The proposal does not substantively affect the use and value of private property. The proposal does not affect costs related to the development of real estate.

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[1]See https://townhall.virginia.gov/L/GetFile.cfm?File=Meeting\33\31189\Minutes_DHP_ 31189_v1.pdf

[2]See the Purpose section the Agency Background Document: https://townhall.virginia.gov/l/GetFile.cfm?File=33\5703\9231\AgencyStatement_DHP_9231_v1.pdf

[3]Source: DHP

[4]Pursuant 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.

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

Agency's Response to Economic Impact Analysis: The Board of Veterinary Medicine concurs with the result of the analysis of the Department of Planning and Budget.

Summary:

The amendments (i) allow the licensure requirements for veterinary technicians to accept a degree from an accredited program in veterinary technology that results in a degree in veterinary nursing and (ii) allow licensure by endorsement requirements to accept the credential of a person who has been practicing in another jurisdiction as a

veterinary nurse. These changes reflect the board's approval of the position statement of the American Veterinary Medical Association on terminology to use "veterinary nurse" as the same value as "veterinary technician."

18VAC150-20-115. Requirements for licensure by examination as a veterinary technician.

A. The applicant, in order to be licensed by the board as a veterinary technician, shall:

1. Have received a degree in veterinary technology or veterinary nursing from a college or school accredited by the AVMA or the CVMA.

2. Have filed with the board the following documents:

a. A complete application on a form obtained from the board;

b. An official copy, indicating a veterinary technology or veterinary nursing degree, of the applicant's college or school transcript; and

c. Verification that the applicant is in good standing by each board in another state or United States jurisdiction from which the applicant holds a license, certification, or registration to practice veterinary technology or veterinary nursing.

3. Have passed the Veterinary Technician National Examination approved by the AAVSB or any other board-approved, national board examination for veterinary technology with a score acceptable to the board.

4. Sign a statement attesting that the applicant has read, understands, and will abide by the statutes and regulations governing the practice of veterinary medicine in Virginia.

5. Have submitted the application fee specified in 18VAC150-20-100.

6. Have committed no acts that would constitute a violation of § 54.1-3807 of the Code of Virginia.

B. The application for licensure shall be valid for a period of one year after the date of initial submission, after which time a new application and fee shall be required.

18VAC150-20-121. Requirements for licensure by endorsement for veterinary technicians.

In its discretion, the board may grant a license by endorsement to an applicant who is licensed, certified, or registered to practice as a veterinary technician or a veterinary nurse in another jurisdiction of the United States, provided that the applicant:

1. Holds at least one current and unrestricted license, certification, or registration issued by the regulatory entity in another jurisdiction of the United States and that he is not a respondent in any pending or unresolved board action in any jurisdiction;

2. Provides documentation of having been regularly engaged in clinical practice as a licensed, certified, or registered veterinary technician or veterinary nurse for at least two of the past four years immediately preceding application;

3. Has received a degree in veterinary technology or veterinary nursing from a college or school accredited by the AVMA or the CVMA or has passed the Veterinary Technician National Examination approved by the AAVSB or any other board-approved national board examination for veterinary technology with a score acceptable to the board;

4. Provides documentation of completion of at least 16 hours of continuing education requirements during the preceding four years;

5. Submits the application fee specified in 18VAC150-20-100 and a complete application on a form obtained from the board;

6. Signs a statement attesting that the applicant has read, understands, and will abide by the statutes and regulations governing the practice of veterinary medicine in Virginia; and

7. Has committed no acts that would constitute a violation of § 54.1-3807 of the Code of Virginia.

VA.R. Doc. No. R21-6717; Filed July 22, 2021, 4:14 p.m.

TITLE 20. PUBLIC UTILITIES AND TELECOMMUNICATIONS

STATE CORPORATION COMMISSION

Forms

REGISTRAR'S 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.

Title of Regulation: **20VAC5-340. Rules Governing Shared Solar Program.**

Agency Contact: Austin Skeens, Attorney, Public Utility Regulation, State Corporation Commission, Tyler Building, 1300 East Main Street, P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9140, or email austin.skeens@scc.virginia.gov.

FORMS (20VAC5-340)

Low-Income Subscription Plan Form (eff. 7/2021)

Standard Consumer Disclosure Form (eff. 7/2021)

VA.R. Doc. No. R21-6892; Filed July 28, 2021, 9:59 a.m.

TITLE 22. SOCIAL SERVICES

DEPARTMENT FOR THE BLIND AND VISION IMPAIRED

Proposed Regulation

Title of Regulation: **22VAC45-30. Regulations Governing the Sale and Distribution of Goods and Articles Made by Blind Persons (amending 22VAC45-30-10 through 22VAC45-30-110).**

Statutory Authority: § 51.5-65 of the Code of Virginia.

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: October 15, 2021.

Agency Contact: Susan K. Davis, MS, CRC, Regulatory Coordinator, Department for the Blind and Vision Impaired, 397 Azalea Avenue, Henrico, VA 23227, telephone (804) 371-3140, FAX (804) 371-3157, or email susan.davis@dbvi.virginia.gov.

Basis: Statutory authority comes from § 51.5-65 of the Code of Virginia, which identifies the functions, duties, and powers of the Commissioner of the Department for the Blind and Vision Impaired to adopt regulations to carry out the applicable provisions of the chapter.

Purpose: This regulation facilitates identification of goods and articles made by persons who are blind and organizations established to assist persons who are blind in the sale of goods or articles by providing a means of authenticating the source of such goods and articles. The regulation prevents misrepresentation of these same persons thereby protecting such persons' safety and welfare.

Substance: This regulatory action updates the agency name, deletes references to repealed sections of the Code of Virginia, and aligns language in 22VAC45-30 with §§ 51.5-101 through 51.5-105 of the Code of Virginia.

Issues: The department recognizes the advantage to the agency and public of amending 22VAC45-30 to reflect the relevant sections. This regulatory action clarifies the agency name and aligns the regulation with the Code of Virginia, which assures that citizens of the Commonwealth, government officials, and other members of the public do not experience confusion when seeking to understand the relevant Virginia Administrative Code and Code of Virginia sections requirements. This regulatory action poses no disadvantages to the public or to the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Department for the Blind and Vision Impaired (DBVI) proposes to correct the agency name, replace the incorrectly used word "permit" with the word "registration," update references to the Code of Virginia, and clarify the language in general.

Background. This regulation requires any person or business engaged in the manufacture, sale, or distribution of any goods purporting to have been made by a person who is blind to register with DBVI in order to use a label or symbol designed or approved by DBVI to identify such goods and articles as made by blind persons. Registration must be renewed annually. No fees are required to register. The regulation does not apply to blind persons selling their own produced goods.

In essence, this regulation facilitates identification of goods and articles made by persons who are blind and organizations established to assist persons who are blind in the sale of goods or articles by providing a means of authenticating the source of such goods and articles; the regulation prevents misrepresentation of these same persons.

Product labeling is a tool to inform the consumers about the maker of the product so that if they have a preference to purchase goods made by blind or vision impaired individuals or their willingness to pay is higher for such goods they are able to do so with the information provided by the labeling allowed under this regulation.

Estimated Benefits and Costs. The proposed changes include: updating references to the Code of Virginia, replacing the incorrectly used word "permit" with the correct word "registration," correcting the agency name, and clarifying the language in general.

None of the proposed changes appear to have any impact on how this regulation would be implemented. Thus, no economic effect is expected from the proposed changes other than improving the accuracy and the clarity of the regulatory text.

Businesses and Other Entities Affected. Using the American Community Survey 2018 five-year estimates and the Weldon Cooper Center July 2019 population estimates, DBVI estimates there are 95,684 individuals between the ages 18 to 64, and 80,176 individuals 65 and older with blindness or vision loss in Virginia. However, DBVI have received no applications for registration in at least 20 years.[1] Thus, the proposed changes are not expected to affect any entities at this time. In addition, the proposed changes do not introduce any costs or other effects. So, no adverse impact[2] is indicated and no entity appears to be disproportionally affected.

Small Businesses[3] Affected. The proposed amendments do not adversely affect small businesses.

Localities[4] Affected.[5] The proposed amendments do not affect localities.

Projected Impact on Employment. The proposed amendments do not affect total employment.

Effects on the Use and Value of Private Property. The proposed amendments do not affect the use and value of private property.

[1]DBVI reports that it considered repealing this regulation. However, § 51.5-101 of the Code of Virginia specifically requires that agency adopt a regulation for administration of the statute.

[2]Adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined.

[3]Pursuant 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."

[4]"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.

[5]§ 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

Agency's Response to Economic Impact Analysis: The Department for the Blind and Vision Impaired concurs with the economic impact analysis performed by the Department of Planning and Budget.

Summary:

The proposed amendments (i) update references to the Code of Virginia, (ii) replace the incorrectly used word "permit" with the correct word "registration,"(iii) correct the agency name, and (iv) clarify language in general.

22VAC45-30-10. General.

It is the policy of the Commonwealth of Virginia through the Department for the ~~Visually Handicapped~~ Blind and Vision Impaired to assist ~~blind~~ persons who are blind and organizations established to aid ~~blind~~ persons who are blind in the sale of goods and articles ~~which~~ that are the product of ~~a blind craftsman's~~ the labor of a person who is blind by providing a means of authenticating the source of such goods and articles and by preventing misrepresentation.

In implementing this policy, this chapter shall govern and form the basis for enforcing the policy under ~~§ 63.1-167~~ §§ 51.5-101 through 51.5-105 of the Code of Virginia.

