VIRGINIA REGISTER OF REGULATIONS

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THE VIRGINIA REGISTER INFORMATION PAGE

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

ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

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

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

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

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

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

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

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

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

FAST-TRACK RULEMAKING PROCESS

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

EMERGENCY REGULATIONS

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

January 2022 through February 2023

Volume: Issue	Material Submitted By Noon*	Will Be Published On
38:12	January 12, 2022	January 31, 2022
38:13	January 26, 2022	February 14, 2022
38:14	February 9, 2022	February 28, 2022
38:15	February 23, 2022	March 14, 2022
38:16	March 9, 2022	March 28, 2022
38:17	March 23, 2022	April 11, 2022
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38:20	May 4, 2022	May 23, 2022
38:21	May 18, 2022	June 6, 2022
38:22	June 1, 2022	June 20, 2022
38:23	June 15, 2022	July 4, 2022
38:24	June 29, 2022	July 18, 2022
38:25	July 13, 2022	August 1, 2022
38:26	July 27, 2022	August 15, 2022
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39:7	November 2, 2022	November 21, 2022
39:8	November 14, 2022 **(Monday)**	December 5, 2022
39:9	November 30, 2022	December 19, 2022
39:10	December 14, 2022	January 2, 2023
39:11	December 27, 2022 **(Tuesday)**	January 16, 2023
39:12	January 11, 2023	January 30, 2023
39:13	January 25, 2023	February 13, 2023

*Filing deadlines are Wednesdays unless otherwise specified.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF SOCIAL WORK

Initial Agency Notice

Title of Regulation: **18VAC140-20. Regulations Governing the Practice of Social Work.**

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

Name of Petitioner: Darryl McCarroll.

Nature of Petitioner's Request: Amendments to 18VAC140-20-45, Requirements for licensure by endorsement, to accept experience in another jurisdiction.

Agency Plan for Disposition of Request: In accordance with Virginia law, the petition was filed with the Registrar of Regulations and will be published on January 17, 2022, with comment accepted through February 16, 2022. The petition is also posted on the Virginia Regulatory Town Hall at www.townhall.viginia.gov.

The petition and any comment will be considered by the board at its next meeting following the close of comment. The board will inform the petitioner of its decision following that meeting.

Public Comment Deadline: February 16, 2022.

Agency Contact: Jaime Hoyle, Executive Director, Board of Social Work, 9960 Mayland Drive, Suite 300, Richmond, VA, 23233, telephone (804) 367-4441, or email jaime.hoyle@dhp.virginia.gov.

VA.R. Doc. No. PFR22-15; Filed December 22, 2021, 11:34 a.m.

TITLE 9. ENVIRONMENT

STATE AIR POLLUTION CONTROL BOARD

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Air Pollution Control Board conducted a periodic review and a small business impact review of **9VAC5-5, Public Participation Guidelines**, and determined that this regulation should be retained as is. The department is publishing its report of findings dated November 30, 2021, to support this decision.

The regulation continues to be needed and is being retained without changes. The regulation is clearly written and easily understandable. This regulation includes the requirements for notification, seeking input, use of advisory panels, and public participation during regulatory actions. The current regulation continues to be needed to comply with § 2.2-4007.02 of the Code of Virginia, which requires agencies to develop and adopt public participation guidelines for soliciting input from interested parties during the development of regulations.

Comments were received during the periodic review comment period. Many comments received were outside of the scope of the public participation guidelines (PPGs). Comments that were applicable to the PPGs have been addressed in the response to comments section. Approximately 100 rulemaking bodies in Virginia have used the Department of Planning and Budget's model PPGs as a basis for adopting regulations concerning public participation guidelines. The Air Pollution Control Board previously adopted this regulation concerning public participation guidelines to promote consistent public participation guidelines during the regulatory development process throughout the Commonwealth. The regulation is being retained to maintain a consistent public participation process for the adoption of regulations.

The regulation is not technical in nature. The regulation establishes guidelines for the participation of interested citizens during all phases of the adoption of new regulations, or the amendment or repeal of existing regulations. Federal regulatory programs encourage public participation by citizens and the regulated community; however, Virginia law details specific public participation requirements. This regulation was adopted as required by state statute and does not conflict with federal law or regulation. This regulation was last updated in 2017 to adopt changes to conform to changes to the Code of Virginia. The regulation is explanatory in nature and does not place any additional regulatory burden on the regulated community including small businesses.

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.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of Environmental Quality conducted a periodic review and a small business impact review of **9VAC15-11, Public Participation Guidelines**, and determined that this regulation should be retained as is. The department is publishing its report of findings dated November 30, 2021, to support this decision.

The regulation continues to be needed and is being retained without changes. The regulation is clearly written and easily understandable. This regulation includes the requirements for notification, seeking input, use of advisory panels, and public participation during regulatory actions. The current regulation continues to be needed to comply with § 2.2-4007.02 of the Code of Virginia, which requires agencies to develop and adopt public participation guidelines for soliciting input from interested parties during the development of regulations.

Comments were received during the periodic review comment period. Many comments received were outside of the scope of the public participation guidelines (PPGs). Comments that were applicable to the PPGs have been addressed in the response to comments section. Approximately 100 rulemaking bodies in Virginia have used the Department of Planning and Budget's model PPGs as a basis for adopting regulations concerning public participation guidelines. The Department of Environmental Quality previously adopted this regulation concerning public participation guidelines to promote consistent public participation guidelines during the regulatory development process throughout the Commonwealth. The regulation is being retained to maintain a consistent public participation process for the adoption of regulations.

The regulation is not technical in nature. The regulation establishes guidelines for the participation of interested citizens during all phases of the adoption of new regulations, or the amendment or repeal of existing regulations. Federal regulatory programs encourage public participation by citizens and the regulated community; however, Virginia law details specific public participation requirements. This regulation was adopted as required by state statute and does not conflict with federal law or regulation. This regulation was last updated in 2017 to adopt changes to conform to changes to the Code of Virginia. The regulation is explanatory in nature and does not place any additional regulatory burden on the regulated community including small businesses.

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.

VIRGINIA WASTE MANAGEMENT BOARD

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Virginia Waste Management Board conducted a periodic review and a small business impact review of **9VAC20-11, Public Participation Guidelines**, and determined that this regulation should be retained as is. The department is publishing its report of findings dated November 30, 2021, to support this decision.

The regulation continues to be needed and is being retained without changes. The regulation is clearly written and easily understandable. This regulation includes the requirements for notification, seeking input, use of advisory panels, and public participation during regulatory actions. The current regulation continues to be needed to comply with § 2.2-4007.02 of the Code of Virginia, which requires agencies to develop and adopt public participation guidelines for soliciting input from interested parties during the development of regulations.

Comments were received during the periodic review comment period. Many comments received were outside of the scope of the public participation guidelines (PPGs). Comments that were applicable to the PPGs have been addressed in the response to comments section. Approximately 100 rulemaking bodies in Virginia have used the Department of Planning and Budget's model PPGs as a basis for adopting regulations concerning public participation guidelines. The Virginia Waste Management Board previously adopted this regulation concerning public participation guidelines to promote consistent public participation guidelines during the regulatory development process throughout the Commonwealth. The regulation is being retained to maintain a consistent public participation process for the adoption of regulations.

The regulation is not technical in nature. The regulation establishes guidelines for the participation of interested citizens during all phases of the adoption of new regulations, or the amendment or repeal of existing regulations. Federal regulatory programs encourage public participation by citizens and the regulated community; however, Virginia law details specific public participation requirements. This regulation was adopted as required by state statute and does not conflict with federal law or regulation. This regulation was last updated in 2017 to adopt changes to conform to changes to the Code of Virginia. The regulation is explanatory in nature and does not place any additional regulatory burden on the regulated community including small businesses.

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.

STATE WATER CONTROL BOARD

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Water Control Board conducted a periodic review and a small business impact review of **9VAC25-11, Public Participation Guidelines**, and determined that this regulation should be retained as is. The department is publishing its report of findings dated November 30, 2021, to support this decision.

The regulation continues to be needed and is being retained without changes. The regulation is clearly written and easily understandable. This regulation includes the requirements for notification, seeking input, use of advisory panels, and public participation during regulatory actions. The current regulation continues to be needed to comply with § 2.2-4007.02 of the Code of Virginia, which requires agencies to develop and adopt public participation guidelines for soliciting input from interested parties during the development of regulations.

Comments were received during the periodic review comment period. Many comments received were outside of the scope of the public participation guidelines (PPGs). Comments that were applicable to the PPGs have been addressed in the response to comments section. Approximately 100 rulemaking bodies in Virginia have used the Department of Planning and Budget's model PPGs as a basis for adopting regulations concerning public participation guidelines. The State Water Control Board previously adopted this regulation concerning public participation guidelines to promote consistent public participation guidelines during the regulatory development process throughout the Commonwealth. The regulation is being retained to maintain a consistent public participation process for the adoption of regulations.

The regulation is not technical in nature. The regulation establishes guidelines for the participation of interested citizens during all phases of the adoption of new regulations, or the amendment or repeal of existing regulations. Federal regulatory programs encourage public participation by citizens and the regulated community; however, Virginia law details specific public participation requirements. This regulation was adopted as required by state statute and does not conflict with federal law or regulation. This regulation was last updated in 2017 to adopt changes to conform to changes to the Code of Virginia. The regulation is explanatory in nature and does not place any additional regulatory burden on the regulated community including small businesses.

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.

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Water Control Board conducted a periodic review and a small business impact review of **9VAC25-40, Regulation for Nutrient Enriched Waters and Dischargers within the Chesapeake Bay Watershed**, and determined that this regulation should be retained as is. The department is publishing its report of findings dated November 18, 2021, to support this decision.

This regulation is necessary for the protection of public health, safety, and welfare. The regulation is clearly written and easily understandable. The regulation is effective and continues to be needed and is being retained. This regulation controls nutrient discharges from point sources in the Chesapeake Bay watershed as part of the Commonwealth's comprehensive initiative to restore water quality and habitat in the Chesapeake Bay watershed.

No public comments were received during the periodic review.

The regulation provides for the control of discharges of nutrients from point source discharges affecting waters that have been designated "nutrient enriched waters" in the Water Quality Standards (9VAC25-260). Portions of the regulation may be viewed as complex due to the technical requirements included in the regulation; however, this regulation is clearly written and easily understandable by the users of the regulation. This regulation does not duplicate or conflict with federal or state law or regulation but works together with other regulations to protect water quality in the Commonwealth. The State Water Control Board last amended this regulation in 2006. Over the course of time, the cost to remove pollutants typically decreases with advancements in technology.

Outside of the Chesapeake Bay watershed, this regulation requires that facilities discharging 1 million gallons per day or more to designated "nutrient enriched waters" meet a monthly average total phosphorus effluent limit of 2.0 mg/l. Within the Chesapeake Bay watershed, the regulation does not require nutrient removal of any existing discharger. Dischargers that install nutrient removal technology are subject to annual average nutrient limits that match the technology installed. New and expanding discharges within the Chesapeake Bay watershed are subject to minimum nutrient treatment technologies depending on the size of the potential nutrient load. The more advanced "state-of-the-art" treatment technology is applicable to the largest new or expanding facilities. Smaller new or expanding facilities must install less expensive "biological nutrient removal" technology. The smallest category of new or expanding facilities (40,000 gallons per day or the equivalent nutrient load from an industrial facility) have no minimum technology requirements at all. The regulation also includes an exclusion for dischargers that are able to demonstrate that the specified standard is not technically or economically feasible for the facility. These provisions are drafted to minimize any impact on small businesses while still meeting the Commonwealth's water quality goals.

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 12. HEALTH

STATE BOARD OF HEALTH

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Board of Health conducted a periodic review and a small business impact review of **12VAC5-630, Private Well Regulations**, and determined that this regulation should be amended.

The proposed regulatory action to amend 12VAC5-630, which is published in this issue of the Virginia Register, serves as the report of findings.

Contact Information: Lance Gregory, Director, Division of Onsite Sewage and Water Services, Virginia Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7491, FAX (804) 864-7475, or email lance.gregory@vdh.virginia.gov.

TITLE 22. SOCIAL SERVICES

STATE BOARD OF SOCIAL SERVICES

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Board of Social Services conducted a periodic review and a small business impact review of **22VAC40-705, Child Protective Services**, and determined that this regulation should be retained as is. The department is publishing its report of findings dated December 15, 2021, to support this decision.

This regulation should be retained without changes. This regulation governs the administration of child protective services. The regulation is essential to protecting the health, safety, and welfare by providing local departments of social services with clear and comprehensive rules for administering child protective services. The regulation is clearly written and easily understandable.

This regulation is necessary because it governs the administration of child protective services. There were no

complaints or comments received from the public concerning this regulation. This regulation does not conflict with federal or state law or regulations, and there are no requirements that exceed applicable federal requirements. This regulation was last amended through the three-stage process in 2021. There are no impacts on small businesses, as it does not include any language that prescribes limitations or requirements on small businesses.

Contact Information: Shannon Hartung, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7554.

TITLE 8. EDUCATION

STATE BOARD OF EDUCATION

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 Education intends to consider amending **8VAC20-23, Licensure Regulations for School Personnel**. The purpose of the proposed action is to include instruction in cultural competency for initial licensure and renewal of a license to conform to Chapters 23 and 24 of the 2021 Acts of Assembly, Special Session I.

The agency does not intend to hold a public hearing on the proposed action after publication in the Virginia Register.

Statutory Authority: §§ 22.1-298, 22.1-299, and 22.1-305.2 of the Code of Virginia.

Public Comment Deadline: February 16, 2022.

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.

VA.R. Doc. No. R22-6842; Filed December 22, 2021, 2:05 p.m.