22VAC45-30-20. Application for registration ~~and permit~~.

~~Every~~ A person, firm, or organization engaged in the manufacture, sale, or distribution in the Commonwealth of Virginia of any goods ~~or~~ and articles purporting or in any manner represented to have been made by a person who is blind ~~persons~~ shall apply to the Department for the ~~Visually Handicapped~~ Blind and Vision Impaired (department) for registration ~~and permit~~ to use a label or symbol designed or approved by the department to identify such goods and articles as made by blind persons.

22VAC45-30-30. Application requirements.

~~Every such~~ The application shall ~~be made on forms prescribed by the department and shall~~ disclose fully the identity and address of the applicant~~;~~ and include a descriptive list of ~~all~~ goods and articles proposed to be ~~manufactured, sold, or distributed by the applicant as "blind made" products; and the proposed sale price of each such item. Each~~ made by a person who is blind and that may be labeled as "Made by a person who is blind." The applicant shall furnish ~~any~~ additional information requested by the ~~department~~ Department for the Blind and Vision Impaired (department) relevant to compliance by the applicant with the provisions of ~~said statute~~ § 51.5-60 of the Code of Virginia, including a medical eye report documenting that the person making the goods is a blind person as described in § 51.5-60. This documentation shall be retained by the applicant for the duration the applicant wishes to sell the goods and shall be updated the earlier of every two years or when a significant change in the person's vision occurs. Persons who are blind shall perform at least 75% of the labor to produce the product.

The department shall verify, or require verification of, all information submitted by the application; and to this end, may require the applicant to submit samples for examination and may cause its authorized representatives to visit the site of manufacture for inspection.

22VAC45-30-40. Product requirements.

No organization representing itself as established for the purpose of selling ~~"blind made"~~ products made by persons who are blind exclusively shall carry in stock or sell any merchandise ~~which is not made by blind persons~~ where less than 75% of the direct labor to produce the product was performed by persons who are blind and so identified. ~~Any~~ An organization violating this section shall be ineligible for registration and permit under ~~§ 63.1-167~~ §§ 51.5-101 through 51.105 of the Code of Virginia. The registration ~~and permit~~ of ~~any~~ an organization ~~which has been registered and issued a permit under said statute~~ shall be suspended upon a violation of this section, and it may not be ~~revalidated~~ reregistered as long as such violation continues.

22VAC45-30-50. Labeling.

No goods or articles made in this Commonwealth or elsewhere may be displayed, advertised, offered for sale, or sold in this Commonwealth upon the representation that ~~the same~~ they are made by ~~blind~~ persons who are blind unless such goods or articles are identified as such by a label or symbol prescribed or approved by the ~~department~~ Department for the Blind and Vision Impaired (department). The "Skilcraft" trademark registered by National Industries for the Blind is acceptable by the department as an approved identification.

All such goods shall be so labeled as to disclose the name of the manufacturer and the place of manufacture. Agencies manufacturing "Skilcraft" products approved by National Industries for the Blind may use the "shop identification code number" assigned by National Industries for the Blind in lieu of the name and address of the manufacturer.

22VAC45-30-60. Duration of ~~registrations and permits~~ registration.

~~All registrations and permits~~ A registration issued under ~~§ 63.1-167~~ §§ 51.5-101 through 51.5-105 of the Code of Virginia and ~~regulations~~ this chapter shall be valid for one year ~~only~~, but ~~they~~ it may be renewed upon application in writing

~~made~~ submitted to the department not less than 60 days prior to ~~the~~ its expiration ~~of such year~~. If an application for registration renewal is not ~~made~~ submitted at least 60 days prior to such expiration, the renewal may be withheld for 60 days following ~~such~~ submission of the application.

22VAC45-30-70. Suspension of registration ~~or permit~~.

Upon receipt of information indicating violation of any of the provisions of ~~§ 63.1-167~~ §§ 51.5-101 through 51.5-105 of the Code of Virginia or of this chapter by ~~any~~ a person, firm, or organization registered ~~and issued a permit~~, the ~~department~~ Department for the Blind and Vision Impaired may suspend such registration ~~and permit~~ after giving such person, firm, or organization an opportunity, upon not less than 10 days' written notice ~~in writing~~, to show cause why such registration ~~and permit~~ should not be suspended.

Unless and until such suspension is rescinded, the ~~holder of the permit~~ suspended person, firm, or organization shall desist from the sale or distribution of any goods ~~or~~ and articles ~~made or~~ represented to be made by ~~blind~~ persons who are blind.

22VAC45-30-80. Soliciting prohibited.

~~The use of a permit~~ Using the registration issued pursuant to ~~§ 63.1-167~~ §§ 51.5-101 through 51.5-105 of the Code of Virginia and this chapter as a means of soliciting contribution of money is expressly forbidden. The registration ~~and permit~~ of any person, firm, or organization found to be so soliciting contributions may be suspended by the ~~department~~ Department for the Blind and Vision Impaired for not more than 90 days for an initial offense and indefinitely for a ~~repeated~~ subsequent offense.

22VAC45-30-90. Grounds for denying registration ~~or permit~~.

Exploitation of the public by ~~excessive prices, or by~~ indicating or implying that ~~any goods~~ a good or ~~articles are~~ article is being sold on behalf of the ~~department~~ Department for the Blind and Vision Impaired, or that the proceeds ~~will~~ shall accrue to ~~blind people~~ persons who are blind, when ~~such~~ it is not ~~the case~~ true, shall be grounds for denying registration ~~and permit~~.

22VAC45-30-100. Profit-making statement.

~~There shall be written~~ The following statement shall appear on the face of ~~every permit~~ a registration issued by the Department for the Blind and Vision Impaired (department) to a business or organization that is essentially engaged in profit making ~~the following statement~~: "This is a profit making enterprise."

22VAC45-30-110. Applicability of chapter.

This chapter shall not apply to a ~~blind~~ person who is blind who manufactures and sells products of his own labor only, nor ~~to workshops~~ production facilities operated by the ~~department, nor to the manufacturer of products for the Military Resale Program or other U.S. government sales made in accordance with the "Schedule of Blind made Products" prepared by the General Services Administration, nor to any Lion's Club or other civic organization under a sales contract negotiated with the department for the sale of products manufactured by the workshops operated by the department~~ Department for the Blind and Vision Impaired.

~~Lions Clubs and other civic organizations engaging in the sale of "blind made" products not produced by the workshops operated by the department shall comply with § 63.1-167 of the Code of Virginia and this chapter.~~

~~No distributor of goods at retail shall be required to register and obtain a permit for the sale of "blind made" products if the manufacturer or wholesale distributor of such products has registered and obtained a permit pursuant to § 63.1-167 of the Code of Virginia and this chapter, and if such products are labeled and identified as required by § 63.1-167 of the Code of Virginia and this chapter.~~

VA.R. Doc. No. R21-6345; Filed July 22, 2021, 4:07 p.m.

Proposed Regulation

Titles of Regulations: **22VAC45-70. Provision of Services in Rehabilitation Teaching (amending 22VAC45-70-10 through 22VAC45-70-80).**

22VAC45-80. Provision of Independent Living Rehabilitation Services (repealing 22VAC45-80-10 through 22VAC45-80-140).

Statutory Authority: § 51.5-60 of the Code of Virginia.

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: October 15, 2021.

Agency Contact: Susan K. Davis, MS, CRC, Regulatory Coordinator, Department for the Blind and Vision Impaired, 397 Azalea Avenue, Richmond, VA 23227, telephone (804) 371-3184, or email susan.davis@dbvi.virginia.gov.

Basis: Statutory authority comes from § 51.5-65 of the Code of Virginia, which identifies the functions, duties, and powers of the Commissioner of the Department for the Blind and Vision Impaired (DBVI) to adopt regulations to carry out the applicable provisions of the chapter.

Purpose: The purpose of this regulatory action is to amend 22VAC45-70 to accurately reflect DBVI's Rehabilitation Teaching/Independent Living (RT/IL) Program under which rehabilitation teaching and independent living services to eligible individuals who are blind, vision impaired, or deafblind are provided.

Additionally, this regulatory action will repeal 22VAC45-80. Among other services described in 22VAC45-80 is the operation of independent living centers for people who are blind and have secondary disabilities. DBVI does not operate independent living centers. DBVI provides independent living services through its RT/IL Program in each of six regional

offices and the Virginia Rehabilitation Center for the Blind and Vision Impaired.

The action protects and improves the public safety, health, and welfare of individuals applying for or receiving rehabilitation teaching and independent living services through the DBVI by ensuring services are provided in a consistent and timely manner.

Substance: Amendments include (i) changing the title of the regulation from "Provision of Services in Rehabilitation Teaching" to "Regulations Governing the Provision of Rehabilitation Teaching and Independent Living Services"; (ii) updating the agency name; (iii) removing outdated definitions and adding new definitions that more fully describe certain terms or that reflect rehabilitation teaching and independent living services provided under DBVI's RT/IL Program; (iv) adding the words "independent living" throughout the regulation to clarify that those services are included along with rehabilitation teaching; (v) clarifying referral and application procedures, eligibility criteria, and determination requirements; and (vi) updating the name of the plan that specifies the services an individual will receive, the scope of services available to eligible individuals, and financial participation an individual may have in costs of services.

Issues: DBVI is the agency in the Commonwealth charged with updating and maintaining relevant regulations that accurately identify and describe services for eligible individuals who are blind, vision impaired, or deafblind. 22VAC45-70 and 22VAC45-80 contain redundant information and no longer accurately reflect the way DBVI provides rehabilitation teaching and independent living services. For example, federal funding for the provision of independent living services as described in 22VAC45-80 ceased to be available in 2000 and these services are now provided through the RT/IL Program, which is funded primarily through state funds. The primary advantage of this action is that it streamlines and updates 22VAC45-70 to include relevant portions of 22VAC45-80 to reflect current practice and repeals 22VAC45-80, which no longer will be necessary. There are no disadvantages to the public, agency, or Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Pursuant to findings from a periodic review of both chapters, the Department for the Blind and Vision Impaired (DBVI) seeks to revise 22VAC45-70 (chapter 70) and repeal 22VAC45-80 (chapter 80) in its entirety.[1] The independent living services that are addressed in chapter 80 are no longer being provided in the same way that they were when the regulation was first promulgated, and have instead been folded into the provision of rehabilitation training covered by chapter 70. Thus, DBVI seeks to amend chapter 70 to update the department name, certain definitions, and the title and content of the chapter to align with current DBVI practices. The agency would also repeal chapter 80 since its provisions would be redundant. Background. Pursuant to the periodic review, DBVI proposes to make a number of changes to chapter 70. The most significant changes are summarized as follows:

1. Changing the title of the regulation from "Provision of Services in Rehabilitation Teaching" to "Regulations Governing the Provision of Rehabilitation Teaching and Independent Living Services."

2. Updating the agency name from "Department for the Visually Impaired" to the current name, "Department for the Blind and Vision Impaired."

3. Updating the definition of blindness and adding a definition of deafblind to reflect current practice.

4. Adding the words, "and independent living" throughout the regulation to clarify that those services are included along with rehabilitation teaching.

5. Renaming "Individualized Written Rehabilitation Program" to "Rehabilitation Teaching/Independent Living Program Plan" (RT/IL plan) to reflect that individualized plans would include both types of services.

6. Sections 20, 30, 40, 60 and 70 would be amended to update the referral process, eligibility criteria, eligibility determination process, development of the RT/IL plan, and scope of services, respectively. The proposed amendments to these sections would largely update the language to match current practice.

7. In section 30, optometrists would be added as a category of professionals who would be authorized to determine blindness for the purpose of eligibility for services. Currently, the regulation only authorizes ophthalmologists to make such determinations. However, DBVI reports that optometrists are included in eligibility determinations for their other programs and that this was merely an oversight.

8. Finally, eligibility for financial participation in cost of services (22VAC45-70-80) would be revised to include individuals with a household income that exceeds 80 percent of the federally estimated median income for Virginia. The threshold for financial participation in 22VAC45-70-80 is currently 100% of the median income, whereas the corresponding threshold in 22VAC45-80-80 (which would be repealed) has always been 80%.

Although item 7 suggests that the eligibility threshold for financial participation would be lowered for some individuals receiving rehabilitation training, DBVI reports that the proposed amendment would only reflect its current practice, which has been in place since 2012. Specifically, DBVI reports that the federal funds that once supported the Independent Living services identified in chapter 80 were no longer available after about 2000. Since then, DBVI has coordinated and provided independent living services as part of its Rehabilitation Teaching/Independent Living (RT/IL) Program and as ancillary services through its Vocational Rehabilitation Services Program.[2] Currently, the RT/IL program is fully state funded and serves individuals up to age 55.[3]

Estimated Benefits and Costs. The proposed amendments to chapter 70 as well as the repeal of chapter 80 would clarify various aspects of DBVI's RT/IL program as it currently stands, which would benefit readers of the regulation. The proposed changes would not create any new costs, either for individuals participating or seeking to participate in the RT/IL program or for the licensed professionals who provide such training and services. Lastly, by repealing chapter 80, this regulatory action would also contribute to Virginia's regulatory reform efforts by eliminating a redundant and unnecessary regulation.

Businesses and Other Entities Affected. DBVI reports that roughly 1,400 individuals were served under the RT/IL program in 2020, with roughly 800-900 individuals in the program on any given date. In general, services are provided internally by DBVI employees, including certified Rehabilitation Teachers, Orientation and Mobility Instructors, Vocational Rehabilitation Counselors, and Technology Technicians who have Master's degrees and are either licensed or certified by various organizations that have oversight over those particular professions. DBVI employees operate out of six field offices (Bristol, Roanoke, Stanton, Fairfax, Norfolk, and Richmond) and often work with individuals in their homes to develop and implement their individualized RT/IL plans. As mentioned, both individuals receiving or seeking to receive RT/IL program services, as well as providers of these services would benefit from clear and accurate information in the regulation. Individuals with a household income between 80%-100% of the federal median income would now be required to financially participate in their rehabilitation training. However, as mentioned previously this requirement has been in effect since 2012.

Small Businesses[4] Affected. Since most services are provided directly by DBVI employees, the proposed amendments are unlikely to impact businesses, including small businesses.

Localities[5] Affected.[6] The proposed amendments do not introduce new costs for local governments and are unlikely to affect any locality in particular.

Projected Impact on Employment. The proposed amendments are unlikely to affect the employment by DBVI or by vendors of low vision aids and rehabilitation technology.

Effects on the Use and Value of Private Property. The proposed amendments are unlikely to affect the use and value of private property. Real estate development costs are not affected.

[1]More information about the periodic reviews can be found on the Virginia Regulatory Town Hall (Town Hall) at https://townhall.virginia.gov/L/ViewAction.cfm?actionid=5476.

[2]See the Agency Background Document at https://townhall.virginia.gov/l/GetFile.cfm?File=47\5476\9153\AgencyStatement_DBVI_9153_v2.pdf. DBVI further clarified that, "there is no prohibition on how an agency determines to use or not use means testing to purchase goods and services to individuals receiving RT/IL services. However, because funds are quite limited in the RT/IL program, the agency elected to change the family income eligibility percentage for participation in cost of services from 100% to 80% of the federally estimated median income agency sometime around 2011/2012."

[3]Individuals over the age of 55 are covered by the Older Bling Grant, which is covered by limited federal funds and the required state match.

[4]Pursuant 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.

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

Agency's Response to Economic Impact Analysis: The Department for the Blind and Vision Impaired concurs with the economic impact analysis performed by the Department of Planning and Budget.

Summary:

The proposed amendments (i) change the title of the regulation from "Provision of Services in Rehabilitation Teaching" to "Regulations Governing the Provision of Rehabilitation Teaching and Independent Living Services"; (ii) update the agency name throughout the regulation; (iii) remove outdated definitions and add new definitions that more fully describe certain terms or that reflect rehabilitation teaching and independent living services provided under the department's Rehabilitation Teaching/Independent Living *Program; (iv) add the words "independent living" throughout the regulation to clarify that those services are included along with rehabilitation teaching; (v) clarify referral and application procedures, eligibility criteria, and determination requirements; and (vi) update the name of the plan that specifies the services an individual will receive, the scope of services available to eligible individuals, and financial participation an individual may have in costs of service.*

Chapter 70

Regulations Governing the Provision of ~~Services in~~ Rehabilitation Teaching and Independent Living Services

~~Part I~~

~~Introduction~~

22VAC45-70-10. Definitions.

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

"Assessment" means the systematic evaluation or identification of the consumers' need for and ability to benefit from services.

~~"Blindness, legal blindness" means the condition as defined in §§ 63.1-142 and 63.1-166 of the Code of Virginia.~~

~~"Consumer" means any person undergoing an assessment or receiving a service provided by the Rehabilitation Teaching Program of the Department for the Blind and Vision Impaired.~~

"Blind person" means an individual who has central visual acuity of 20/200 or less in the better eye, as measured with best correction, or a limitation in the field of vision in the better eye, such that the widest diameter of the visual field subtends an angle of 20 degrees or less, as defined in § 51.5-60 of the Code of Virginia.

"DBVI" means the Department for the Blind and Vision Impaired.

"Deafblind person" means an individual:

1. a. Who has central visual acuity of 20/200 or less in the better eye with corrective lenses, or a field defect such that the peripheral diameter of visual fields subtends an angular distance no greater than 20 degrees, or a progressive visual loss having a prognosis leading to one or both of the conditions;

b. Who has a chronic hearing impairment so severe that most speech cannot be understood with optimum amplification, or a progressive hearing loss having a prognosis leading to this condition; and

c. For whom the combination of impairments described in subdivisions 1 a and 1 b of this definition cause extreme difficulty in attaining independence in daily life activities, achieving psychological adjustment, or obtaining a vocation; and

2. Who, despite the inability to be measured accurately for hearing and vision loss due to cognitive or behavioral constraints or both, can be determined through functional and performance assessments to have severe hearing and visual disabilities that cause extreme difficulty in attaining independence in daily life activities, achieving psychological adjustment, or obtaining vocational objectives.

"Department" means the Department for the Blind and Vision Impaired.

"Financial needs assessment' means an assessment to consider the financial need of an individual who is applying for or receiving rehabilitation teaching and independent living services to determine the extent of the individual's participation in the costs of services.

"Independent living" means control over one's life based on the choice of acceptable options that minimize reliance on others in making decisions and performing everyday activities. This includes managing one's affairs, participating in day-to-day life in the community, fulfilling a range of social roles, making decisions that lead to self-determination, and the minimization of physical and psychological dependence on others.