TITLE 12. HEALTH

STATE BOARD OF HEALTH

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Board of Health intends to consider amending **12VAC5-217, Regulations of the Patient Level Data System**. The purpose of the proposed action is to add a field to report criteria for voluntary or involuntary psychiatric commitment to the data collected and shared via Virginia Health Information (VHI) with the Department of Behavioral Health and Developmental Services (DBHDS). Item 307 D1 of Chapter 552 of the 2021 Acts of Assembly, Special Session I, requires inpatient hospitals to report the admission source of any individuals meeting the criteria for voluntary or involuntary psychiatric commitment as outlined in § 16.1-338, 16.1-339, 16.1-340.1, 16.1-345, 37.2-805, 37.2-809, or 37.2-904 of the Code of Virginia to the State Board of Health. The board is required to collect and share such data regarding the admission source of individuals admitted to inpatient hospitals as a psychiatric patient with DBHDS. The information will be shared using the new field in the patient-level data that DBHDS receives from VHI.

The agency does not intend to hold a public hearing on the proposed action after publication in the Virginia Register.

Statutory Authority: §§ 32.1-12 and 32.1-276.6 of the Code of Virginia.

Public Comment Deadline: February 16, 2022.

Agency Contact: Michael Sarkissian, Director, Data and Quality, Office of Information Management, Virginia Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7416, FAX (804) 864-7022, or email vdh_oim_regulations@vdh.virginia.gov.

VA.R. Doc. No. R22-6605; Filed December 22, 2021, 7:59 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Board of Health intends to consider promulgating **12VAC5-219, Prescription Drug Price Transparency Regulation**. The purpose of the proposed action is to add a new regulation establishing the requirements to report prescription drug price information. The new regulation is necessary to meet the statutory mandate of Chapter 304 of the 2021 Acts of Assembly, Special Session I, which requires the specification of prescription drugs for the purpose of data collection and procedures for auditing information provided by health carriers, pharmacy benefits managers, wholesale distributors, and manufacturers, as well as a schedule of civil penalties for failure to report the information required based on the severity of the violation.

The agency does not intend to hold a public hearing on the proposed action after publication in the Virginia Register.

Statutory Authority: §§ 32.1-12 and 32.1-23.4 of the Code of Virginia.

Public Comment Deadline: February 16, 2022.

Agency Contact: Michael Sarkissian, Director, Data and Quality, Office of Information Management, Virginia Department of Health, 9960 Mayland Drive, Suite 401, Richmond, VA 23233, telephone (804) 229-0517, FAX (804) 527-4502, or email vdh_oim_regulations@vdh.virginia.gov.

VA.R. Doc. No. R22-6828; Filed December 22, 2021, 7:57 p.m.

STATE BOARD OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

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 Behavioral Health and Developmental Services intends to consider amending **12VAC35-46, Regulations for Children's Residential Facilities**. The purpose of the proposed action is to to align the Regulations for Children's Residential Facilities (12VAC35-46) with the requirements of the federal Family First Prevention Services Act (FFPSA) for children's residential service providers who accept Title IV-E funding to meet the standards as qualified residential treatment programs (QRTPs). Item 318 D of Chapter 552 of the 2021 Acts of Assembly, Special Session 1, requires the agency to adopt regulations. The amendments require QRTPs to have a trauma-informed treatment model, have registered licensed nursing staff and

licensed clinical staff who are available 24 hours a day and seven days a week, facilitate outreach to the family members of the child, facilitate participation of family members in the child's treatment program, provide or arrange discharge planning and family-based aftercare support for at least six months after discharge, and be licensed and accredited by an independent, not-for-profit accrediting organization approved by the U.S. Secretary of Health and Human Services.

The agency does not intend to hold a public hearing on the proposed action after publication in the Virginia Register.

Statutory Authority: §§ 37.2-203 and 37.2-408 of the Code of Virginia.

Public Comment Deadline: February 16, 2022.

Agency Contact: Susan H. Puglisi, Regulatory Research Specialist, Office of Regulatory Affairs, Department of Behavioral Health and Developmental Services, 1220 Bank Street, 4th Floor South, Richmond, VA 23219, telephone (804) 371-8043, FAX (804) 371-4609, TDD (804) 371-8977, or email susan.puglisi@dbhds.virginia.gov.

VA.R. Doc. No. R22-6861; Filed December 29, 2021, 11:00 a.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF MEDICINE

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 Medicine intends to consider amending **18VAC85-80, Regulations for Licensure of Occupational Therapists**. Chapter 242 of the 2021 Acts of the Assembly, Special Session I mandates membership of the Commonwealth of Virginia in the Occupational Therapy Interjurisdictional Compact and requires the board to promulgate regulations to implement the provisions. The purpose of the proposed action is to add definitions consistent with the compact, set the fee for a compact privilege to practice in Virginia, and specify that renewal of the privilege is based on adherence to compact rules for continued competency.

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

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

Public Comment Deadline: February 16, 2022.

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.

VA.R. Doc. No. R22-6878; Filed December 22, 2021, 2:06 p.m.

BOARD OF NURSING

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 Nursing intends to consider promulgating **18VAC90-70, Regulations Governing the Practice of Licensed Certified Midwives**. The purpose of the proposed action is to adopt a new regulation for midwives with requirements similar to other licensed professions for a fee structure, renewal or reinstatement, continuing competency, and standards of practice to conform to Chapters 200 and 201 of the 2021 General Assembly, Special Session I, which requires the Boards of Nursing and Medicine to promulgate regulations governing the practice of licensed certified midwives. Section 54.1-2957.04 of the Code of Virginia specifies the credential that will be considered as qualification for licensure and renewal, the requirement for a practice agreement, and the prescriptive authority for the profession.

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

Statutory Authority: §§ 54.1-2400 and 54.1-2957.04 of the Code of Virginia.

Public Comment Deadline: February 16, 2022.

Agency Contact: Jay P. Douglas, R.N., Executive Director, Board of Nursing, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4520, FAX (804) 527-4455, or email jay.douglas@dhp.virginia.gov.

VA.R. Doc. No. R22-7056; Filed December 22, 2021, 2:20 p.m.

BOARD OF PHARMACY

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 Pharmacy intends to consider amending **18VAC110-20, Regulations Governing the Practice of Pharmacy**. The purpose of the proposed action is to amend 18VAC110-20-460 and 18VAC110-20-490 to allow a pharmacist at a central distribution company to verify Schedule VI drugs to be placed in an automated dispensing device (ADD) prior to delivery to the receiving hospital and to allow pharmacy technicians at the hospital to load the drugs directly into the ADD without further verification by a pharmacist at the hospital. The intended rulemaking is a result of a petition for rulemaking.

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

Statutory Authority: §§ 54.1-2400 and 54.1-3307 of the Code of Virginia.

Public Comment Deadline: February 16, 2022.

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.

VA.R. Doc. No. PFR21-33; Filed December 22, 2021, 1:57 p.m.

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 Pharmacy intends to consider amending **18VAC110-20, Regulations Governing the Practice of Pharmacy** and **18VAC110-21, Regulations Governing the Licensure of Pharmacists and Registration of Pharmacy Technicians**. The purpose of the proposed action is to add drugs and devices that may be initiated by a pharmacist and the authority to dispense controlled paraphernalia or other supplies or equipment to 18VAC110-21-46, a section newly added to the Virginia Administrative Code through an emergency regulatory action in 2020. The planned amendments (i) define drugs, devices, and controlled paraphernalia pursuant to applicable statute; (ii) add "other supplies and equipment available over-the-counter, covered by the patient's health carrier when the patient's out-of-pocket cost is lower than the out-of-pocket cost to purchase an over-the-counter equivalent of the same drug, device, controlled paraphernalia, or other supplies or equipment"; (iii) include on the list vaccines on the Immunization Schedule published by the Centers for Disease Control and Prevention or that have a current emergency use authorization from the U.S. Food and Drug Administration; (iv) include on the list tuberculin purified protein derivative for tuberculosis testing; and (v) include on the list controlled substances for the prevention of human immunodeficiency virus, including controlled substances prescribed for pre-exposure and post-exposure prophylaxis pursuant to guidelines and recommendations of the Centers for Disease Control and Prevention. The amendments meet the requirements of Chapter 214 of the 2021 Acts of the Assembly, Special Session I.

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

Statutory Authority: §§ 54.1-2400 and 54.1-3307 of the Code of Virginia.

Public Comment Deadline: February 16, 2022.

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.

VA.R. Doc. No. R22-6989; Filed December 22, 2021, 2:03 p.m.

TITLE 1. ADMINISTRATION

DEPARTMENT OF THE TREASURY

Fast-Track Regulation

Title of Regulation: **1VAC75-30. Regulations Governing Escheats (amending 1VAC75-30-10, 1VAC75-30-40, 1VAC75-30-60, 1VAC75-30-70, 1VAC75-30-90, 1VAC75-30-110, 1VAC75-30-120; repealing 1VAC75-30-20, 1VAC75-30-30).**

Statutory Authority: § 55.1-2439 of the Code of Virginia.

Public Hearing Information: No public hearing is scheduled.

Public Comment Deadline: February 16, 2022.

Effective Date: March 3, 2022.

Agency Contact: Brad Earl, Director of Unclaimed Property, Department of the Treasury, James Monroe Building, 101 North 14th Street, 4th Floor, Richmond, VA 23219, telephone (804) 807-0073, FAX (804) 786-4653, or email bradley.earl@trs.virginia.gov.

Basis: Pursuant to § 55.1-2439 of the Code of Virginia, the State Treasurer shall adopt any necessary regulations to carry out the provisions of Chapter 24 (§ 55.1-2400 et seq.) of Title 55.1 of the Code of Virginia.

Purpose: The purpose of this revision to the escheats regulations is to update renumbering and language to conform regulations to Chapter 712 of the 2019 Acts of Assembly, which recodified Title 55 to Title 55.1. The Department of the Treasury affirms that the consistency between statute and the regulation is important to the public health, safety, and welfare with regard to the escheat regulations.

Rationale for Using Fast-Track Rulemaking Process: Outside of the renaming of the statute and several minor semantic changes, there were no substantive changes to the statute; therefore, it is deemed to be noncontroversial.

Substance: The Department of the Treasury has amended 1VAC75-30 to conform the regulation per Chapter 712 of the 2019 Acts of Assembly, the recodification of Title 55 as Title 55.1.

Issues: The primary advantages of the regulatory update for the public and agency are that the changes will eliminate potential confusion by the public concerning outdated statutory citations. There are no primary advantages and disadvantages to the agency or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order 14 (as amended, July 16, 2018). The analysis presented represents DPB's best estimate of these economic impacts.[1]

Summary of the Proposed Amendments to Regulation. As the result of a period review[2] and a legislative mandate,[3] the State Treasurer proposes to amend 1VAC75-30 Regulations Governing Escheats (regulation) to update Code of Virginia citations that are no longer valid and remove obsolete or otherwise unnecessary information.

Background. Pursuant to a recommendation of the Virginia Code Commission, Chapter 712 of the 2019 Acts of Assembly[4] created in the Code of Virginia Title 55.1 (Property and Conveyances) as a revision of the then existing Title 55 (Property and Conveyances). The Escheat[5] Generally Statute was in Title 55 prior to the legislation, but is now in Title 55.1 and renamed Escheats. The regulation currently contains citations to the old Escheat Generally Statute using what are now obsolete numbers. The proposed action would update the regulation by revising the name of the statute and the Title 55.1 citations. Also, the proposed action revises an outdated reference to the Virginia Freedom of Information Act to the current correct citation.

An example of the obsolete or otherwise unnecessary information that is proposed to be removed is as follows: the State Treasurer proposes to strike the section titled "General," which contains information about statutory authority, because that information is already contained at the bottom of each section in the Virginia Administrative Code.

Estimated Benefits and Costs. Updating citations to the Code of Virginia would be beneficial because it helps enable readers of the regulation to find relevant information. Otherwise, the proposed amendments would not have any substantive impact in practice.

Businesses and Other Entities Affected. The proposed amendments affect readers of the regulation. People who are interested in becoming an escheator,[6] auctioneer for an escheat auction, or a bidder at an escheat auction, may be particularly interested in reading the regulation.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.[7] An adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined. The proposed amendments do not produce an adverse impact.

Small Businesses[8] Affected.[9] The proposed amendments do not adversely affect small businesses.

Localities[10] Affected.[11] The proposed amendments neither disproportionally affect any particular localities nor affect costs for local governments.

Projected Impact on Employment. The proposed amendments do not affect employment.

Effects on the Use and Value of Private Property. The proposed amendments do not affect the use and value of private property or real estate development costs.

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

[2]See https://townhall.virginia.gov/l/ViewPReview.cfm?PRid=2006

[3]See https://townhall.virginia.gov/l/viewmandate.cfm?mandateid=1238

[4]See https://lis.virginia.gov/cgi-bin/legp604.exe?191+ful+CHAP0712

[5]According to the Department of the Treasury, "escheat" is "a process by which the state acquires title and/or custody of real or personal property which is unclaimed by, undistributed to, or presumed abandoned by the rightful owner."

[6]The current regulation defines "escheator" as any individual who has been appointed and qualified, and who continues in service in accordance with §§ 55-168 through 55-170 of the Code of Virginia. The proposed regulation updates the citation to §§ 55.1-2401, 55.1-2402, and 55.1-2403.

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

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

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

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

[11]§ 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

Agency's Response to Economic Impact Analysis: The agency concurs with the economic impact analysis of the Department of Planning and Budget.

Summary:

The amendments (i) update citations to the Code of Virginia that changed due to the recodification of Title 55 to Title 55.1 pursuant to Chapter 712 of the 2019 Acts of Assembly; (ii) remove obsolete text and a form; and (iii) update a reference to the Administrative Process Act.

1VAC75-30-10. Definitions.

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

"Agency" means the Department of the Treasury.

"Escheator" means any individual who has been appointed and qualified, and who continues in service in accordance with ~~§§ 55-168 through 55-170~~ §§ 55.1-2401, 55.1-2402, and 55.1-2403 of the Code of Virginia.

1VAC75-30-20. ~~General.~~ (Repealed.)

~~These regulations are promulgated pursuant to the authority set forth in § 55-200.1 55.1-2439 of the Code of Virginia which requires the State Treasurer to adopt any necessary rules and regulations in accordance with the Administrative Process Act to carry out the provisions of the Escheat Generally Statutes Chapter 10 (§ 55-168 et seq.) of Title 55 of the Code of Virginia.~~

1VAC75-30-30. ~~Effective date.~~ (Repealed.)