"~~Individualized Written~~ Rehabilitation Teaching/Independent Living Program ~~(IWRP)~~ Plan" or ("Plan") means a written program of rehabilitation teaching services identified during the assessment for each ~~consumer~~ individual determined eligible for services by ~~this program~~ the Rehabilitation Teaching/Independent Living Program.

"Reasonable expectation" means that rehabilitation teaching and independent living services are anticipated to significantly assist ~~a consumer to improve~~ an individual to improve his ability to cope with blindness and function more independently.

"Rehabilitation teaching" means the process of guiding and instructing a blind, visually impaired ~~consumer~~, or deafblind person through an individualized plan of instruction designed to develop and raise the level of adaptive coping skills and functional independence.

"Severely visually impaired" means vision less than 20/70 in the better eye with correction or a field restricted to 70 degrees or less in the better eye.

~~Part II~~
~~Referral~~

22VAC45-70-20. Referral and application.

A. To be considered for rehabilitation teaching and independent living services, DBVI must obtain the following information ~~must be obtained~~ from the individual seeking services:

1. Name and address;

2. Date of birth and ~~sex~~ gender;

3. Disability; and

4. Date of referral.

~~The department~~ DBVI shall expeditiously process ~~persons~~ the application of an individual who is referred for rehabilitation teaching and independent living services.

B. ~~An~~ DBVI shall conduct an assessment ~~by the Department for the Blind and Vision Impaired is required of each person~~ of the rehabilitation teaching and independent living needs of an individual who applies for ~~rehabilitation teaching~~ services. The assessment is limited to ~~that~~ information that is necessary to determine eligibility for rehabilitation teaching and independent living services consistent with 22VAC45-70-30 ~~and to determine which rehabilitation teaching services are needed~~.

~~Part III~~
~~Eligibility~~

22VAC45-70-30. Eligibility for rehabilitation teaching and independent living services.

A. Eligibility shall be determined without regard to sex, sexual orientation, gender identity, race, creed, color, or national origin. No individual shall be excluded or found ineligible solely on the basis of the type of disability or on the basis of age. No residence requirement shall be imposed that

excludes from services any individual who is presently in the Commonwealth.

B. To be eligible for rehabilitation teaching and independent living services, ~~a consumer~~ an individual must have a visual limitation that constitutes or results in a substantial impediment to personal independent functioning~~. A consumer~~, and there must be a reasonable expectation that rehabilitation teaching and independent living services will significantly assist the individual to improve his ability to cope with blindness and to function more independently. An individual has a visual limitation if ~~one or more of the following criteria are met~~ the individual:

1. ~~Legal blindness~~ Is a "blind person" as defined in 22VAC45-70-10;

2. ~~20/100~~ Has distance vision of 20/70 to 20/200 ~~distance vision~~ in the better eye with correcting glasses or a field limitation to 30 degrees or less in the better eye, ~~and if the person~~ has been unable to adjust to the loss of vision, and ~~if it is~~ has been determined by the rehabilitation teacher t~~hat the person is~~ to be in need of the specialized services available through the ~~Department for the Blind and Vision Impaired's~~ DBVI rehabilitation teaching and independent living program; or

3. ~~Night~~ Has night blindness or a rapidly progressive eye condition which, in the opinion of a qualified ophthalmologist or optometrist, will reduce the distance vision to 20/200 or less.

~~B. A reasonable expectation that rehabilitation teaching services will significantly assist the consumer to improve his ability to cope with blindness and to function more independently.~~

22VAC45-70-40. Eligibility determination.

Prior to or simultaneously with acceptance of ~~a consumer~~ an individual for rehabilitation teaching and independent living services, there shall be a determination of eligibility; a case narrative shall state the basis for the ~~visual~~ eligibility determination and a reasonable expectation that rehabilitation teaching ~~will significantly~~ and independent living services shall assist the ~~consumer in achieving or maintaining functional independence~~ individual to improve his ability to cope with blindness and to function more independently. When ~~a consumer~~ an individual is determined ineligible for rehabilitation teaching services and independent living services, the rehabilitation teacher shall inform the ~~consumer~~ individual of the ineligibility determination, stating the reason ~~or reasons~~. This may be done during a personal contact or by a letter.

22VAC45-70-60. The ~~Individualized Written~~ Rehabilitation Teaching and Independent Living Program ~~(IWRP)~~ (Plan).

Initial plan development.

1. The ~~IWRP~~ Plan shall specify the rehabilitation teaching and independent living services that the ~~consumer~~ individual and DBVI ~~instructor~~ rehabilitation teacher jointly determine are necessary to ~~raise~~ increase the individual's level of adaptive coping skills and functional independence.

2. The ~~IWRP~~ Plan shall be initiated after determination of eligibility and periodically updated to include additional rehabilitation teaching and independent living services that are needed by the ~~consumer~~ individual.

3. Rehabilitation teaching and independent living services shall be provided in accordance with ~~IWRP~~ the Plan.

22VAC45-70-70. Scope of rehabilitation teaching and independent living services.

Services provided through the rehabilitation teaching ~~services~~ and independent living program may include:

1. Counseling to determine the ~~consumer's~~ individual's need for specific rehabilitation teaching and independent living services.

2. Referral to and information regarding resources and programs ~~that~~, internal and external to DBVI, which might benefit the ~~consumer~~ individual.

3. Counseling to assist the ~~consumer~~ individual to cope with ~~visual~~ vision loss.

4. Provision of low vision services in accordance with the Regulations Governing Low Vision, 22VAC45-110.

5. Instruction in the following areas:

a. Personal management skills or activities of daily living;

b. Home management skills;

c. Communication skills, including reading and writing braille, typing, script writing, and use of electronic equipment and technology;

d. Other appropriate adaptive coping skills~~, i.e.,~~ to facilitate leisure and recreational activities; and

e. Information and instruction in the acquisition of and use of adaptive equipment.

~~Part V~~
~~Financial Participation~~

22VAC45-70-80. Financial participation in cost of services.

A. ~~The Department for the Blind and Vision Impaired~~ DBVI has elected to uniformly apply a financial needs assessment for persons receiving purchased rehabilitation teaching and independent living services and goods in the Commonwealth. Purchased services and goods may be provided at no cost to the recipient who is ~~legally~~ a blind person if the family's income is less than ~~100%~~ 80% of the federally estimated median income for Virginia, and if the family's assets are less than 50% of the federally estimated median income as determined by the United States Department of Health and

Human Services, Family Support Administration. ~~The Department for the Blind and Vision Impaired will~~ DBVI shall review and change its financial participation levels to match the ~~above-referenced~~ estimated median income level ~~every third year~~ annually.

B. There ~~is~~ shall be no financial participation in cost of services required for the assessment, counseling, low vision exams, information and referral, and instructional services provided through the rehabilitation teaching ~~services~~ and independent living program.

~~C. Consumers must be both legally blind and demonstrate financial need as determined by the financial needs assessment in order to receive any purchased services or goods other than a low vision exam.~~

~~D.~~ Allowable deductions from income.

1. Expenses that may be deducted from family income on the financial needs assessment are unusual medical expenses and the education of ~~a consumer~~ the individual or family member to attend a private or public educational facility. Medical expenses ~~such as~~, including routine doctors' visits and hospital insurance premiums, may not be deducted.

2. When the ~~consumer's~~ individual's gross family income, liquid assets, or both, exceed the financial ~~eligibility~~ need requirement after allowable deductions have been considered, the ~~consumer~~ individual and his family are required to apply the excess toward the cost of those services provided by rehabilitation teaching and independent living services for which financial need is considered.

VA.R. Doc. No. R21-6293; Filed July 22, 2021, 4:09 p.m.

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.

DEPARTMENT FOR AGING AND REHABILITATIVE SERVICES

Title of Document: DRS Policy and Procedure Manual Select Policies 2021.

Public Comment Deadline: September 15, 2021.

Effective Date: September 16, 2021.

Agency Contact: Leah Mills, Policy Analyst, Department for Aging and Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, VA 23229, telephone (804) 662-7610, or email leah.mills@dars.virginia.gov.

* * *

Title of Document: Nutrition Education Service Standard.

Public Comment Deadline: September 15, 2021.

Effective Date: October 1, 2021.

Agency Contact: Elizabeth Patacca, Administrative Staff Assistant, Department for Aging and Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, VA 23229, telephone (804) 726-6625, or email elizabeth.patacca@dars.virginia.gov.

BOARD OF AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY
BOARD OF COUNSELING
BOARD OF DENTISTRY
BOARD OF FUNERAL DIRECTORS AND EMBALMERS
BOARD OF HEALTH PROFESSIONS
DEPARTMENT OF HEALTH PROFESSIONS
BOARD OF MEDICINE
BOARD OF NURSING
BOARD OF LONG-TERM CARE ADMINISTRATORS
BOARD OF OPTOMETRY
BOARD OF PHARMACY
BOARD OF PHYSICAL THERAPY
BOARD OF PSYCHOLOGY
BOARD OF SOCIAL WORK
BOARD OF VETERINARY MEDICINE

Title of Document: Requirements imposed on Hospitals, Other Health Care Institutions and Organizations, and Assisted Living Facilities to Report Disciplinary Actions Against, Allegations of Misconduct by, and Impairment of Certain Health Care Practitioners to the Virginia Department of Health Professions or the Office of Licensure and Certification of the Virginia Department of Health.

Public Comment Deadline: September 15, 2021.

Effective Date: September 16, 2021.

Agency Contact: Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Professions, Perimeter Center, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4688, or email elaine.yeatts@dhp.virginia.gov.

STATE BOARD OF EDUCATION

Title of Document: Recertification Guidance Document for Virginia Career Switcher Programs.

Public Comment Deadline: September 15, 2021.

Effective Date: September 16, 2021.

Agency Contact: Maggie Clemmons, Director of Licensure and School Leadership, Department of Education, 101 North 14th Street, Richmond, VA 23219, telephone (804) 371-2471, or email maggie.clemmons@doe.virginia.gov.

* * *

Titles of Documents: Model Guidance for Positive and Preventive Code of Student Conduct Policy and Alternatives to Suspension.

Supplemental Guidance for Evaluation and Eligibility in Special Education.

Public Comment Deadline: September 15, 2021.

Effective Date: September 16, 2021.

Agency Contact: Samantha Hollins, Assistant Superintendent for Special Education and Student Services, Department of Education, 101 North 14th Street Richmond, VA 23219, telephone (804) 786-8079, or email samantha.hollins@doe.virginia.gov.

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

Title of Document: Virginia Board of Funeral Directors and Embalmers Bylaws.

Public Comment Deadline: September 15, 2021.

Effective Date: September 16, 2021.

Agency Contact: Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Professions, Perimeter Center, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4688, or email elaine.yeatts@dhp.virginia.gov.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Title of Document: Draft-Addition of Buprenorphine_Naloxone Sublingual Tablet to the Virginia Common Core Formulary/Preferred Drug List.

Public Comment Deadline: September 15, 2021.

Effective Date: September 16, 2021.

Agency Contact: Emily McClellan, Policy and Research, 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.

BOARD OF OPTOMETRY

Title of Document: Guidelines for Processing Applications for Licensure.

Public Comment Deadline: September 15, 2021.

Effective Date: September 16, 2021.

Agency Contact: Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Professions, Perimeter Center, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4688, or email elaine.yeatts@dhp.virginia.gov.

BOARD OF PHARMACY

Title of Document: Alternate Delivery of Prescriptions in Virginia.

Public Comment Deadline: September 15, 2021.

Effective Date: September 16, 2021.

Agency Contact: Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Professions, Perimeter Center, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4688, or email elaine.yeatts@dhp.virginia.gov.

SAFETY AND HEALTH CODES BOARD

Titles of Documents: Inspection Procedures for the COVID-19 Emergency Temporary Standard.

Virginia Occupational Safety and Health Field Operations Manual.

Public Comment Deadline: September 15, 2021.

Effective Date: September 16, 2021.

Agency Contact: Holly Trice, Attorney, Department of Labor and Industry, Main Street Centre, 600 East Main Street, Richmond, VA 23219, telephone (804) 786-2641, or email holly.trice@doli.virginia.gov.

BOARD OF SOCIAL WORK

Title of Document: Guidance on Emotional Support Animals.

Public Comment Deadline: September 15, 2021.

Effective Date: September 16, 2021.

Agency Contact: Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Professions, Perimeter Center, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4688, or email elaine.yeatts@dhp.virginia.gov.

STATE CORPORATION COMMISSION

AT RICHMOND, JULY 23, 2021

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. PUR-2020-00125

Ex Parte: In the matter of establishing regulations
for a shared solar program pursuant to
§ 56-594.3 of the Code of Virginia

ORDER FOR NOTICE AND HEARING

During its 2020 Session, the Virginia General Assembly enacted Chapters 1238 (HB 1634) and 1264 (SB 629) of the 2020 Virginia Acts of Assembly. These Acts of Assembly amend the Code of Virginia ("Code") by adding a section numbered 56-594.3, effective July 1, 2020. Code § 56-594.3 requires that by January 1, 2021, the State Corporation Commission ("Commission") establish by regulation a program affording customers of Virginia Electric and Power Company d/b/a Dominion Energy Virginia ("Dominion") the opportunity to participate in a shared solar program ("Shared Solar Program" or "Program").[1] Pursuant to Code § 56-594.3 E, the Commission must approve a Shared Solar Program of 150 megawatts with a minimum requirement of 30 percent low-income customers as defined in Code § 56%u2011594.3 A. Also under the Program, each subscriber will pay a minimum bill to Dominion and receive a bill credit based on the subscriber's customer class.[2] The Commission must establish the minimum bill, which may be modified over time, and must set the bill credit rate annually.[3] Dominion must file any tariffs, agreements, or forms necessary to implement the Program within 60 days of its full implementation of a new customer information platform or by July 1, 2023, whichever occurs first.[4]

On December 23, 2020, the Commission issued its Order Adopting Rules in this docket, in which the Commission adopted the Rules Governing Shared Solar Program, 20 VAC 5-340-10 et seq. ("Rules").[5] Among other things, the Order Adopting Rules also established a stakeholder working group ("Working Group") to develop methods for low-income verification, methods for measuring low-income participation, and the standardized disclosure forms to be adopted by the Commission pursuant to Code § 56-594.3 F 8 for the Shared Solar Program.[6] The Order Adopting Rules also required Dominion to file a minimum bill proposal ("Proposal") in this docket.[7] Further, the Order Adopting Rules noted that, pursuant to 20 VAC 5-340-80, the Commission would convene a proceeding to consider any monthly administrative charge and the components of the minimum bill to be applied by Dominion pursuant to the Rules.[8]

Working Group

The Working Group, including multiple interested persons, the Virginia Department of Mines, Minerals, and Energy ("DMME"), and Commission Staff ("Staff") met multiple times as a whole and in focus groups to carry out the tasks directed by the Order Adopting Rules. On April 22, 2021, the Staff filed its Staff Update in this docket, which contained the Low Income Stakeholder Working Group Report on the Virginia Shared Solar and Multi-Family Shared Solar Programs[9] (2020-2021) ("Working Group Report"). Among other things, the Working Group Report included standardized consumer disclosure forms and an update on discussions regarding methods for low-income verification and methods to measure low-income participation, as directed by the Order Adopting Rules.

Minimum Bill Proposal

Dominion filed its Proposal on March 1, 2021, as directed.[10] Comments on the Proposal were filed by the Coalition for Community Solar Access ("CCSA") together with the Chesapeake Solar & Storage Association ("CHESSA"); DMME; Senator Scott A. Surovell and Delegate Jay Jones ("Legislator Commenters"); and Mr. Jay Epstein. In addition to their comments, CCSA and CHESSA together with other entities,[11] DMME, and the Legislator Commenters requested an evidentiary hearing. The Staff filed a reply to the Proposal on May 14, 2021, and on May 21, 2021, Dominion filed a reply in which it supported the requests for an evidentiary hearing on the Proposal.

Motion on Bill Credit Rate

On April 20, 2021, CCSA, together with CHESSA, moved the Commission to enter an order clarifying the bill credit rate for both the multi-family shared solar program and the Shared Solar Program ("CCSA-CHESSA Motion"). CCSA and CHESSA requested that the Commission enter an order: (1) adopting 2021 applicable bill credit rates for each customer class (residential, commercial, and industrial) for the multi-family shared solar program based on the most recent posted U.S. Energy Information Administration ("EIA") data; and (2) confirming that the same EIA data and calculation methodology will be used to determine the applicable bill credit rates for both the multi-family shared solar program and the Shared Solar Program.[12]

On May 10, 2021, Dominion filed its response to the CCSA-CHESSA Motion. Dominion stated that it did not disagree with using EIA data to calculate the Shared Solar Program bill credit rate but argued that "before the statutory formula can be applied, taxes must be removed from the revenue totals, because these tax payments are passed through to the respective governmental entities to whom they belong, and are not Company revenue."[13] On May 24, 2021, CCSA and CHESSA filed a reply in which they continued to advocate for

the use of EIA data without Dominion's proposed removal of taxes from the revenue totals.

Motion for Extension of Time

On June 7, 2021, Dominion filed a motion seeking an extension of time, until August 1, 2021, to file with the Commission and post to its website materials for project registration, as required by the Order Adopting Rules ("Dominion Motion"). The Commission provided an opportunity for responses and replies to the Dominion Motion; none were received.

NOW THE COMMISSION, having considered this matter, is of the opinion and finds as follows.

Minimum Bill and Bill Credit Rate

Code § 56-594.3 A defines "Bill credit" as "the monetary value of the electricity, in kilowatt-hours, generated by the shared solar facility allocated to a subscriber to offset that subscriber's electricity bill." Code § 56-594.3 B provides that:

> [A] utility shall provide a bill credit for the proportional output of a shared solar facility attributable to that subscriber. . . .
>
> 1. The value of the bill credit for the subscriber shall be calculated by multiplying the subscriber's portion of the kilowatt-hour electricity production from the shared solar facility by the applicable bill credit rate for the subscriber.

Code § 56-594.3 D provides that:

> The Commission shall establish a minimum bill, which shall include the costs of all utility infrastructure and services used to provide electric service and administrative costs of the shared solar program. The Commission may modify the minimum bill over time. In establishing the minimum bill, the Commission shall (i) consider further costs the Commission deems relevant to ensure subscribing customers pay a fair share of the costs of providing electric services and (ii) minimize the costs shifted to customers not in a shared solar program. Low-income customers shall be exempt from the minimum bill.