~~This chapter shall be effective on and after July 1, 1992.~~

1VAC75-30-40. Annual reporting requirement for local government treasurers.

An Annual Escheat Report shall be submitted by each local government treasurer, director of finance, or other designated local government official to the appointed escheator for that locality and to the agency by May 31 of each year for the calendar year just ended. This report is required even if there are no real property parcels to be reported. The report shall be prepared on the appropriate form, or in an approved format, and shall be submitted on either hard copy or an acceptable diskette in a file layout and format approved by the agency. The report shall be certified as to its accuracy by the commissioner of revenue or designated local official prior to the May 31 submission date.

The local government treasurer, director of finance, or other designated local government official shall include in the Annual Escheat Report all real properties pursuant to ~~§ 55-171~~ § 55.1-2404 of the Code of Virginia.

1VAC75-30-60. Required bond for escheators.

Each escheator shall give bond for the judicial circuit for which he is appointed in the circuit court for the locality in which he resides. The bond in the amount of $3,000 ~~must~~ shall be obtained within 60 days of confirmation of the appointment and a copy of such bond should be provided to the ~~Treasurer of Virginia~~ State Treasurer. This bond shall remain in force as long as the escheator shall continue in office until removed or until a successor is duly appointed and qualified.

If property in another locality within the judicial circuit escheats to the Commonwealth at the inquest hearing, the escheator shall give additional bond pursuant to the requirements in ~~§ 55-169~~ § 55.1-2402 of the Code of Virginia.

1VAC75-30-70. Escheator's responsibility for collection of sale proceeds and remittance to State Treasurer.

The escheator shall be responsible for the collection of all moneys during the escheat process. Any and all moneys collected during the escheat process shall be deposited into the bank account of the escheator no later than the next banking day following the collection date. A check for the full amount collected shall be drawn on this account and made payable to the Treasurer of Virginia no later than 10 banking days following the deposit date. The escheator shall submit the check and complete columns 5, 6, 7, and 8 of the Annual Escheat Report Form received from the local treasurer or submit other supporting documentation for funds collected other than sale proceeds.

The escheator shall be responsible for the collection of any checks relative to the escheat process returned by the bank to the escheator's bank account for insufficient funds or any other reason ~~which~~ that makes a check uncollectible. The escheator shall institute procedures for collection of these moneys immediately upon notification from the bank that a check has been returned uncollected. The procedures shall include~~, but not be limited to,~~ a written notice to the maker of the returned check advising the maker that payment, with certified funds or cash, be made within five business days of the correspondence date. In regard to a sale transaction, the notice shall state that failure to comply may result in (i) the forfeiture of any deposit and the resale of escheated property pursuant to ~~§ 55-187~~ § 55.1-2425 of the Code of Virginia, (ii) a suit to enforce specific performance of the sale agreement, (iii) resale of the property and suit for any damages resulting from default by the purchaser, or (iv) any other remedy at law or in equity available to a seller against a defaulting purchaser of real estate.

1VAC75-30-90. Required written disclosures to be made by the escheator at the escheat auction.

The escheator shall provide written information to any and all individuals who register as a bidder for an escheat sale that the grant for the escheated property will be issued in accordance with ~~§ 55-186.1~~ § 55.1-2422 of the Code of Virginia and that this statutory form of grant contains no warranty of title. In addition, the written information shall instruct any and all bidders seeking a recovery of proceeds from a sale of escheated property that the recovery of proceeds of each sale from the Commonwealth, less the expenses of sale and the escheator's fee, may be obtained if the buyer, pursuant to ~~§ 55-200~~ § 55.1-2438 of the Code of Virginia, submits satisfactory evidence to the State Treasurer within 120 days of the sale that the escheated property does not exist or was improperly escheated.

1VAC75-30-110. Reimbursable expenses and required documents of the auctioneer.

The auctioneer shall submit an expense report with supporting documentation to the State Treasurer within 30 days of the auction to ensure proper reimbursement of the auction expenses pursuant to ~~§ 55-186~~ § 55.1-2421 of the Code of Virginia. Reimbursable expenses shall include: advertisements, postage, payroll, and any other expenses directly related to the auction, but in no case shall the expense reimbursement exceed 5.0% of the proceeds collected. Proceeds do not include recording fees.

1VAC75-30-120. Fees charged for requests under the Virginia Freedom of Information Act (~~§ 2.1-340~~ § 2.2-3700 et seq. of the Code of Virginia).

Fees shall be computed on all requests for information under the Virginia Freedom of Information Act, Chapter ~~21~~ 37 (~~§ 2.1-340~~ § 2.2-3700 et seq.) of Title ~~2.1~~ 2.2 of the Code of Virginia, related to the escheat process. The fee assessed shall be determined based on the actual time of the employee performing the duties necessary to comply with the request and other costs incurred. Other costs include copies, postage, and any other cost directly associated with providing the requested information.

If there is an amount due the agency and it is in excess of 30 days past due, current and future requests for information will be withheld until the outstanding amount is paid to the agency. Continued failure to pay fees when due may result in the agency requesting payment in advance.

~~FORMS (1VAC75-30)~~

~~Annual Escheat Report, #ESH-1 (3/93).~~

VA.R. Doc. No. R22-6838; Filed December 27, 2021, 9:11 p.m.

Fast-Track Regulation

Title of Regulation: **1VAC75-40. Unclaimed Property Administrative Review Process (amending 1VAC75-40-10 through 1VAC75-40-60).**

Statutory Authority: § 55.1-2541 of the Code of Virginia.

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: February 16, 2022.

Effective Date: March 3, 2022.

Agency Contact: Brad Earl, Director of Unclaimed Property, Department of the Treasury, James Monroe Building, 101 North 14th Street, 4th Floor, Richmond, VA 23219, telephone (804) 807-0073, FAX (804) 786-4653, or email bradley.earl@trs.virginia.gov.

Basis: Pursuant to § 55.1-2541 D of the Code of Virginia, the State Treasurer or Treasurer's designee shall promulgate regulations pursuant to which any person (i) asserting ownership of property remitted to the Commonwealth under this chapter, (ii) required to pay or deliver abandoned property pursuant to this chapter, or (iii) otherwise aggrieved by a decision of the administrator may file an application for administrative appeal and correction of the administrator's determination.

Purpose: The purpose of this revision to the Unclaimed Property Administrative Review Process regulations is to update language in response to recent recodification of Title 55 to Title 55.1 via Chapter 712 of the 2019 Acts of Assembly. The Department of Treasury affirms that the consistency between statute and regulation is important to public health, safety, and welfare with regard to the unclaimed property regulations.

Rationale for Using Fast-Track Rulemaking Process: Outside of the renaming of the statute and several minor semantic changes, there were no substantive changes to the statute so the action is deemed to be noncontroversial.

Substance: The Department of Treasury has amended 1VAC75-40 to conform the regulation to the recodification of Title 55 to Title 55.1 via Chapter 712 of the 2019 Acts of Assembly.

Issues: The primary advantage of the regulatory update to the public is elimination of potential confusion because of outdated statutory citations. There are no disadvantages to the public. There are no primary advantages and disadvantages to the agency or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order 14 (as amended, July 16, 2018). The analysis presented represents DPB's best estimate of these economic impacts.[1]

Summary of the Proposed Amendments to Regulation. As the result of a legislative mandate,[2] the State Treasurer proposes to amend 1VAC75-40 Unclaimed Property Administrative Review Process (regulation) to update Code of Virginia citations that are no longer valid due to the recodification of the Uniform Disposition of Unclaimed Property Act[3] in 2019. Additionally, obsolete text would be removed and non-consequential wording changes would be made.

Background. Pursuant to a recommendation of the Virginia Code Commission, Title 55.1 (Property and Conveyances) was created in the Code of Virginia as a revision of then existing Title 55 (Property and Conveyances).[4] The Uniform Disposition of Unclaimed Property Act was in Title 55 prior to the legislation, but is now in Title 55.1 and renamed the Virginia Disposition of Unclaimed Property Act. The regulation contains citations to the Uniform Disposition of Unclaimed Property Act using what are now obsolete numbers. The proposed action would update the name of the act and the citations to the Title 55.1 numbers in the regulation.

Estimated Benefits and Costs. Updating citations to the Code of Virginia would be beneficial because it helps enable readers of the regulation to find relevant information. Otherwise, the proposed amendments would not have any substantive impact in practice.

Businesses and Other Entities Affected. The proposed amendments affect readers of the regulation. The regulation pertains to any person or entity (i) asserting ownership of property remitted to the Commonwealth under the Virginia Disposition of Unclaimed Property Act or (ii) required to pay or deliver abandoned property pursuant to the Virginia Disposition of Unclaimed Property Act. Such persons or people who work for such entities may be particularly interested in reading the regulation.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.[5] An adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined. The proposed amendments do not produce adverse impact.

Small Businesses[6] Affected.[7] The proposed amendments do not appear to adversely affect small businesses.

Localities[8] Affected.[9] The proposed amendments neither disproportionally affect any particular localities nor affect costs for local governments.

Projected Impact on Employment. The proposed amendments do not affect employment.

Effects on the Use and Value of Private Property. The proposed amendments do not affect the use and value of private property or real estate development costs.

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

[2]See https://townhall.virginia.gov/l/viewmandate.cfm?mandateid=1239

[3]See https://law.lis.virginia.gov/vacode/title55.1/chapter25/

[4]See Chapter 712 of the 2019 Acts of Assembly at https://lis.virginia.gov/cgi-bin/legp604.exe?191+ful+CHAP0712

[5]Pursuant to § 2.2-4007.04 D: In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact

on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance. Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation.

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

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

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

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

Agency's Response to Economic Impact Analysis: The Department of Treasury concurs with the economic impact analysis of the Department of Planning and Budget.

Summary:

The amendments (i) update citations to the Code of Virginia that changed due to the recodification of Title 55 to Title 55.1 pursuant to Chapter 712 of the 2019 Acts of Assembly; (ii) remove obsolete text; and (iii) update definitions, clarify language, and remove a form.

1VAC75-40-10. Definitions.

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

"Abandoned property" means funds or other property, tangible or intangible, presumed abandoned under the act.

"Act" refers to the ~~Uniform~~ Virginia Disposition of Unclaimed Property Act, Chapter ~~11.1~~ 25 (§ ~~55-210.1~~ 55.1-2500 et seq.) of Title ~~55~~ 55.1 of the Code of Virginia.

"Administrator" means ~~the Director of the Unclaimed Property Division at the Department of the Treasury or such other person as shall be designated by~~ the State Treasurer or the State Treasurer's designee.

"Applicant" means any person (i) asserting ownership of property remitted to the Commonwealth under the ~~Uniform~~ Virginia Disposition of Unclaimed Property Act, (ii) required to pay or deliver abandoned property pursuant to the ~~Uniform~~ Virginia Disposition of Unclaimed Property Act, or (iii) otherwise aggrieved by a decision of the administrator.

"Division of Unclaimed Property" means the Division in the Department of the Treasury of the Commonwealth ~~of Virginia~~ responsible for administration of the ~~Uniform~~ Virginia Disposition of Unclaimed Property Act.

"Holder" means a person, wherever organized or domiciled, who is (i) in possession of property belonging to another, (ii) a trustee in case of a trust, or (iii) indebted to another on an obligation.

1VAC75-40-20. ~~State Treasurer~~ Administrator to give written notice to any person asserting ownership of property when payment denied.

The ~~State Treasurer~~ administrator will issue a denial of payment letter to any person asserting ownership of property remitted to the Commonwealth under the act where it is determined that the evidence submitted does not provide sufficient proof of ownership.

1VAC75-40-30. ~~State Treasurer~~ Administrator to give written notice for failure to pay or deliver abandoned property.

The ~~State Treasurer~~ administrator shall issue a written notice to any person who ~~he~~ the administrator ascertains has failed to pay or deliver abandoned property. The notice will demand the remittance of the property and payment of any penalties and interest. The notice will be accompanied by a detailed explanation of the person's right to administrative or judicial review. The notice will require the holder to remit the demanded property, plus penalties and interest, if any, to the ~~State Treasurer~~ administrator within 90 days from the date the notice is received by the holder unless the holder requests (i) an administrative review in accordance with this regulation, or (ii) a judicial review in accordance with § ~~55-210.22~~ 55.1-2534 of the Code of Virginia.

1VAC75-40-40. Request for administrative review.

Any person aggrieved by a decision of the administrator may file ~~an application~~ a request for administrative review and correction of the administrator's determination.

1. Any person asserting ownership of property remitted to the Commonwealth receiving a denial of payment letter from the ~~State Treasurer~~ administrator may file an application for administrative review within 90 days from the date the notice is received by such person.

2. Any person receiving a written notice from the ~~State Treasurer~~ administrator demanding the remittance of property and the payment of penalties and interest, if any, may file an application for administrative review within 90 days after receipt by the holder of the written notice.

3. Any person otherwise aggrieved by a decision of the administrator may file an application for administrative

review within 90 days from the date the written notice is received by such person.

1VAC75-40-50. ~~Application~~ Submission of request for administrative review.

All requests for an administrative review are required to be submitted ~~on the form entitled "Application for an Administrative Review" within the prescribed time period. The Application for an Administrative Review must be~~ in writing and accompanied by the documentation to support the review or an explanation as to why such supporting documentation is not available. No ~~application~~ request shall be denied solely on the basis that no supporting documentation is available or that additional documentation may be desirable. Failure to submit the ~~Application for an Administrative Review~~ request within the prescribed time period will bar administrative but not judicial review of the matter.

1VAC75-40-60. Administrative review process steps.

A. The ~~Application for an Administrative Review form~~ request must be submitted to the administrator as agent for the State Treasurer within the prescribed time period.

B. The administrator will contact the applicant to schedule the administrative review meeting within 30 calendar days of the receipt of the ~~Application for an Administrative Review~~ request.