We agree with the commenters in this proceeding who have requested that we schedule a public hearing in this docket to establish the minimum bill for Dominion. Further, since the Order Adopting Rules provided that the Commission shall establish the annual bill credit rate for the subscriber's rate class but did not specify the methodology for establishing the bill credit rate, we find that the hearing we set herein should also consider the methodology to be used to establish the bill credit rate, and the resulting bill credit for each customer class produced by this methodology, for the Shared Solar Program.[14]

Working Group Issues

Code § 56-594.3 F 8 requires that the Commission "[a]dopt standardized consumer disclosure forms." The Working Group Report included proposed disclosure forms for the multi-family shared solar program and the Shared Solar Program. Pursuant to Code § 56-594.3 F 8, we will adopt the consumer disclosure form provided in the Working Group Report, which is attached to this order.

The Order Adopting Rules also directed the Working Group to "address the components of low-income subscription plans."[15] The Rules define "Low-income subscription plan" as "a plan submitted to the [C]ommission by an applicant providing a commitment for low-income subscription and demonstrating the ability to subscribe low-income customers."[16] Additionally, the Rules define a "Low-income customer" as "any person or household whose income is no more than 80% of the median income of the locality in which the customer resides. The median income of the locality is determined by the U.S. Department of Housing and Urban Development."[17]

The Working Group Report included a proposed low-income subscription plan form to be submitted by applicants seeking to offer low-income subscriptions. We will adopt the low-income subscription plan form provided in the Working Group Report, which is attached to this order.

Code § 56-594.3 E provides that:

> The Commission shall approve a shared solar facility program of 150 megawatts with a minimum requirement of 30 percent low-income customers. The Commission shall approve an additional 50 megawatts of capacity upon determining that at least 45 megawatts of the aggregated shared solar capacity in the Commonwealth have been subscribed to by low-income customers. Subscriber organizations shall be allowed to demonstrate compliance with the low income requirement using either project capacity or project savings methodology. The Commission, in collaboration with [DMME], may adopt mechanisms to ensure low-income customer participation.

The Order Adopting Rules directed the Working Group to meet and address low-income eligibility and verification methods for the Shared Solar Program.[18] The Working Group Report proposed a menu of options for subscriber organizations to verify low-income eligibility and requested the opportunity to continue to meet and provide recommendations on the following topics: (1) use of low-income census tracts to verify eligibility; (2) interplay between the Shared Solar and the Percentage of Income Payment Program ("PIPP");[19] (3) guidance regarding participation in other income-based programs to verify eligibility; and (4) development and use of a self-attestation form for verifying eligibility.[20]

We agree that additional meetings of the Working Group would be useful to further develop guidance and provide information on the topics listed above. We direct the Staff to convene additional meetings of the Working Group and to provide a Staff Update on these meetings, including any

proposals for Commission action, no later than September 30, 2021.

In setting the hearing and ordering the additional procedures discussed herein, the Commission takes judicial notice of the ongoing public health concern related to the spread of the coronavirus, or COVID-19. The Commission has taken certain actions, and may take additional actions going forward, that could impact the procedures in this proceeding.[21] Consistent with these actions, in regard to the terms of the procedural framework established below, the Commission will, among other things, direct the electronic filing of testimony and pleadings, unless they contain confidential information, and require electronic service on parties to this proceeding.

Accordingly, IT IS ORDERED THAT:

(1) As provided by § 12.1-31 of the Code and Rule 5 VAC 5-20-120, Procedure before hearing examiners, of the Commission's Rules of Practice, a Hearing Examiner is appointed to conduct all further proceedings in this matter on behalf of the Commission.

(2) All pleadings in this matter should be submitted electronically to the extent authorized by Rule 5 VAC 5-20-150, *Copies and format*, of the Commission's Rules of Practice and Procedure ("Rules of Practice").[22] Confidential and Extraordinarily Sensitive information shall not be submitted electronically and should comply with 5 VAC 5-20-170, Confidential information, of the Rules of Practice. At this time, any person seeking to hand deliver and physically file or submit any pleading or other document shall contact the Clerk's Office Document Control Center at (804) 371-9838 to arrange the delivery.[23]

(3) Pursuant to 5 VAC 5-20-140, Filing and service, of the Commission's Rules of Practice, the Commission directs that service on parties and the Staff in this matter shall be accomplished by electronic means. Concerning Confidential or Extraordinarily Sensitive Information, parties and the Staff are instructed to work together to agree upon the manner in which documents containing such information shall be served upon one another, to the extent practicable, in an electronically protected manner, even if such information is unable to be filed in the Office of the Clerk, so that no party or the Staff is impeded from preparing its case.

(4) A public hearing shall be convened at 10 a.m. on November 3, 2021, to receive the testimony of public witnesses and the evidence of the Company, any respondents, and the Staff on Dominion's Proposal and the bill credit rate to be adopted in this proceeding. This hearing will be held either in the Commission's second floor courtroom located in the Tyler Building, 1300 East Main Street, Richmond, Virginia 23219, or by electronic means. Further details on this hearing will be provided by subsequent Commission Order or Hearing Examiner's Ruling that, upon issuance, will be available on the Commission's website at scc.virginia.gov/pages/Case-Information by searching for Case No. PUR-2020-00125.

(5) An electronic copy of the Company's Proposal may be obtained by submitting a written request to counsel for the Company, Timothy D. Patterson, Esquire, McGuireWoods LLP, Gateway Plaza, 800 East Canal Street, Richmond, Virginia 23219, or tpatterson@mcguirewoods.com. Interested persons also may download unofficial copies of all documents filed in this docket, including the Proposal, the CCSA-CHESSA Motion, Dominion's May 10, 2021 response to the CCSA-CHESSA Motion, and CCSA-CHESSA's May 24, 2021 reply, from the Commission's website: scc.virginia.gov/pages/Case-Information.

(6) The Clerk of the Commission is directed to provide a copy of this Order for Notice and Hearing to all persons who have submitted comments in this docket.

(7) Within five (5) business days of issuance of this Order for Notice and Hearing, the Staff shall transmit electronically a copy of this Order for Notice and Hearing to any persons or entities identified by the Staff as potentially having an interest in this matter. The Staff shall promptly file with the Clerk of the Commission a certificate of transmission and include a list of names of the persons and entities to whom the Order for Notice and Hearing was transmitted.

(8) On or before August 18, 2020, Dominion shall cause the following notice to be published as display advertising (not classified) on one (1) occasion in newspapers of general circulation throughout the Company's service territory within Virginia:

NOTICE TO THE PUBLIC OF A HEARING ON VIRGINIA ELECTRIC AND POWER COMPANY'S SHARED SOLAR PROGRAM MINIMUM BILL PROPOSAL

AND ON THE PROGRAM'S BILL CREDIT RATE

CASE NO. PUR-2020-00125

Section 56-594.3 of the Code of Virginia requires the State Corporation Commission ("Commission") to establish a program that affords customers of Virginia Electric and Power Company ("Dominion") the opportunity to participate in shared solar projects ("Shared Solar Program" or "Program"). Under the Program, each Dominion customer that is a subscriber to a shared solar facility will pay a minimum bill to Dominion and receive a bill credit, based on the subscriber's customer class (residential, commercial, or industrial), for the proportional output of the facility attributable to that customer.

The Commission issued an Order for Notice and Hearing in this case. Among other things, the Order for Notice and Hearing scheduled a hearing to consider Dominion's minimum bill proposal ("Minimum Bill Proposal"), filed

in this docket on March 1 and April 1, 2021, and to establish the bill credit rate.

Interested persons are encouraged to review the documents in this case for details on Dominion's Minimum Bill Proposal and on the bill credit rate, in particular Dominion's March 1 and April 1 filings in this docket on the Minimum Bill Proposal; the April 20, 2021 Motion for Clarification of the Bill Credit Rates for the Multi-Family Shared Solar Program and the Shared Solar Program filed by the Coalition for Community Solar Access together with the Chesapeake Solar and Storage Association ("CCSA-CHESSA")("Motion"); Dominion's May 10, 2021 response to the Motion; and CCSA-CHESSA's May 24, 2021 reply. (The Motion, Dominion's May 10, 2021 response to the Motion; and CCSA-CHESSA's May 24, 2021 reply collectively are referred to as the "Bill Credit Pleadings.")

Interested persons may download unofficial copies of all documents filed in this docket, including the Minimum Bill Proposal and the Bill Credit Pleadings, from the Commission's website: scc.virginia.gov/pages/Case-Information. An electronic copy of the Company's Minimum Bill Proposal also may be obtained by submitting a written request to counsel for Dominion, Timothy D. Patterson, Esquire, McGuireWoods LLP, Gateway Plaza, 800 East Canal Street, Richmond, Virginia 23219, or tpatterson@mcguirewoods.com.

TAKE NOTICE that the Commission may set the bill credit rate and the minimum bill in a manner differing from that proposed in the Bill Credit Pleadings and the Minimum Bill Proposal.

A public hearing shall be convened on November 3, 2021, at 10 a.m., to receive the testimony of public witnesses and the evidence of the Company, any respondents, and the Commission's Staff on the Minimum Bill Proposal and the bill credit rate. Further details on the hearing will be provided by subsequent Commission Order or Hearing Examiner's Ruling that, upon issuance, will be available on the Commission's website at scc.virginia.gov/pages/Case-Information by searching for Case No. PUR-2020-00125.

The Commission further takes judicial notice of the ongoing public health concern related to the spread of the coronavirus, or COVID-19. In accordance therewith, all pleadings, briefs, or other documents required to be served in this matter should be submitted electronically to the extent authorized by 5 VAC 5-20-150, Copies and format, of the Commission's Rules of Practice and Procedure ("Rules of Practice"). Confidential and Extraordinarily Sensitive information shall not be submitted electronically and should comply with 5 VAC 5-20-170, Confidential information, of the Rules of Practice. At this time, any person seeking to hand deliver and physically file or submit any pleading or other document shall contact the Clerk's Office Document Control Center at (804) 371-9838 to arrange the delivery.

Pursuant to 5 VAC 5-20-140, Filing and service, of the Rules of Practice, the Commission has directed that service on parties and the Commission's Staff in this matter shall be accomplished by electronic means. Refer to the Commission's Order for Notice and Hearing for further instructions concerning Confidential or Extraordinarily Sensitive Information.

On or before October 27, 2021, any interested person may file comments on the Minimum Bill Proposal and the bill credit rate by following the instructions found on the Commission's website: scc.virginia.gov/casecomments/Submit-Public-Comments. Those unable to submit comments electronically may file such comments by U.S. mail to the Clerk of the State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118. All comments shall refer to Case No. PUR-2020-00125.

On or before September 15, 2021, any person or entity wishing to participate as a respondent in this proceeding may do so by filing a notice of participation with the Clerk of the Commission at scc.virginia.gov/clk/efiling. Those unable to submit a notice of participation electronically may submit such notice by U.S. mail to the Clerk of the Commission at the address listed above. Such notice of participation shall include the email addresses of such parties or their counsel, if available. The respondent simultaneously shall serve a copy of the notice of participation on counsel to Dominion. Pursuant to Rule 5 VAC 5-20-80 B, Participation as a respondent, of the Rules of Practice, any notice of participation shall set forth: (i) a precise statement of the interest of the respondent; (ii) a statement of the specific action sought to the extent then known; and (iii) the factual and legal basis for the action. Any organization, corporation, or government body participating as a respondent must be represented by counsel as required by Rule 5 VAC 5-20-30, *Counsel*, of the Rules of Practice. All filings shall refer to Case No. PUR-2020-00125.

On or before October 5, 2021, each respondent may file with the Clerk of the Commission, at scc.virginia.gov/clk/efiling, any testimony and exhibits by which the respondent expects to establish its case. Any respondent unable to submit testimony and exhibits electronically may submit such by U.S. mail to the Clerk of the Commission at the address listed above. Each witness's testimony shall include a summary not to exceed one page. All testimony and exhibits shall be served on the Commission's Staff, the Company, and all other respondents simultaneous with its filing. In all filings, respondents shall comply with the Rules of Practice, including 5 VAC 5-20-140, Filing and service; and 5 VAC

5-20-240, Prepared testimony and exhibits. All filings shall refer to Case No. PUR-2020-00125.

Any documents filed in paper form with the Office of the Clerk of the Commission in this docket may use both sides of the paper. In all other respects, except as modified by the Commission's Order for Notice and Hearing, all filings shall comply fully with the requirements of 5 VAC 5-20-150, Copies and format, of the Commission's Rules of Practice.

All documents filed in this case, including the Minimum Bill Proposal and the Bill Credit Pleadings, the Commission's Rules of Practice, and the Commission's Order for Notice and Hearing may be viewed at: scc.virginia.gov/pages/Case-Information.

VIRGINIA ELECTRIC AND POWER COMPANY

(9) On or before August 18, 2021, Dominion shall serve a copy of this Order for Notice and Hearing on the following local officials, to the extent the position exists, in each county, city, and town in which Dominion provides service in the Commonwealth of Virginia: the chairman of the board of supervisors of each county; the mayor or manager (or equivalent official) of every city and town; and the county, city, or town attorney. Service shall be made electronically where possible; if electronic service is not possible, service shall be made by either personal delivery or first class mail to the customary place of business or residence of the person served. [24]

(10) On or before September 15, 2021, Dominion shall file proof of the notice and service required by Ordering Paragraphs (8) and (9), including the name, title, address, and electronic mail address (if applicable) of each official served, with the Clerk of the State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118, or by filing electronically at scc.virginia.gov/clk/efiling/.

(11) On or before October 27, 2021, any interested person may file comments on the Proposal and the bill credit rate by following the instructions found on the Commission's website: scc.virginia.gov/casecomments/Submit-Public-Comments. Those unable to submit comments electronically may file such comments by U.S. mail to the Clerk of the State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118. All comments shall refer to Case No. PUR-2020-00125.

(12) On or before September 15, 2021, any person or entity wishing to participate as a respondent in this proceeding may do so by filing a notice of participation with the Clerk of the Commission at scc.virginia.gov/clk/efiling. Those unable to submit a notice of participation electronically may submit such notice by U.S. mail to the Clerk of the Commission at the address listed above. Such notice of participation shall include the email addresses of such parties or their counsel, if available. The respondent simultaneously shall serve a copy of the notice of participation on counsel to Dominion. Pursuant to Rule 5 VAC 5-20-80 B, Participation as a respondent, of the Rules of Practice, any notice of participation shall set forth: (i) a precise statement of the interest of the respondent; (ii) a statement of the specific action sought to the extent then known; and (iii) the factual and legal basis for the action. Any organization, corporation, or government body participating as a respondent must be represented by counsel as required by Rule 5 VAC 5-20-30, Counsel, of the Rules of Practice. All filings shall refer to Case No. PUR-2020-00125.

(13) On or before September 21, 2021, Dominion may file with the Clerk of the Commission and serve on the Staff and all respondents, any testimony and exhibits by which it expects to establish its case regarding the Proposal and bill credit rate, and each witness's testimony shall include a summary not to exceed one page.

(14) On or before October 5, 2021, each respondent may file with the Clerk of the Commission, at scc.virginia.gov/clk/efiling, any testimony and exhibits by which the respondent expects to establish its case. Any respondent unable to submit testimony and exhibits electronically may submit such by U.S. mail to the Clerk of the Commission at the address listed above. Each witness's testimony shall include a summary not to exceed one page. All testimony and exhibits shall be served on the Commission's Staff, the Company, and all other respondents simultaneous with its filing. In all filings, respondents shall comply with the Rules of Practice, including 5 VAC 5-20-140, Filing and service; and 5 VAC 5-20-240, Prepared testimony and exhibits. All filings shall refer to Case No. PUR-2020-00125.

(15) On or before October 12, 2021, Staff may file with the Clerk of the Commission its testimony and exhibits, and each Staff witness's testimony shall include a summary not to exceed one page. A copy thereof shall be served on counsel to Dominion and all respondents.

(16) On or before October 19, 2021, Dominion may file with the Clerk of the Commission any rebuttal testimony and exhibits that it expects to offer, and each rebuttal witness's testimony shall include a summary not to exceed one page. Dominion shall serve a copy of any rebuttal testimony and exhibits on the Staff and all respondents.

(17) Any documents filed in paper form with the Office of the Clerk of the Commission in this docket may use both sides of the paper. In all other respects, except as modified herein, all filings shall comply fully with the requirements of 5 VAC 5-20-150, Copies and format, of the Commission's Rules of Practice.

(18) The Commission's Rule of Practice 5 VAC 5-20-260, Interrogatories to parties or requests for production of documents and things, shall be modified for this proceeding as follows: responses and objections to written interrogatories and requests for production of documents shall be served

within five (5) business days after receipt of the same. In addition to the service requirements of 5 VAC 5-20-260 of the Rules of Practice, on the day that copies are filed with the Clerk of the Commission, a copy of the interrogatory or request for production shall be served electronically on the party to whom the interrogatory or request for production is directed or the assigned Staff attorney, if the interrogatory or request for production is directed to the Staff.[25] Except as modified herein, discovery shall be in accordance with Part IV of the Commission's Rules of Practice, 5 VAC 5-20-240 et seq.

(19) The Standard Consumer Disclosure Form attached hereto as Attachment A is adopted for use in the Shared Solar Program.

(20) The Low-Income Subscription Plan form attached hereto as Attachment B is adopted for use in the Shared Solar Program.

(21) Staff shall convene additional meetings of the Low-Income Stakeholder Working Group as discussed herein and file a Staff Update no later than September 30, 2021.

(22) Dominion's Motion for an extension of time to file project registration materials is granted.

(23) This matter is continued.

A COPY hereof shall be sent electronically by the Clerk of the Commission to all persons on the official Service List in this matter. The Service List is available from the Clerk of the Commission.

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[1]Under this Program, Dominion will provide a bill credit for the proportional output of a shared solar facility attributable to a utility customer that is a subscriber to a shared solar facility. See Code § 56-594.3 B.

[2]Code § 56-594.3 C.

[3]Code § 56-594.3 C and D.

[4]Code § 56-594.3 F.

[5]On December 30, 2020, the Commission issued a Correcting Order to correct a scribal error on page 13 of Attachment A to the Order Adopting Rules.

[6]See, e.g., Order Adopting Rules at 6-7, 9.

[7]Id. at 12, Ordering Paragraph (7).

[8]See id. at 3, n.2.

[9]The multi-family shared solar program is offered pursuant to Code § 56-585.1:12 in the service territories of Dominion and Kentucky Utilities Company d/b/a Old Dominion Power Company. The Commission established the bill credit rate and adopted a consumer disclosure form for this program in a separate docket. See Commonwealth of Virginia, ex rel. State Corporation Commission, Ex Parte: In the matter of establishing regulations for a multi%u2011family shared solar program pursuant to § 56-585.1:12 of the Code of Virginia, Case No. PUR-2020-00124, Doc. Con. Cen. No. 210650050, Order (June 29, 2021).

[10]On April 1, 2021, Dominion filed supplemental information related to its Proposal, as required by a Commission Order in this docket dated March 18, 2021.