C. The administrative review will be held at the ~~office of the State Treasurer~~ Department of the Treasury at an agreed upon time during the next 30 calendar days or at such later time as is mutually agreed upon by the applicant and the administrator. Prior to the review meeting, the applicant shall present any additional evidence and pertinent information supporting the basis for the ~~Application for an Administrative Review~~ request.

D. The review panel for the Department of the Treasury will consist of the State Treasurer or designee, the Director of Unclaimed Property or designee, and a representative from the Office of the Attorney General. A representative from the Division of Unclaimed Property Audit or Claims area may also participate in the administrative review meeting. The applicant may be assisted at the review meeting by his agent or by legal counsel, or both.

E. During the administrative review meeting, the applicant will have an opportunity to explain his reason for requesting a correction. Members of the State Treasurer's review panel may ask questions to clarify their understanding of the issues. There will be no examination or cross-examination of any of those present at the meeting. The Division of Unclaimed Property (Division) shall allow the applicant to make an audio recording of the administrative review meeting at the applicant's expense and using the applicant's equipment. ~~The division may make an audio recording of the administrative review meeting at the division's expense and using the division's equipment. The division shall, upon request of the applicant, provide the applicant a transcript of a meeting recorded by the division. The division may charge the applicant for the cost of the requested transcription and reproduction of the transcript. Receipts from the charges for the transcripts shall be credited to the division for reimbursement of transcription expenses.~~

F. The State Treasurer's review panel has the ability to approve claims, correct errors and amend or withdraw any denial of payment letter or other written notice from the administrator or State Treasurer.

G. Based on the evidence and additional information presented during the review meeting, the State Treasurer will issue a written determination to the applicant within 90 days of the receipt of the ~~Application for an Administrative Review~~ request. The State Treasurer will notify the applicant and the administrator if a longer period is required. The State Treasurer's written determination will also advise the applicant of his right to seek judicial review pursuant to § ~~55-210.22~~ 55.1-2534 of the Code of Virginia.

~~FORMS (1VAC75-40)~~

~~Application for an Administrative Review (eff. 9/04).~~

VA.R. Doc. No. R22-6827; Filed December 27, 2021, 9:14 p.m.

TITLE 2. AGRICULTURE

BOARD OF AGRICULTURE AND CONSUMER SERVICES

Fast-Track Regulation

Title of Regulation: **2VAC5-560. Rules and Regulations Pertaining to Labeling and Sale of Infant Formula (amending 2VAC5-560-50, 2VAC5-560-70).**

Statutory Authority: § 3.2-5121 of the Code of Virginia.

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: February 16, 2022.

Effective Date: March 3, 2022.

Agency Contact: Ryan Davis, Program Manager, Office of Dairy and Foods, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-8910, FAX (804) 371-7792, TDD (800) 828-1120, or email ryan.davis@vdacs.virginia.gov.

Basis: Section 3.2-109 of the Code of Virginia establishes the Board of Agriculture and Consumer Services as a policy board with the authority to adopt regulations in accordance with the provisions of Title 3.2 of the Code of Virginia. Section 3.2-5121 of the Code of Virginia grants the board authority to adopt regulations for the efficient enforcement of Article 3 (§ 3.2-5120 et seq.) of Chapter 51 of Title 3.2 of the Code of

Virginia, which pertains to the adulteration, misbranding, and false advertising of food.

Purpose: The purpose of the proposed amendments is to ensure that the regulation and its references are accurate. The proposed amendments protect the health, safety, and welfare of Virginia's citizens in that they ensure that the regulation and the Code of Virginia references contained therein are current and enforceable. A current and enforceable infant formula regulation will ensure that infants receive and consume infant formula that is nutritious and capable of supporting the infant's growth, health, and wellbeing. The goal of the proposed amendments is to ensure a regulation with references to the Code of Virginia that are accurate, updated, and enforceable.

Rationale for Using Fast-Track Rulemaking Process: A periodic regulatory review of this regulation identified references to the Code of Virginia that are outdated and inaccurate. These sections needed to be amended to reflect an accurate reference. This rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track rulemaking process because the proposed amendments simply ensure the regulation is accurate.

Substance: The misbranding provision in this regulation references a Code of Virginia section that was eliminated when Title 3.1 was recodified. The proposed amendment updates the reference to § 3.2-5123 A 1 of the Code of Virginia.

The section of this regulation pertaining to the sale of a product unfit for food also references an obsolete section of Title 3.1 of the Code of Virginia and will be updated to subdivision 3 of § 3.2-5122 of the Code Virginia.

Issues: The proposed amendments will ensure an accurate, updated, and enforceable regulation. The amended regulation will further ensure that infant formula is not sold beyond the scientifically determined expiration date and will further ensure that infants will consume nutritionally sound formula in order to ensure the infant's health, growth, and development.

The primary advantage to the agency and Commonwealth is that the agency can ensure an enhanced degree of public health protection by ensuring that infant formula consumed in the Commonwealth is nutritionally sound.

There do not appear to be any disadvantages to the public or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. As the result of a 2021 periodic review,[1] the Board of Agriculture and Consumer Services (Board) is proposing to update two references to the Code of Virginia.

Background. This regulation requires that any container of infant formula manufactured or sold in the Commonwealth of Virginia conspicuously show the calendar month and year after which the product is not to be sold or used for human consumption. For many children, infant formula is the sole source of nutrition during the initial stages of life. Manufacturers must ensure scientifically that infant formula consumed contains the appropriate spectrum and quality of nutrients required for growth and development as long as the formula is consumed by the expiration date and retailers must ensure that expired infant formula is not sold to consumers.

The regulation provides that any infant formula manufacturer knowingly filing incorrect or unverifiable data with the Commissioner or placing an expiration date upon a shipping carton, container, or any consumer package that is inconsistent with the data filed with the Commissioner shall be considered to have misbranded the formula.

The regulation also states that any manufacturer, distributor, dealer, or other person who offers for sale or sells infant formula without an expiration date, or who offers for sale or sells infant formula after the expiration date shown, shall be deemed to be offering for sale a product that is unfit for food.

The misbranding provision in this regulation references a section of the Code of Virginia (Code) that addresses misbranding. The section of the Code that is referenced, § 3.1-396(a), no longer exists, as Title 3.1 of the Code was recodified in 2008.[2] The correct reference to the statue is now § 3.2-5123(a)(1). The proposed amendment updates the reference so that it refers to the correct section of the Code of Virginia.

Similarly, the section of this regulation pertaining to the sale of a product unfit for food references a section of the Code that addresses adulterated food products. This section of the Code that is referenced, § 3.1-395(a)(3), also no longer exists due the recodification of Title 3.1 in 2008. The regulation should reference § 3.2-5122(3). The proposed change updates the reference so that it refers to the correct section of the Code.

Estimated Benefits and Costs. The proposed changes simply update references to the Code of Virginia regarding misbranding and unfit food without any change in regulatory requirements. Therefore, no significant economic effect is expected other than improving the accuracy of the regulatory text.

Businesses and Other Entities Affected. This regulation applies to one manufacturer of infant formula in the Commonwealth and approximately 9,000 retail establishments that may be offering infant formula for sale. No adverse economic impact[3] on any entity is indicated.

Small Businesses[4] Affected. The proposed amendments do not adversely affect small businesses.

Localities[5] Affected.[6] The proposed amendments do not introduce costs for local governments and do not affect any particular locality.

Projected Impact on Employment. The proposed amendments do not affect total employment.

Effects on the Use and Value of Private Property. No impact on the use and value of private property or on the real estate development costs is expected.

[1] https://townhall.virginia.gov/L/ViewPReview.cfm?PRid=1984

[2]https://lis.virginia.gov/cgi-bin/legp604.exe?ses=081&typ=bil&val=ch860

[3]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.

[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 agency concurs with the economic impact analysis of the Department of Planning and Budget.

Summary:

The amendments update citations to the Code of Virginia that changed due to the recodification of Title 3.1 to Title 3.2 pursuant to Chapter 860 of the 2008 Acts of Assembly.

2VAC5-560-50. Misbranding.

Knowingly filing incorrect or unverifiable data with the commissioner, or placing an expiration date upon a shipping carton, container, or any consumer package ~~which~~ that is inconsistent with the data filed with the commissioner~~,~~ shall be considered to be misbranding under ~~§ 3.1-396(a)~~ § 3.2-5123 A 1 of the Code of Virginia. However, it shall not be considered misbranded if the expiration date shown is an earlier date than the filed data could warrant.

2VAC5-560-70. Sale of a product unfit for food.

Any manufacturer, distributor, dealer, or other person who offers for sale or sells infant formula without an expiration date~~,~~ or who offers for sale or sells infant formula after the expiration date shown~~,~~ shall be deemed to be offering for sale a product unfit for food ~~within the meaning of § 3.1-395(a)(3)~~ as described in subdivision 3 of § 3.2-5122 of the Code of Virginia.

~~FORMS (2VAC5-560)~~

~~Inspection Report, Form VDACS-06017.~~

VA.R. Doc. No. R21-6646; Filed December 27, 2021, 4:38 p.m.

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TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

DEPARTMENT OF CORRECTIONS

Fast-Track Regulation

Title of Regulation: **6VAC16-10. Public Participation Guidelines (adding 6VAC16-10-10 through 6VAC16-10-110).**

Statutory Authority: §§ 2.2-4007.02 and 53.1-266 of the Code of Virginia.

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: February 16, 2022.

Effective Date: March 5, 2022.

Agency Contact: Tracey Jenkins, Grant Administrator, Department of Corrections, 6900 Atmore Drive, Richmond, VA 23225, telephone (804) 887-7898, or email tracey.jenkins@vadoc.ryan.davis@vdacs.virginia.gov.

Basis: Section 2.2-4007.02 of the Code of Virginia requires state agencies to develop, adopt, and use public participation guidelines in order to ensure the involvement of interested persons in the formation and development of the agency's regulations.

The Director of the Department of Corrections is authorized under § 53.1-266 of the Code of Virginia to promulgate regulations as related to the administration of specific duties and responsibilities of the department.

Purpose: This regulatory action is necessary to comply with § 2.2-4007.02 of the Code of Virginia, which requires state agencies to develop, adopt, and use public participation guidelines in order to ensure the involvement of interested persons in the formation and development of the agency's regulations. Participation by the public in the regulatory process is essential to assist the department in the promulgation of regulations that will protect the public health and safety.

Rationale for Using Fast-Track Rulemaking Process: The proposed regulatory action establishes public participation guidelines for the Department of Corrections under 6VAC16. Section 2.2-4007.02 of the Administrative Process Act requires agencies to adopt public participation guidelines, which are procedures for obtaining public input from interested parties in the formation and development of an agency's regulations. Regulations under 6VAC15-10 are specific for the Board of Local and Regional Jails and do not extend to regulations that must be promulgated for the Department of Corrections under 6VAC16; therefore, separate public participation guidelines are necessary under 6VAC16.

The proposed regulation follows model public participation guidelines used by agencies throughout the Commonwealth for obtaining public input from interested parties in the formation and development of an agency's regulations. Therefore, these are expected to be noncontroversial and appropriate for the fast-track rulemaking process.

Substance: The proposed regulation follows model public participation guidelines used by agencies throughout the Commonwealth for obtaining public input from interested parties in the formation and development of an agency's regulations without deviation. As provided for in model public participation guidelines, the proposed regulations include the following parts and sections:

Part I: Purpose and Definitions; sections: Purpose; Definitions.

Part II: Notification of Interested Persons; sections: Notification list; Information to be sent to persons on the notification list.

Part III: Public Participation Procedures; sections: Public comment; Petition for rulemaking; Appointment of regulatory advisory panel; Appointment of negotiated rulemaking panel; Meetings; Public hearings on regulations; Periodic review of regulations.

Issues: The primary advantage of the regulatory proposal is to provide guidance for obtaining public input from interested parties in the formation and development of an agency's regulations. The regulation will benefit the general public and the department by ensuring that a standardized process for obtaining public input from interested parties is used in the formation and development of an agency's regulations. There are no disadvantages associated with the regulatory proposal for the public or Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order 14 (as amended, July 16, 2018). The analysis presented below represents DPB's best estimate of these economic impacts.[1]

Summary of the Proposed Amendments to Regulation. The Department of Corrections (DOC) proposes to promulgate Public Participation Guidelines (PPGs).

Background. In § 2.2-4007.02, the Virginia Administrative Process Act requires agencies to adopt PPGs for soliciting the input of interested parties in the formation and development of its regulations.[2] The guidelines shall set out any methods for the identification and notification of interested parties and any specific means of seeking input from interested persons or groups that the agency intends to use in addition to the Notice of Intended Regulatory Action. The PPGs must also set out a general policy for the use of standing or ad hoc advisory panels and consultation with groups and individuals registering interest in working with the agency. Such policy shall address the circumstances in which the agency considers the panels or consultation appropriate and intends to make use of the panels or consultation.

DOC's proposed PPGs follow the model PPGs developed by DPB,[3] and also reflect 2012 legislation concerning PPGs. Chapter 795 of the 2012 Acts of Assembly[4] clarified that in formulating any regulation or in evidentiary hearings on regulations, an interested party shall be entitled to be accompanied by and represented by counsel or other qualified representative.

Chapter 759 of the 2020 Acts of Assembly[5] renamed the Board of Corrections as the State Board of Local and Regional Jails. As a result, the location in the Virginia Administrative Code where the regulations of the Board of Corrections resided (6 VAC 15) was renamed State Board of Local and Regional Jails. There currently are PPGs in 6VAC15, namely 6VAC15-11.[6]

DOC and the Registrar of Regulations determined, however, that some of the regulations formerly under the Board of Corrections fall under the authority of DOC. Hence, the Registrar assigned a new location for regulations of DOC within the VAC (6VAC16); and since each regulatory entity needs to have PPGs in place, the DOC proposes to promulgate such a regulation now.

Estimated Benefits and Costs. The proposed regulation would benefit the general public and DOC by ensuring that a clear standardized process for obtaining public input from interested parties is used in the formation and development of the agency's regulations.

Businesses and Other Entities Affected. The proposed regulation affects people interested in providing input regarding the formation and development of DOC regulations, as well as DOC.

The Code of Virginia requires the DPB to assess whether an adverse impact may result from the proposed regulation.[7] An adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined. The proposed regulation does not produce an adverse impact.

Small Businesses[8] Affected.[9] The proposed regulation does not appear to adversely affect small businesses.

Localities[10] Affected.[11] The proposed regulation does not disproportionally affect any particular localities, and does not affect costs for local governments.

Projected Impact on Employment. The proposed regulation does not appear to affect employment.

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

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

[2]See http://law.lis.virginia.gov/vacode/title2.2/chapter40/section2.2-4007.02/

[3]Chapter 321 of the 2008 Acts of Assembly required DPB, in consultation with the Office of the Attorney General, to develop model PPGs. See http://leg1.state.va.us/cgi-bin/legp504.exe?081+ful+CHAP0321

[4]See https://lis.virginia.gov/cgi-bin/legp604.exe?121+ful+CHAP0795

[5]See https://lis.virginia.gov/cgi-bin/legp604.exe?201+ful+CHAP0759

[6]See https://law.lis.virginia.gov/admincode/title6/agency15/chapter11/

[7]Pursuant to Code § 2.2-4007.04 D: In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a

locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance. Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation.

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

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

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

[11]§ 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

Agency's Response to Economic Impact Analysis: The Department of Corrections concurs with the Department of Planning and Budget's economic impact analysis.

Summary:

This regulatory action establishes Public Participation Guidelines (6VAC16-10) for the Department of Corrections, which are procedures for obtaining public input from interested parties in the formation and development of an agency's regulations.

Chapter 10
Public Participation Guidelines

Part I
Purpose and Definitions

6VAC16-10-10. Purpose.

The purpose of this chapter is to promote public involvement in the development, amendment or repeal of the regulations of the Department of Corrections. This chapter does not apply to regulations, guidelines, or other documents exempted or excluded from the provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

6VAC16-10-20. Definitions.

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

"Administrative Process Act" means Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2 of the Code of Virginia.

"Agency" means the Department of Corrections, which is the unit of state government empowered by the agency's basic law to make regulations or decide cases. Actions specified in this chapter may be fulfilled by state employees as delegated by the agency.

"Basic law" means provisions in the Code of Virginia that delineate the basic authority and responsibilities of an agency.

"Commonwealth Calendar" means the electronic calendar for official government meetings open to the public as required by § 2.2-3707 C of the Freedom of Information Act.

"Negotiated rulemaking panel" or "NRP" means an ad hoc advisory panel of interested parties established by an agency to consider issues that are controversial with the assistance of a facilitator or mediator, for the purpose of reaching a consensus in the development of a proposed regulatory action.

"Notification list" means a list used to notify persons pursuant to this chapter. Such a list may include an electronic list maintained through the Virginia Regulatory Town Hall or other list maintained by the agency.

"Open meeting" means any scheduled gathering of a unit of state government empowered by an agency's basic law to make regulations or decide cases, which is related to promulgating, amending, or repealing a regulation.

"Person" means any individual, corporation, partnership, association, cooperative, limited liability company, trust, joint venture, government, political subdivision, or any other legal or commercial entity and any successor, representative, agent, agency, or instrumentality thereof.

"Public hearing" means a scheduled time at which members or staff of the agency will meet for the purpose of receiving public comment on a regulatory action.

"Regulation" means any statement of general application having the force of law, affecting the rights or conduct of any person, adopted by the agency in accordance with the authority conferred on it by applicable laws.

"Regulatory action" means the promulgation, amendment, or repeal of a regulation by the agency.

"Regulatory advisory panel" or "RAP" means a standing or ad hoc advisory panel of interested parties established by the agency for the purpose of assisting in regulatory actions.

"Town Hall" means the Virginia Regulatory Town Hall, the website operated by the Virginia Department of Planning and Budget at www.townhall.virginia.gov, which has online public comment forums and displays information about regulatory meetings and regulatory actions under consideration in Virginia and sends this information to registered public users.

"Virginia Register" means the Virginia Register of Regulations, the publication that provides official legal notice of new, amended and repealed regulations of state agencies, which is published under the provisions of Article 6 (§ 2.2-4031 et seq.) of the Administrative Process Act.

Part II
Notification of Interested Parties

6VAC16-10-30. Notification list.

A. The agency shall maintain a list of persons who have requested to be notified of regulatory actions being pursued by the agency.

B. Any person may request to be placed on a notification list by registering as a public user on the Town Hall or by making a request to the agency. Any person who requests to be placed on a notification list shall elect to be notified either by electronic means or through a postal carrier.

C. The agency may maintain additional lists for persons who have requested to be informed of specific regulatory issues, proposals, or actions.

D. When electronic mail is returned as undeliverable on multiple occasions at least 24 hours apart, that person may be deleted from the list. A single undeliverable message is insufficient cause to delete the person from the list.

E. When mail delivered by a postal carrier is returned as undeliverable on multiple occasions, that person may be deleted from the list.

F. The agency may periodically request those persons on the notification list to indicate their desire to either continue to be notified electronically, receive documents through a postal carrier, or be deleted from the list.

6VAC16-10-40. Information to be sent to persons on the notification list.

A. To persons electing to receive electronic notification or notification through a postal carrier as described in 6VAC16-10-30, the agency shall send the following information:

1. A notice of intended regulatory action (NOIRA).

2. A notice of the comment period on a proposed, a reproposed, or a fast-track regulation and hyperlinks to, or instructions on how to obtain, a copy of the regulation and any supporting documents.

3. A notice soliciting comment on a final regulation when the regulatory process has been extended pursuant to § 2.2-4007.06 or 2.2-4013 C of the Code of Virginia.

B. The failure of any person to receive any notice or copies of any documents shall not affect the validity of any regulation or regulatory action.

Part III
Public Participation Procedures

6VAC16-10-50. Public comment.

A. In considering any nonemergency, nonexempt regulatory action, the agency shall afford interested persons an opportunity to (i) submit data, views, and arguments, either orally or in writing, to the agency; and (ii) be accompanied by and represented by counsel or other representative. Such opportunity to comment shall include an online public comment forum on the Town Hall.

1. To any requesting person, the agency shall provide copies of the statement of basis, purpose, substance, and issues; the economic impact analysis of the proposed or fast-track regulatory action; and the agency's response to public comments received.

2. The agency may begin crafting a regulatory action prior to or during any opportunities it provides to the public to submit comments.

B. The agency shall accept public comments in writing after the publication of a regulatory action in the Virginia Register as follows:

1. For a minimum of 30 calendar days following the publication of the notice of intended regulatory action (NOIRA).

2. For a minimum of 60 calendar days following the publication of a proposed regulation.

3. For a minimum of 30 calendar days following the publication of a reproposed regulation.

4. For a minimum of 30 calendar days following the publication of a final adopted regulation.

5. For a minimum of 30 calendar days following the publication of a fast-track regulation.

6. For a minimum of 21 calendar days following the publication of a notice of periodic review.

7. Not later than 21 calendar days following the publication of a petition for rulemaking.

C. The agency may determine if any of the comment periods listed in subsection B of this section shall be extended.

D. If the Governor finds that one or more changes with substantial impact have been made to a proposed regulation, the Governor may require the agency to provide an additional 30 calendar days to solicit additional public comment on the changes in accordance with § 2.2-4013 C of the Code of Virginia.

E. The agency shall send a draft of the agency's summary description of public comment to all public commenters on the proposed regulation at least five days before final adoption of the regulation pursuant to § 2.2-4012 E of the Code of Virginia.

6VAC16-10-60. Petition for Rule Making.

A. As provided in § 2.2-4007 of the Code of Virginia, any person may petition the agency to consider a regulatory action.

B. A petition shall include to the following information:

1. The petitioner's name and contact information;

2. The substance and purpose of the rulemaking that is requested, including reference to any applicable Virginia Administrative Code sections; and

3. Reference to the legal authority of the agency to take the action requested.

C. The agency shall receive, consider, and respond to a petition pursuant to § 2.2-4007 and shall have the sole authority to dispose of the petition.

D. The petition shall be posted on the Town Hall and published in the Virginia Register.

E. Nothing in this chapter shall prohibit the agency from receiving information or from proceeding on its own motion for rulemaking.

6VAC16-10-70. Appointment of regulatory advisory panel.

A. The agency may appoint a regulatory advisory panel to provide professional specialization or technical assistance when the agency determines that such expertise is necessary to address a specific regulatory issue or action or when individuals indicate an interest in working with the agency on a specific regulatory issue or action.

B. Any person may request the appointment of a RAP and request to participate in its activities. The agency shall determine when a RAP shall be appointed and the composition of the RAP.

C. A RAP may be dissolved by the agency if:

1. The proposed text of the regulation is posted on the Town Hall, published in the Virginia Register, or such other time as the agency determines is appropriate; or

2. The agency determines that the regulatory action is either exempt or excluded from the requirements of the Administrative Process Act.

6VAC16-10-80. Appointment of negotiated rulemaking panel.

A. The agency may appoint a negotiated rulemaking panel if a regulatory action is expected to be controversial.

B. An NRP that has been appointed by the agency may be dissolved by the agency when:

1. There is no longer controversy associated with the development of the regulation;

2. The agency determines that the regulatory action is either exempt or excluded from the requirements of the Administrative Process Act; or

3. The agency determines that resolution of a controversy is unlikely.

6VAC16-10-90. Meetings.

Notice of any open meeting, including meetings of a RAP or an NRP, shall be posted on the Town Hall and Commonwealth Calendar at least seven working days prior to the date of the meeting. The exception to this requirement is any meeting held in accordance with § 2.2-3707 D of the Code of Virginia allowing for contemporaneous notice to be provided to participants and the public.

6VAC16-10-100. Public hearings on regulations.

A. The agency shall indicate in its notice of intended regulatory action whether it plans to hold a public hearing following the publication of the proposed stage of the regulatory action.

B. The agency may conduct one or more public hearings during the comment period following the publication of a proposed regulatory action.

C. An agency is required to hold a public hearing following the publication of the proposed regulatory action when:

1. The agency's basic law requires the agency to hold a public hearing;

2. The Governor directs the agency to hold a public hearing; or

3. The agency receives requests for a public hearing from at least 25 persons during the public comment period following the publication of the notice of intended regulatory action.

D. Notice of any public hearing shall be posted on the Town Hall and Commonwealth Calendar at least seven working days prior to the date of the hearing. The agency shall also notify those persons who requested a hearing under subdivision C 3 of this section.

6VAC16-10-110. Periodic review of regulations.

A. The agency shall conduct a periodic review of its regulations consistent with:

1. An executive order issued by the Governor pursuant to § 2.2-4017 of the Administrative Process Act to receive comment on all existing regulations as to their effectiveness, efficiency, necessity, clarity, and cost of compliance; and

2. The requirements in § 2.2-4007.1 of the Administrative Process Act regarding regulatory flexibility for small businesses.

B. A periodic review may be conducted separately or in conjunction with other regulatory actions.

C. Notice of a periodic review shall be posted on the Town Hall and published in the Virginia Register.

VA.R. Doc. No. R22-6914; Filed December 22, 2021, 2:52 p.m.

TITLE 8. EDUCATION

STATE COUNCIL OF HIGHER EDUCATION FOR VIRGINIA

Final Regulation

Title of Regulation: **8VAC40-31. Regulations Governing Certification of Certain Institutions to Confer Degrees, Diplomas and Certificates (amending 8VAC40-31-10, 8VAC40-31-160).**

Statutory Authority: § 23.1-215 of the Code of Virginia.

Effective Date: February 18, 2022.

Agency Contact: Beverly Rebar, Senior Associate for Academic and Legislative Affairs, State Council of Higher Education for Virginia, 101 North 14th Street, 9th Floor, Monroe Building, Richmond, VA 23219, telephone (804) 371-0571, or email beverlyrebar@schev.edu.

Summary:

The amendments add (i) the definition of "enrollment agreement" and (ii) the requirements for the enrollment agreement between students and regulated institutions mandated by Chapter 298 of 2017 Acts of Assembly.

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

8VAC40-31-10. Definitions.

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

"Academic credit" means the measure of the total time commitment an average student is expected to devote to learning per week of study. Generally, one unit of credit represents a total of three hours per week of in-class and out-of-class work (Carnegie Unit of Credit). In this context, an hour is defined as 50 minutes. Emerging delivery methodologies may necessitate determining a unit of undergraduate or graduate credit with nontime-based methods. These courses shall use demonstration of competency, demonstration of proficiency, or fulfillment of learning outcomes to ensure these courses are equivalent to traditionally delivered courses.

"Academic-vocational" means a noncollege degree school that offers degree and nondegree credit courses at a site in Virginia or via telecommunications equipment located in Virginia.

"Accreditation" means a process of external quality review used by higher education to scrutinize colleges, universities, and educational programs for quality assurance and quality improvement. This term applies to those accrediting organizations recognized by the United States Department of Education.

"Adjunct faculty" means professional staff members of businesses, industries, and other agencies and organizations who are appointed by institutions and schools on a part-time basis to carry out instructional, research, or public service functions.

"Administrative capability" means a branch (i) maintains or has access to all records and accounts; (ii) has an administrator; (iii) offers courses that consist of a large number of unit subjects that comprise a program of education or a set curriculum large enough to allow pursuit on a continuing basis; and (iv) provides student services, including ~~but not limited to~~ financial aid, admissions, career placement assistance, or registration.

"Agent" means a person who is employed by any institution of higher education or noncollege degree school, whether such institution or school is located within or outside this Commonwealth, to act as an agent, solicitor, procurer, broker, or independent contractor to procure students or enrollees for any such institution or school by solicitation in any form at any place in this Commonwealth other than the office or principal location of such institution or school.

"Avocational" means instructional programs that are not intended to prepare students for employment but are intended solely for recreation, enjoyment, personal interest, or as a hobby or courses or programs that prepare individuals to teach such pursuits.