[11]This Joint Hearing Request was filed by CCSA, CHESSA, Vote Solar, GRID Alternatives Mid-Atlantic, Local Energy Alliance Program, Virginia Poverty Law Center, Solar United Neighbors, Southern Environmental Law Center, Appalachian Voices, Sierra Club, and Virginia Advanced Energy Economy.

[12]CCSA-CHESSA Motion at 1.

[13]Dominion Response at 3.

[14]We note that in Case No. PUR-2021-00124, we determined that the bill credit rate for the multi-family shared solar program should be determined using Virginia-specific FERC Form 1 information. The Hearing Examiner in this proceeding may recommend a different methodology for the Shared Solar Program, but we direct that any difference in methodology, and the reasons therefor, be explained in detail.

[15]Order Adopting Rules at 9. See *also* 20 VAC 5-340-100.

[16]20 VAC 5-340-20.

[17]Id.

[18]See Order Adopting Rules at 7, 9.

[19]Through the PIPP, eligible participants' electric bill payments are limited to a specific percentage of their annual household income. Details on the PIPP may be found at Code § 56-585.6.

[20]Working Group Report at 20.

[21]See, e.g., Commonwealth of Virginia, ex rel. State Corporation Commission, Ex Parte: Electronic Service of Commission Orders, Case No. CLK-2020-00004, Doc. Con. Cen. No. 200330035, Order Concerning Electronic Service of Commission Orders (Mar. 19, 2020); Commonwealth of Virginia, ex rel., State Corporation Commission, Ex Parte: Revised Operating Procedures During COVID-19 Emergency, Case No. CLK-2020-00005, Doc. Con. Cen. No. 200330042, Order Regarding the State Corporation Commission's Revised Operating Procedures During COVID-19 Emergency (Mar. 19, 2020); Commonwealth of Virginia, ex rel. State Corporation Commission, Ex Parte: Electronic service among parties during COVID-19 emergency, Case No. CLK-2020-00007, Doc. Con. Cen. No. 200410009, Order Requiring Electronic Service (Apr. 1, 2020); Commonwealth of Virginia, ex rel., State Corporation Commission, Ex Parte: Revised Operating Procedures During COVID-19 Emergency Extension of Prior Orders, Case Nos. CLK-2020-00004 and CLK-2020-00005, Doc. Con. Cen. No. 200520101, Order Regarding the State Corporation Commission's Revised Operating Procedures During COVID-19 Emergency (May 11, 2020).

[22]5 VAC 5-20-10 et seq.

[23]As noted in the Commission's March 19, 2020 Order Regarding the State Corporation Commission's Revised Operating Procedures During COVID-19 Emergency in Case No. CLK-2020-00005, submissions to the Commission's Clerk's Office via U.S. mail or commercial mail equivalents may not be processed for an indefinite period of time due to the ongoing COVID-19 public health concern. See n.21, supra.

[24]See the Commission's April 1, 2020 Order in Case No. CLK-2020-00007, n.21, supra. See also Petition of Virginia Electric and Power Company, For a continuing waiver of 20 VAC 5-201-10 J of the Rules Governing Utility Rate Applications and Annual Informational Filings to permit electronic service to local officials upon request, Case No. PUE-2016-00039, Doc. Con. Cen. No. 160420194, Order (Apr. 19, 2016).

[25]The assigned Staff attorney is identified on the Commission's website, scc.virginia.gov/pages/Case-Information, by clicking "Docket Search," then clicking "Search by Case Information," and entering the case number, PUR-2020-00125 in the appropriate box.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Draft Local Education Agency Manual

The draft Local Education Agency Provider Manual Chapters IV, V, and VI are now available on the Department of Medical Assistance Services website at https://www.dmas.virginia.gov/for-providers/general-information/medicaid-provider-manual-drafts/ for public comment until August 19, 2021.

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.

* * *

Intent to Amend the Virginia State Plan for Medical Assistance Pursuant to § 1902(a)(13) of the Social Security Act (USC § 1396a(a)(13)) - Doula Services

The Virginia Department of Medical Assistance Services (DMAS) hereby affords the public notice of its intention to amend the Virginia State Plan for Medical Assistance to provide for changes to Methods and Standards for Establishing Payment Rates; Other Types of Care(12VAC30-80).

This notice is intended to satisfy the requirements of 42 CFR 447.205 and of § 1902(a)(13) of the Social Security Act, 42 USC § 1396a(a)(13). A copy of this notice is available for public review the contact listed at the end of this notice.

DMAS is specifically soliciting input from stakeholders, providers, and beneficiaries on the potential impact of the proposed changes discussed in this notice. Comments or inquiries may be submitted in writing within 30 days of this notice publication to Emily McClellan, and such comments are available for review at the same address. Comments may also be submitted in writing on the Virginia Regulatory Town Hall public comment forum at https://townhall.virginia.gov/L/generalnotice.cfm.

In accordance with Item 313 WWWWW of the 2021 Acts of Assembly, Special Session I, DMAS will be making the following changes:

Methods and Standards for Establishing Payment Rates; Other Types of Care (12VAC30-80)

The state plan is being revised to include coverage for doula services for Medicaid-enrolled pregnant women. Services shall include up to eight prenatal or postpartum visits and support during labor and delivery. The department shall also implement up to two linkage-to-care incentive payments for postpartum and newborn care. A copy of the Report of the Virginia Medicaid Benefit for Community Doula Services Work Group, dated December 1, 2020, is available at https://rga.lis.virginia.gov/Published/2020/RD669.

The expected increase in annual aggregate expenditures is $584,186 in state general funds and $ 621,516 in federal funds in federal Fiscal Year 2022.

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.

STATE WATER CONTROL BOARD

Proposed Enforcement Action for City of Fredericksburg

An enforcement action has been proposed for the City of Fredericksburg for violations of the State Water Control Law and regulations at the Fredericksburg wastewater treatment facility located in Fredericksburg, Virginia. The State Water Control Board proposes to issue a consent order to resolve violations associated with the Fredericksburg wastewater treatment facility. A description of the proposed action is available at the Department of Environmental Quality office listed or online at www.deq.virginia.gov. The staff contact person listed will accept comments by email or by postal mail from August 17, 2021, through September 16, 2021.

Contact Information: Benjamin Holland, Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, or email benjamin.holland@deq.virginia.gov.

Proposed Enforcement Action for Magnolia Green

An enforcement action has been proposed for 6801 Woolridge Road-Moseley LP for the Magnolia Green Subdivision located north of US Route 360 (Hull Street Road) and west of State Route 667 (Otterdale Road) in Chesterfield County, Virginia. The State Water Control Board proposes to issue a consent order to address noncompliance with State Water Control Law and regulations. A description of the proposed action is available at the Department of Environmental Quality office listed or online at www.deq.virginia.gov. Frank Lupini will accept comments by email at frank.lupini@deq.virginia.gov, FAX at (804) 698-4277, or postal mail at Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, from August 16, 2021, to September 16, 2021.

VIRGINIA CODE COMMISSION

Notice to State Agencies

Contact Information: *Mailing Address:* Virginia Code Commission, Pocahontas Building, 900 East Main Street, 8th Floor, Richmond, VA 23219; *Telephone:* (804) 698-1810; *Email:* varegs@dls.virginia.gov.

Meeting Notices: Section 2.2-3707 C of the Code of Virginia requires state agencies to post meeting notices on their websites and on the Commonwealth Calendar at https://commonwealthcalendar.virginia.gov.

Cumulative Table of Virginia Administrative Code Sections Adopted, Amended, or Repealed: A table listing regulation sections that have been amended, added, or repealed in the *Virginia Register of Regulations* since the regulations were originally published or last supplemented in the print version of the Virginia Administrative Code is available at http://register.dls.virginia.gov/documents/cumultab.pdf.

Filing Material for Publication in the *Virginia Register of Regulations:* Agencies use the Regulation Information System (RIS) to file regulations and related items for publication in the *Virginia Register of Regulations*. The Registrar's office works closely with the Department of Planning and Budget (DPB) to coordinate the system with the Virginia Regulatory Town Hall. RIS and Town Hall complement and enhance one another by sharing pertinent regulatory information.

STATE BOARD OF HEALTH

Title of Regulation: **12VAC5-371. Regulations for the Licensure of Nursing Facilities.**

Publication: 37:17 VA.R. 2413-2430 April 12, 2021.

Correction to Fast-Track Regulation:

Page 2430, DOCUMENTS INCORPORATED BY REFERENCE, replace "Guidelines for Design and Construction of Health Care Facilities, Facilities Guideline Institute (formerly of the American Institute of Architects Academy of Architecture), 2010 Edition." with "Guidelines for Design and Construction of Residential Health, Care, and Support Facilities, 2018 Edition, Facility Guidelines Institute http://www.fgiguidelines.org"

VA.R. Doc. No. R21-3404; Filed July 29, 2021, 4:23 p.m.

BOARD FOR ARCHITECTS, PROFESSIONAL ENGINEERS, LAND SURVEYORS, CERTIFIED INTERIOR DESIGNERS AND LANDSCAPE ARCHITECTS

Title of Regulation: **18VAC10-20. Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects Regulations.**

Publication: 37:24 VA.R. 3693-3722 July 19, 2021.

Correction to Final Regulation:

Page 3696,18VAC10-20-120, after stricken text, replace "~~D.~~ C." with "~~D.~~ [~~C.~~ B.]"

VA.R. Doc. No. R17-5025; Filed August 4, 2021, 3:30 p.m.