"Branch" means an additional location, operated by a school with an approved existing site. A branch campus must have administrative capability exclusive of the main campus and adequate resources to ensure that the objectives of its programs can be met.

"Career-technical school" means a school that does not offer courses for degree credit at a site in Virginia or via telecommunication equipment located in Virginia; same as academic-vocational school.

"Certificate" means the credential awarded by a school upon the successful completion of a program that consists of one or more technical courses, usually completed in less than 26 weeks, normally with a single skill objective.

"Certification" means the process of securing authorization to operate a private or out-of-state postsecondary school or institution of higher education ~~and/or~~ or degree, certificate, or diploma program in the Commonwealth of Virginia.

"Change of ownership" means the change in power within a school. Change of ownership may include~~, but is not limited to,~~ the following situations: (i) sale of the school~~;~~, (ii) merger of two or more schools if one of the schools is nonexempt~~;~~, or (iii) change from profit to nonprofit or collective.

"CIP code" means the six-digit number assigned to each discipline specialty in the Classification of Instructional Programs (CIP) taxonomy maintained by the National Center for Education Statistics.

"Clock ~~(or contact)~~ hour" or "contact hour" means a minimum of 50 minutes of supervised or directed instruction and appropriate breaks.

"College" means any institution of higher education that offers degree programs.

"Conditional certification" means a status that may be granted by the council to a school certified to operate in Virginia to allow time for the correction of major deficiencies or weaknesses identified in the school's administration that are of such magnitude that, if not corrected, may result in the suspension or revocation of the school's certificate to operate. During a period of conditional certification, a school may not enroll new students or confer any degrees, diplomas, or certificates.

"Council" means the State Council of Higher Education for Virginia.

"Course for degree credit" means a single course whose credits are applicable to the requirements for earning a degree, diploma, or certificate.

"Course registration materials" means any official documents provided to students for the purpose of formal enrollment into the school, a specific program, or a certain course.

"Credit" means (i) the quantitative measurement assigned to a course generally stated in semester hours, quarter hours, or clock hours or (ii) the recognition awarded upon successful completion of coursework.

"Credit hour" means a unit by which a school may measure its coursework. The number of credit hours assigned to a traditionally delivered course is usually defined by a combination of the number of hours per week in class, the number of hours per week in a laboratory, ~~and/or~~ or the number of hours devoted to externship multiplied by the number of hours in the term. One unit of credit is usually equivalent to, at a minimum, one hour of classroom study and outside preparation, two hours of laboratory experience, or three hours of internship or practicum, or a combination of the three multiplied by the number of weeks in the term. Emerging delivery methodologies may necessitate determining a unit of undergraduate or graduate credit with nontime-based methods. These courses shall use demonstration of competency, demonstration of proficiency, or fulfillment of learning outcomes to ensure these courses are equivalent to traditionally delivered courses.

"Degree" means any earned award at the associate, baccalaureate, master's, first professional, or doctoral level that represents satisfactory completion of the requirements of a program or course of study or instruction beyond the secondary school level and includes certificates and specialist degrees when such awards represent a level of educational attainment above that of the associate degree level.

"Degree program" means a curriculum or course of study that leads to a degree in a discipline or interdisciplinary specialty and normally is identified by a six-digit CIP code number.

"Diploma" means an award that represents a level of educational attainment at or below the associate degree level and that normally consists of up to (i) 1,500 clock hours, (ii) 90 quarter hours, or (iii) 60 semester hours.

"Distance education" means education that uses the Internet, one-way transmission and two-way transmission through open broadcast, closed circuit, cable, microwave, broadband lines, fiber optics, satellite, or wireless communications; audio conferencing; or video cassettes, DVDs, and CD-ROMs to deliver instruction to students who are separated from the instructor and to support regular and substantive interaction between student and instructor.

"Enrollment agreement" means a legally binding document signed by a student and an authorized representative of an institution, prior to the time instruction begins that contains required disclosures, a completed copy of which is given to the student upon execution.

"Existing institution" or "existing postsecondary school" means any postsecondary school that either (i) has been in operation in Virginia for two or more calendar years as of July 1, 2004, and has been certified to operate continuously during that period or (ii) has been approved to operate as a postsecondary school in another state, is accredited by an accrediting agency recognized by the United States Department of Education, and is certified to operate in Virginia.

"Full-time faculty" means a person whose: (i) employment is based upon an official contract, appointment, or agreement with a school; (ii) principal employment is with that school; and (iii) major assignments are in teaching and research. A full-time administrator who teaches classes incidental to administrative duties is not a full-time faculty member.

"Graduate credit hours" means credits hours earned for successful completion of courses beyond the baccalaureate level, generally awarded at the 500 series and above.

"Gross tuition collected" means all fees collected or received on either a cash or accrual accounting method basis for all instructional programs or courses, except for nonrefundable registration and application fees and charges for materials, supplies, and books that have been purchased by, and are the property of, the student.

"In-state institution" means an institution of higher education that is formed, chartered, or established within Virginia. An out-of-state institution shall be deemed an in-state institution for the purposes of certification as a degree-granting institution

if (i) the institution has no instructional campus in the jurisdiction in which it was formed, chartered, established, or incorporated and (ii) the institution produces clear and convincing evidence that its main or principal campus is located in Virginia.

"Institution of higher education" or "institution" means any person, firm, corporation, association, agency, institute, trust, or other entity of any nature whatsoever offering education beyond the secondary school level that has received certification from the council and either: (i) offers courses or programs of study or instruction that lead to, or that may reasonably be understood to be applicable to, a degree; (ii) operates a facility as a college or university or other entity of whatever kind that offers degrees or other indicia of level of educational attainment beyond the secondary school level; (iii) uses the term "college" or "university," or words of like meaning, in its name or in any manner in connection with its academic affairs or business; or (iv) offers approved courses of degree credit or programs of study leading to a degree or offers degrees either at a site in Virginia or via telecommunications equipment located within Virginia.

"Instructional faculty" means a person employed by a school who is engaged in instructional, research, or related activities.

"Instructional site" means a location in Virginia where a postsecondary school (i) offers one or more courses on an established schedule and (ii) lacks administrative capability.

"Multistate compact" means any agreement involving two or more states to offer jointly postsecondary educational opportunities, pursuant to policies and procedures set forth by such agreement and approved by council.

"New institution" or "new postsecondary school" means any postsecondary school that seeks certification and has been in operation in Virginia for less than two calendar years as of July 1, 2004, and has neither operated in another state as a postsecondary institution nor has been approved to operate in another state as a postsecondary institution.

"Noncollege degree school" means any postsecondary school that offers courses or programs of study that do not lead to an associate or higher level degree at a site in Virginia or via telecommunications equipment located within Virginia. Such schools may be academic-career-technical or career-technical.

"Out-of-state institution" means an institution of higher education that is formed, chartered, established, or incorporated outside Virginia.

"Part-time faculty" means a person whose: (i) annual employment is based upon an official contract, appointment, or agreement with a school and (ii) courseload of teaching assignments is of lesser quantity than that expected of a full-time faculty member ~~and/or~~ or is of lesser quantity than the school's definition of a full load of courses.

"Postsecondary education" means the provision of formal instructional programs with a curriculum designed primarily for students who have completed the requirements for a high school diploma or equivalent or who are beyond the age of compulsory high school attendance. It includes programs of an academic, career-technical, and continuing professional education purpose, and excludes avocational and adult basic education programs.

"Postsecondary education activities" means researching, funding, designing, ~~and/or~~ or conducting instructional programs, classes, or research opportunities, designed primarily for students who have completed the requirements for a high school diploma or its equivalent or who are beyond the age of compulsory high school attendance.

"Postsecondary school" or "school" means any entity offering formal instructional programs with a curriculum designed primarily for students who have completed the requirements for a high school diploma or its equivalent or who are beyond the age of compulsory high school attendance, and for which tuition or a fee is charged. Such schools include programs of academic, career-technical, and continuing professional education, and exclude avocational and adult basic education programs. For the purposes of this chapter, a "postsecondary school" shall be classified as either an institution of higher education as defined in this section or a noncollege degree school, as defined in this section.

"Private postsecondary career school" means any for-profit or nonprofit postsecondary career entity maintaining a physical presence in Virginia providing education or training for tuition or a fee that (i) augments a person's occupational skills; (ii) provides a certification; or (iii) fulfills a training or education requirement in one's employment, career, trade, profession, or occupation. Any entity that offers programs beyond the secondary school level, including programs using alternate modes of delivery, shall be included in this definition so long as tuition and fees from such programs constitute any part of its revenue.

"Program" means a curriculum or course of study in a discipline or interdisciplinary area that leads to a degree, certificate, or diploma.

"Program area" means a general group of disciplines in which one or more degree programs, certificates, or diplomas may be offered.

"Program of study" means a curriculum of two or more courses that is intended or understood to lead to a degree, diploma, or certificate. It may include all or some of the courses required for completion of a degree program.

"Provisional certification" means a preliminary approval status granted by the council to a new school applicant that has demonstrated substantial compliance with the provisions of this chapter [~~pursuant to § 23-276 of the Code of Virginia~~]. Such a status may include any conditions imposed by the

council to ensure compliance with the provisions of this chapter. The provisionally certified school must demonstrate compliance with all conditions within one calendar year of the initial grant of provisional certification.

"Surety instrument" means a surety bond or a clean irrevocable letter of credit issued by a surety company or banking institution authorized to transact business in Virginia adequate to provide refunds to students for the unearned non-Title IV portion of tuition and fees for any given semester, quarter or term and to cover the administrative cost associated with filing a claim against the instrument.

"Teach-out agreement" means the process whereby a closed or closing school undertakes to fulfill its educational and contractual obligations to currently enrolled students.

"Telecommunications activity" means any course offered by a postsecondary school or consortium of postsecondary schools where the primary mode of instructional delivery is by television, videocassette or disc, film, radio, computer, or other telecommunications devices.

"Unearned tuition" means the portion of tuition charges billed to the student but not yet earned by the institution; the unearned tuition represents future educational services to be rendered to presently enrolled students.

"University" means any institution offering programs leading to degrees or degree credit beyond the baccalaureate level.

"Vocational" means a noncollege degree school that offers only noncollege credit courses. Such schools have programs of instruction offering a sequence of courses that are directly related to the preparation of individuals for paid or unpaid employment in current or emerging occupations requiring other than a baccalaureate or advanced degree. Vocational education shall not include instructional programs intended solely for recreation, enjoyment, personal interest, or as a hobby, or courses or programs that prepare individuals to teach such pursuits.

8VAC40-31-160. Certification criteria for all postsecondary schools.

A. The criteria in this section shall apply to all postsecondary schools for which certification is required. With regard to postsecondary schools that are accredited by an accrediting agency recognized by the U.S. Department of Education, the council may apply a presumption of compliance with criteria in this section if the school has complied with an accreditation standard directed to the same subject matter as the criteria. The council need not apply this presumption if the accreditation standard is deficient in satisfying an identifiable goal of the council. The council shall articulate reasons that the accreditation standard is deficient.

B. The postsecondary school shall have a clear, accurate, and comprehensive written statement, which shall be available to the public upon request. The statement minimally shall include the following items:

1. The history and development of the postsecondary school;

2. An identification of any persons, entities, or institutions that have a controlling ownership or interest in the postsecondary school;

3. The purpose of the postsecondary school, including a statement of the relative degree of emphasis on instruction, research, and public service as well as a statement demonstrating that the school's proposed offerings are consistent with its stated purpose;

4. A description of the postsecondary school's activities, including telecommunications activities away from its principal location, and a list of all program areas in which courses are offered away from the principal location;

5. A list of all locations in Virginia at which the postsecondary school offers courses and a list of the degree and nondegree programs currently offered or planned to be offered in Virginia;

6. For each Virginia location, and for the most recent academic year, the total number of students who were enrolled as well as the total number and percentage of students who were enrolled in each program offered;

7. For each Virginia location, the total number of students who completed or graduated from the school as of the end of the last academic year and the total number and percentage of students who completed or graduated from each program offered by the school as of the end of the last academic year; and

8. For unaccredited institutions of higher education and career-technical schools only, the total number of students who report employment in their field of study within (i) six months of completion or graduation and (ii) one year of completion or graduation.

C. The postsecondary school or branch shall have a current, written document available to students and the general public upon request that accurately states the powers, duties, and responsibilities of:

1. The governing board or owners of the school;

2. The chief operating officer, president, or director at that branch in Virginia;

3. The principal administrators and their credentials at that branch in Virginia; and

4. The students, if students participate in school governance.

D. The postsecondary school shall have, maintain, and provide to all applicants a policy document accurately defining the minimum requirements for eligibility for admission to the school and for acceptance at the specific degree level or into

all specific degree programs offered by the postsecondary school that are relevant to the school's admissions standards. In addition, the document shall explain:

1. The standards for academic credit or course completion given for experience;

2. The criteria for acceptance of transfer credit where applicable;

3. The criteria for refunds of tuition and fees;

4. Students' rights, privileges, and responsibilities; and

5. The established grievance process of the school, which shall indicate that students should follow this process and may contact council staff to file a complaint about the school as a last resort. The written policy shall include a provision that students will not be subjected to adverse actions by any school officials as a result of initiating a complaint.

E. The postsecondary school shall maintain records on all enrolled students. At a minimum, these records shall include:

1. Each student's application for admission and admissions records containing information regarding the educational qualifications of each regular student admitted that are relevant to the postsecondary school's admissions standards. Each student record must reflect the requirements and justification for admission of the student to the postsecondary school. Admissions records must be maintained by the school, its successors, or its assigns for a minimum of three years after the student's last date of attendance.

2. An original agreement titled "Student Enrollment Agreement" signed by the student and an authorized representative of the school. The use of electronic signatures is permissible so long as the use complies with ~~the Uniform Electronic Transactions Act (~~§ 59.1-479 ~~et seq.~~ of the Code of Virginia~~)~~. A copy of the completed enrollment agreement shall be given to the student upon execution.

a. ~~(Reserved.)~~ At the time of enrollment, the agreement shall contain, at a minimum:

(1) Student name, address, and phone number;

(2) Institution name, address, and phone number;

(3) Name of the educational program, start date, and the total number of credit hours or clock hours to complete the program of study and type of credential awarded upon completion (certificate, diploma, or degree);

(4) Estimated cost of all institutional charges and fees including tuition, fees, equipment charges, supplies, textbooks, and uniforms;

(5) The institution's refund policy, which must be in compliance with subsection N of this section;

(6) A labeled section titled "STUDENT'S RIGHT TO CANCEL" that shall provide the terms for cancellation. Specifically:

(a) The school shall provide a period of at least three business days, excluding weekends and holidays, by which the student applicant must cancel in order to receive refund of all moneys paid less a nonrefundable fee not to exceed $100. The actual date by which the student applicant must cancel shall be specified in the agreement.

(b) The school shall disclose that following the cancellation period, a student applicant may cancel his enrollment agreement, by written notice, at any time prior to the first class day of the session for which application was made. When cancellation is requested under these circumstances, the school will refund all tuition paid by the student, less a maximum tuition fee of 15% of the stated costs of the course or program or $100, whichever is less;

(7) A notice stating that the transferability of credit and credentials earned is at the sole discretion of the receiving institution;

(8) For enrollees in programs leading to professional licensure, the school shall disclose annual pass rates for first time test takers for the last three years, if applicable. If results are not available, the school must provide a written explanation. This disclosure must be signed by the student;

(9) A statement informing students of the institution's grievance policy;

(10) A statement informing students that the institution is certified to operate by SCHEV and providing full contact information for council;

(11) A statement that reads: "By signing below, I certify that I have been provided access to the institution's electronic or print catalog, bulletin, or brochure.";

(12) A statement that reads: "I understand that this is a legally binding agreement. My signature below certifies that I have read, understood, and agreed with my rights and responsibilities. Further, I certify that I understand the institution's cancellation and refund policies and I understand and agree to these policies."; and

(13) Following the statement in subdivision E 2 a (12) of this section, the document provides places for signatures of the student and authorized representative of the school and date the document was signed.

b. ~~(Reserved.)~~ A new enrollment agreement must be completed in the event that the student (i) delays his start date, (ii) changes the program of enrollment, or (iii) drops from the program and re-enrolls at a later date.

c. No postsecondary school shall condition the enrollment of a student on:

(1) Entering into an agreement that requires the student to arbitrate any dispute between the student and the school, regardless of whether the agreement permits the student to opt out of the requirement to arbitrate any such dispute in the future; or

(2) Entering into an agreement that requires the student to resolve a dispute on an individual basis and waive the right to class or group actions.

3. A transcript of the student's academic or course work at the school, which shall be retained permanently in either hard copy forms or in an electronic database with backup by the school, its successors, or its assigns.

4. A record of student academic or course progress at the school including programs of study, dates of enrollment, courses taken and completed, grades, and indication of the student's current status (graduated, probation, etc.) must be retained permanently. Any changes or alterations to student records must be accurately documented and signed by an appropriate school official.

5. A record of all financial transactions between each individual student and the school including payments from the student, payments from other sources on the student's behalf, and refunds. Fiscal records must be maintained for a minimum of three years after the student's last date of attendance. When tuition and fees are paid by the student in installments, a clear disclosure of truth-in-lending statement must be provided to and signed by the student.

6. The school shall make the documents referenced in subdivisions 1 through ~~4~~ 5 of this subsection available to the student upon request. Academic transcripts shall be provided upon request if the student is in good financial standing.

F. Each school shall provide or make available to students, prospective students, and other interested persons a catalog, bulletin, brochure, or electronic media containing, at a minimum, the following information:

1. The number of students enrolled in each program offered.

2. For each Virginia location, the total number of students who completed or graduated from the school as of the end of the last academic year and the total number and percentage of students who completed or graduated from each program offered by the school as of the end of the last academic year.

3. A description of any financial aid offered by the school including repayment obligations, standards of academic progress required for continued participation in the program, sources of loans or scholarships, the percentage of students receiving federal financial aid (if applicable) and the average student indebtedness at graduation.

4. A broad description, including academic or career-technical objectives of each program offered, the number of hours of instruction in each subject and total number of hours required for course completion, course descriptions, and a statement of the type of credential awarded.

5. A statement of tuition and fees and other charges related to enrollment, such as deposits, fees, books and supplies, tools and equipment, and any other charges for which a student may be responsible.

6. The school's refund policy for tuition and fees pursuant to subsection N of this section.

7. The school's procedures for handling complaints, including procedures to ensure that a student will not be subject to unfair actions as a result of his initiation of a complaint proceeding.

8. The name and address of the school's accrediting body, if applicable.

9. The minimum requirements for satisfactory completion of each degree level and degree program, or nondegree certificates or diplomas.

10. A statement that accurately describes the transferability of any courses.

11. A statement that accurately represents the transferability of any diplomas, certificates, or degrees offered by the school.

12. If the institution offers programs leading to the Associate of Applied Science or Associate of Occupational Science degree, a statement that these programs are terminal occupational or technical programs and that credits generally earned in these programs are not applicable to other degrees.

13. The academic or course work schedule for the period covered by the publication.

14. A statement that accurately details the type and amount of career advising and placement services offered by the school.

15. The name, location, and address of the main campus, branch, or instructional site operating in Virginia.

G. The school must have a clearly defined process by which the curriculum is established, reviewed, and evaluated. Evaluation of school effectiveness must be completed on a regular basis and must include:

1. An explanation of how each program is consistent with the mission of the school.

2. An explanation of the written process for evaluating each degree level and program, or career-technical program, once initiated and an explanation of the procedures for assessing the extent to which the educational goals are being achieved.

3. Documented use of the results of these evaluations to improve the degree and career-technical programs offered by the school.

H. Pursuant to [~~§ 23-276.3 B~~ § 23.1-215] of the Code of Virginia, the school must maintain records that demonstrate it is financially sound; exercises proper management, financial controls, and business practices; and can fulfill its commitments for education or training. The school's financial

resources should be characterized by stability, which indicates the school is capable of maintaining operational continuity for an extended period of time. The stability indicator that will be used is the USDOE Financial Ratio (composite score).

1. Institutions of higher education shall provide the results of an annual audited, reviewed, or compiled financial statement. Career-technical schools shall provide the results of an annual audited, reviewed or compiled financial statement or the school may elect to provide financial information on forms provided by council staff. The financial report shall be prepared in accordance with generally accepted accounting principles (GAAP) currently in effect. The financial report shall cover the most recent annual accounting period completed.

2. The USDOE composite score range is -1.0 to 3.0. Schools with a score of 1.5 to 3.0 meet fully the stability requirement in subsection I of this section; scores between 1.0 and 1.4 meet the minimum expectations; and scores less than 1.0 do not meet the requirement and shall be immediately considered for audit.

I. Pursuant to [~~§ 23-276.3 B~~ § 23.1-215] of the Code of Virginia, the school shall have and maintain a surety instrument issued by a surety company or banking institution authorized to transact business in Virginia that is adequate to provide refunds to students for the unearned non-Title IV portion of tuition and fees for any given semester, quarter or term and to cover the administrative cost associated with the instrument claim. The instrument shall be based on the non-Title IV funds that have been received from students or agencies for which the education has not yet been delivered. This figure shall be indicated in an audited financial statement as a Current (non-Title IV) Tuition Liability. A school certified under this regulation shall be exempt from the surety instrument requirement if it can demonstrate a USDOE composite financial responsibility score of 1.5 or greater on its current financial statement; or if it can demonstrate a composite score between 1.0 and 1.4 on its current financial statement and has scored at least 1.5 on a financial statement in either of the prior two years. The school's eligibility for the surety waiver shall be determined annually, at the time of recertification.

1. Public postsecondary schools originating in a state other than Virginia that are operating a branch campus or instructional site in the Commonwealth of Virginia are exempt from the surety bond requirement.

2. New schools and unaccredited existing schools must complete at least five calendar years of academic instruction or certification to qualify for the surety waiver or exemption.

3. Existing schools seeking a waiver of the surety instrument requirement must submit an audited financial statement for the most recent fiscal year end that reflects the appropriate composite score as indicated in this subsection.

J. The school shall have a current written policy on faculty accessibility that shall be distributed to all students. The school shall ensure that instructional faculty are accessible to students for academic or course advising at stated times outside a course's regularly scheduled class hours at each branch and throughout the period during which the course is offered.

K. All recruitment personnel must provide prospective students with current and accurate information on the school through the use of written and electronic materials and in oral admissions interviews:

1. The school shall be responsible and liable for the acts of its admissions personnel.

2. No school, agent, or admissions personnel shall knowingly make any statement or representation that is false, inaccurate or misleading regarding the school.

L. All programs offered via telecommunications or distance education must be comparable in content, faculty, and resources to those offered in residence and must include regular student-faculty interaction by computer, telephone, mail, or face-to-face meetings. Telecommunication programs and courses shall adhere to the following minimum standards:

1. The educational objectives for each program or course shall be clearly defined, simply stated, and of such a nature that they can be achieved through telecommunications.

2. Instructional materials and technology methods must be appropriate to meet the stated objectives of the program or course. The school must consider and implement basic online navigation of any course or program, an information exchange privacy and safety policy, a notice of minimum technology specification for students and faculty, proper system monitoring, and technology infrastructure capabilities sufficient to meet the demands of the programs being offered.

3. The school shall provide faculty and student training and support services specifically related to telecommunication activities.

4. The school shall provide for methods for timely interaction between students and faculty.

5. The school shall develop standards that ensure that accepted students have sufficient background, knowledge, and technical skills to successfully undertake a telecommunications program.

M. The school shall maintain and ensure that students have access to a library with a collection, staff, services, equipment, and facilities that are adequate and appropriate for the purpose and enrollment of the school. Library resources shall be current, well distributed among fields in which the institution offers instructions, cataloged, logically organized, and readily located. The school shall maintain a continuous plan for library resource development and support, including objectives and

selections of materials. Current and formal written agreements with other libraries or with other entities may be used. Institutions offering graduate work shall provide access to library resources that include basic reference and bibliographic works and major journals in each discipline in which the graduate program is offered. Career-technical schools shall provide adequate and appropriate resources for completion of course work.

N. In accordance with [~~§ 23-276.3 B~~ § 23.1-215] of the Code of Virginia, the school shall establish a tuition refund policy and communicate it to students. Each school shall establish, disclose, and utilize a system of tuition and fee charges for each program of instruction. These charges shall be applied uniformly to all similarly circumstanced students. This requirement does not apply to group tuition rates to business firms, industry, or governmental agencies that are documented by written agreements between the school and the respective organization.

1. The school shall adopt a minimum refund policy relative to the refund of tuition, fees, and other charges. All fees and payments, with the exception of the nonrefundable fee described in subdivision 2 of this subsection, remitted to the school by a prospective student shall be refunded if the student is not admitted, does not enroll in the school, does not begin the program or course, withdraws prior to the start of the program, or is dismissed prior to the start of the program.

2. A school may require the payment of a reasonable nonrefundable initial fee, not to exceed $100, to cover expenses in connection with processing a student's enrollment, provided it retains a signed statement in which the parties acknowledge their understanding that the fee is nonrefundable. No other nonrefundable fees shall be allowed prior to enrollment.

3. The school shall provide a period of at least three business days, excluding weekends and holidays, during which a student applicant may cancel his enrollment without financial obligation other than the nonrefundable fee described in subdivision 2 of this subsection.

4. Following the period described in subdivision 3 of this subsection, a student applicant (one who has applied for admission to a school) may cancel, by written notice, his enrollment at any time prior to the first class day of the session for which application was made. When cancellation is requested under these circumstances, the school is required to refund all tuition paid by the student, less a maximum tuition fee of 15% of the stated costs of the course or program or $100, whichever is less. A student applicant will be considered a student as of the first day of classes.

5. The date of the institution's determination that the student withdrew should be no later than 14 calendar days after the student's last date of attendance as determined by the institution from its attendance records. The institution is not required to administratively withdraw a student who has been absent for 14 calendar days. However, after 14 calendar days, the institution is expected to have determined whether the student intends to return to classes or to withdraw. In addition, if the student is eventually determined to have withdrawn, the end of the 14-day period begins the timeframe for calculating the refunds. In the event that a written notice is submitted, the effective date of termination shall be the date of the written notice. The school may require that written notice be transmitted via registered or certified mail, or by electronic transmission provided that such a stipulation is contained in the written enrollment contract. The school is required to submit refunds to individuals who have terminated their status as students within 45 days after receipt of a written request or the date the student last attended classes whichever is sooner. An institution that provides the majority of its program offerings through distance learning shall have a plan for student termination, which shall be provided to council staff for review with its annual or recertification application.

6. In the case of a prolonged illness or accident, death in the family, or other special circumstances that make attendance impossible or impractical, a leave of absence may be granted to the student if requested in writing by the student or designee. No monetary charges or accumulated absences may be assessed to the student during a leave of absence. A school need not treat a leave of absence as a withdrawal if it is an approved leave of absence. A leave of absence is an approved leave of absence if:

a. The school has a formal, published policy regarding leaves of absence;

b. The student followed the institution's policy in requesting the leave of absence and submits a signed, dated request with the reasons for the leave of absence;

c. The school determines that there is a reasonable expectation that the student will return to the school;

d. The school approved the student's request in accordance with the published policy;

e. The school does not impose additional charges to the student as a result of the leave of absence;

f. The leave of absence does not exceed 180 days in any 12-month period; and

g. Upon the student's return from the leave of absence, the student is permitted to complete the coursework he began prior to the leave of absence.

7. If a student does not resume attendance at the institution on or before the end of an approved leave of absence, the institution must treat the student as a withdrawal, and the date that the leave of absence was approved should be considered the last date of attendance for refund purposes.

8. The minimum refund policy for a school that financially obligates the student for a quarter, semester, trimester, or other period not exceeding 4-1/2 calendar months shall be as follows:

a. For schools that utilize an add/drop period, a student who withdraws during the add/drop period shall be entitled to 100% refund for the period.

b. For unaccredited schools and schools that do not utilize an add/drop period:

(1) A student who enters school but withdraws during the first 1/4 (25%) of the period is entitled to receive as a refund a minimum of 50% of the stated cost of the course or program for the period.

(2) A student who enters a school but withdraws after completing 1/4 (25%), but less than 1/2 (50%) of the period is entitled to receive as a refund a minimum of 25% of the stated cost of the course or program for the period.

(3) A student who withdraws after completing 1/2 (50%), or more than 1/2 (50%), of the period is not entitled to a refund.

9. The minimum refund policy for a school that financially obligates the student for the entire amount of tuition and fees for the entirety of a program or course shall be as follows:

a. A student who enters the school but withdraws or is terminated during the first quartile (25%) of the program shall be entitled to a minimum refund amounting to 75% of the cost of the program.

b. A student who withdraws or is terminated during the second quartile (more than 25% but less than 50%) of the program shall be entitled to a minimum refund amounting to 50% of the cost of the program.

c. A student who withdraws or is terminated during the third quartile (more than 50% but less than 75%) of the program shall be entitled to a minimum refund amounting to 25% of the cost of the program.

d. A student who withdraws after completing more than three quartiles (75%) of the program shall not be entitled to a refund.

10. The minimum refund policy for a school that offers its programs completely via telecommunications or distance education shall be as follows:

a. For a student canceling after the [~~5th~~ fifth] calendar day following the date of enrollment but prior to receipt by the school of the first completed lesson assignment, all moneys paid to the school shall be refunded, except the nonrefundable fee described in subdivision 2 of this subsection.

b. If a student enrolls and withdraws or is discontinued after submission of the first completed lesson assignment, but prior to the completion of the program, minimum refunds shall be calculated as follows:

(1) A student who starts the program but withdraws up to and including completion of the first quartile (25%) of the program is entitled to receive as a refund a minimum of 75% of the stated cost of the course or program for the period.

(2) A student who starts the program but withdraws after completing up to the second quartile (more than 25%, but less than 50%) of the program is entitled to receive as a refund a minimum of 50% of the stated cost of the course or program for the period.

(3) A student who starts the program but withdraws after completing up to the third quartile (more than 50%, but less than 75%) of the program is entitled to receive as a refund a minimum of 25% of the stated cost of the course or program for the period.

(4) A student who withdraws after completing the third quartile (75%) or more of the program is not entitled to a refund.

c. The percentage of the program completed shall be determined by comparing the number of completed lesson assignments received by the school to the total number of lesson assignments required in the program.

d. If the school uses standard enrollment terms, such as semesters or quarters, to measure student progress, the school may use the appropriate refund policy as provided in subdivision 8 or 9 of this subsection.

11. Fractions of credit for courses completed shall be determined by dividing the total amount of time required to complete the period or the program by the amount of time the student actually spent in the program or the period, or by the number of correspondence course lessons completed, as described in the contract.

12. Expenses incurred by students for instructional supplies, tools, activities, library, rentals, service charges, deposits, and all other charges are not required to be considered in tuition refund computations when these expenses have been represented separately to the student in the enrollment contract and catalogue, or other documents, prior to enrollment in the course or program. The school shall adopt and adhere to reasonable policies regarding the handling of these expenses when calculating the refund.

13. For programs longer than one year, the policy outlined in subdivisions 9, 10, and 11 of this subsection shall apply separately for each academic year or portion thereof.

14. Schools shall comply with the cancellation and settlement policy outlined in this section, including promissory notes or contracts for tuition or fees sold to third parties.

15. When notes, contracts or enrollment agreements are sold to third parties, the school shall continue to have the responsibility to provide the training specified regardless of the source of any tuition, fees, or other charges that have

been remitted to the school by the student or on behalf of the student.

O. The school shall keep relevant academic transcripts for all teaching faculty to document that each has the appropriate educational credentials in the area of teaching responsibility. In the event teaching qualification is based on professional competencies or scholarly achievements, relevant documentation to support reported experience must be retained by the school.

P. If an internship, externship, or production work is necessary as a part of the school's education program, the school must adhere to the following:

1. When programs contain internships or externships, in any form, the professional training must:

a. Be identified as part of the approved curriculum of the school and be specified in terms of expected learning outcomes in a written training plan.

b. Be monitored by an instructor of record during the entire period of the internship.

c. Not be used to provide labor or as replacement for a permanent employee.

d. Be performed according to a specified schedule of time required for training including an expected completion date.

e. If the internship, externship, or production work is part of the course requirement, the student may not be considered as a graduate or issued a graduation credential until the internship, externship, or production work has been satisfactorily completed.

2. When receiving compensation for services provided by students as part of their education program, the school must clearly inform customers that services are performed by students by (i) posting a notice in plain view of the public or (ii) requiring students to wear nametags that identify them as students while performing services related to their training.

Q. An institution shall notify council staff of the following occurrences no later than 30 days prior to said occurrence:

1. Addition of new programs or modifications to existing program. Program names must adhere to the CIP taxonomy maintained by the National Center for Education Statistics.

2. Addition of a new branch location or instructional site.

3. Address change of a branch or instructional site in Virginia.

Notification of the ~~above-referenced~~ occurrences in this subsection shall be submitted in writing on forms provided by and in a manner prescribed by the council.

R. An institution shall notify the council of the following occurrences no later than 30 days following said occurrence.

1. Naming of new school president.

2. Naming of new campus or branch director.

3. Naming of person responsible for the regulatory oversight of the institution.

VA.R. Doc. No. R19-5154; Filed December 27, 2021, 8:19 p.m.

Proposed Regulation

Title of Regulation: **8VAC40-31. Regulations Governing Certification of Certain Institutions to Confer Degrees, Diplomas and Certificates (amending 8VAC40-31-260).**

Statutory Authority: §§ 23.1-215 and 23.1-224 of the Code of Virginia.

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: March 18, 2022.

Agency Contact: Beverly Rebar, Senior Associate for Academic and Legislative Affairs, State Council of Higher Education for Virginia, 101 North 14th Street, 9th Floor, Richmond, VA 23219, telephone (804) 371-0571, FAX (804) 225-2604, or email beverlyrebar@schev.edu.

Basis: Section 23.1-215 of the Code of Virginia authorizes the State Council of Higher Education for Virginia (SCHEV) to adopt, pursuant to the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia), such regulations as may be necessary to implement the provisions for standards for certain private and out-of-state institutions of higher education. Section 23.1-224 of the Code of Virginia grants SCHEV authority to establish nonrefundable fees for services and methods for collecting such fees.

Purpose: The Private Postsecondary Education (PPE) unit of SCHEV is funded solely by revenue collected from certification application fees, annual recertification fees, agent fees, religious exemption fees, transcript fees, and program approval fees. The unit does not receive money from general funds. SCHEV must establish fees adequate to support the direct and indirect costs of operating the PPE unit. Indirect costs are assessed to the PPE unit via a cost allocation method that ensures an equitable distribution of costs assumed by SCHEV but consumed by the PPE unit. The annual assessment allows SCHEV to collect PPE's share of operating expenses.

The budget in Fiscal Year (FY) 2020 severely limits the unit's operation in the areas of compliance audits and institutional training. The unit cannot adequately perform its duties by drastically cutting expenses. Section 23.1-215 of the Code of Virginia charges SCHEV with the significant responsibility of ensuring student protections for those attending certified institutions. New schools are only certified to operate after they have been given a thorough assessment to ensure they will be operating within the confines of Virginia law and regulation. Annual recertifications verify financial compliance as well as enrollment and graduation data. Compliance audits verify student records, refunds, quality of online education, and

faculty qualifications to teach subjects assigned. PPE staff also handles student complaints, investigates institutions operating without certification, and issues transcripts for closed institutions. In order to perform all these duties effectively, the PPE unit must maintain adequate staffing, have sufficient funds to cover the expense of travel and accommodations for its compliance investigators, have adequate resources to pay for the costs of sustaining an online portal and database, and be able to provide crucial and timely training for staff and regulated institutions.

Substance: The amendments increase certain fees.

Issues: One primary advantage to the public is that consumer protections for students at the regulated schools will be enabled to continue at sufficient levels. Primary advantages to the agency and the Commonwealth are that the PPE unit will be able to fund its operations. The unit will be fully staffed and able to perform the necessary duties to regulate the schools under its purview, providing students of certified schools with adequate consumer protections against fraud or substandard service. Increased fees disadvantage the regulated community due to increased operating costs, but the schools will benefit from the assurance that the unit has adequate resources to respond to concerns and conduct business effectively.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The State Council of Higher Education for Virginia (SCHEV) proposes to increase the fees it charges to private postsecondary schools, including out-of-state schools operating in Virginia. The fee increases are intended to cover the operating costs of the Private Postsecondary Education (PPE) unit, which oversees nearly 300 private education institutions to ensure that institutions certified to operate in the Commonwealth meet minimal academic and administrative capability standards.

In addition, a legislative mandate enacted by the 2020 Acts of Assembly requires SCHEV to certify out-of-state postsecondary schools offering distance learning programs in Virginia, unless those schools are participants of a reciprocity agreement to which the Commonwealth belongs. Thus, the proposed fee changes include new fees for the certification of out-of-state online institutions of higher education that are not members of the National Council for State Authorization Reciprocity Agreements (NC-SARA).

Background. Section 23.1-215 of the Code of Virginia directs SCHEV to establish (i) minimum standards for private providers of postsecondary education, (ii) procedures by which a postsecondary school may seek approval to confer degrees in the Commonwealth, (iii) measures designed to ensure that all postsecondary schools that are subject to the provisions of this article meet the minimal standards, (iv) protections for students attending postsecondary schools subject to the provisions of this article, and (v) information to assist persons who rely on postsecondary degrees or certificates to judge the competence of individuals in receipt of such degrees or certificates.[1]

The PPE unit was established within SCHEV to meet these statutory obligations, thereby protecting the citizens of the Commonwealth from fraudulent or substandard educational institutions. To accomplish this, the PPE unit currently regulates 291 private postsecondary schools, including 126 degree-granting institutions of higher education (IHE) and 165 career-technical schools (now called nondegree schools, abbreviated as NDS) at more than 300 locations throughout Virginia.[2,3] Staff responsibilities include approving new postsecondary schools, approving programs, completing compliance audits, granting exemptions, approving agents, and annually recertifying postsecondary schools. In addition, the PPE unit is also charged with investigating student complaints against all postsecondary institutions in the Commonwealth, investigating schools operating without authorization, ensuring student protections for students enrolled in certified postsecondary schools, assisting with school closures, the retention of student transcripts, and serving as the repository for student records from closed institutions.

Section 23.1-224 of the Code of Virginia authorizes SCHEV to "establish nonrefundable fees for services and methods for collecting such fees."[4] The PPE unit of SCHEV is funded solely by revenue collected from certification application fees, annual recertification fees, agent fees, religious exemption fees, transcript fees, and program approval fees. SCHEV does not receive general funds to perform the duties delegated to the PPE unit, which has no other source of revenue from which to fund its operations.

PPE fees were last evaluated for an increase in 2009. The fee schedule derived from that analysis was adequate to meet the needs of the PPE unit at that time. However, due to a delay in the implementation of the new regulation, the fees did not become effective until February 2014.[5] Although SCHEV reports that the fees were adequate to cover the operating expenditures for a few years immediately following the increase, the agency states that this is no longer the case. Due to increases in indirect cost assessments by SCHEV and salary increases mandated by the General Assembly, the PPE unit's operating costs have risen such that they exceeded revenue in FY 2020.

Table 1 compares the current and proposed fees for both IHE and NDS. In setting the new fees, SCHEV has sought to minimize the burden on smaller schools and attract new NDS to the Commonwealth. Accordingly, NDS would face no increase to their initial fee or nonrefundable administrative fee. In addition, the PPE unit has a handful of schools that collect very small annual tuition. For 2018, for example, one income tax school reported a total tuition income of $26,000, a barber school reported tuition income of $28,000, and a dental assisting school reported tuition income of $15,000. The agency believes that raising the annual renewal fee beyond the $250 that they currently charge would be burdensome on the

smallest schools. Thus, the annual renewal fee for schools with an annual gross tuition under $50,000 would remain unchanged. For all other schools, SCHEV proposes to increase renewal fees such that schools with higher enrollment rates (and thus higher tuition revenue) would face greater percentage increases. SCHEV also proposes to create a new category that would consist of postsecondary schools receiving over $5 million in annual gross tuition.

Table 1: Comparison of current and proposed fees

Fee type (changes italicized and underlined)	Current fee	Proposed fee	Percentage increase
New school orientation session, per person	$150	$150	No change
Initial fee for all new IHE	$6,000	$10,000	67%
Initial fee for all new NDS	$2,500	$2,500	No change
Annual fee for all unaccredited IHE[6]	$6,000	$10,000	67%
Initial fee for out-of-state online IHE that are not members of NC-SARA	N/A	$10,000	N/A
Renewal fee for out-of-state online IHE that are not members of NC-SARA	N/A	$10,000	N/A
Renewal fee for all postsecondary schools with an annual gross tuition collected less than $50,000, as recorded on most recent financial statement	$250	$250	No change
Renewal fee for all postsecondary schools with an annual gross tuition collected greater than or equal to $50,000 but less than $100,000, as recorded on most recent financial statement	$1,000	$1,200	20%
Renewal fee for all postsecondary schools with an annual gross tuition collected greater than or equal to $100,000 but less than $500,000, as recorded on most recent financial statement	$2,500	$3,000	20%
Renewal fee for all postsecondary schools with an annual gross tuition collected greater than or equal to $500,000 but less than $1,000,000, as recorded on most recent financial statement	$4,000	$6,000	50%
Renewal fee for all postsecondary schools with an annual gross tuition collected greater than or equal to $1,000,000, but less than $5,000,000, as recorded on most recent financial statement	$5,000	$7,500	50%
Renewal fee for all postsecondary schools with an annual gross tuition collected greater than or equal to $5,000,000, as recorded on most recent financial statement	N/A	$10,000	N/A
Returned check fee	$35	$35	No change
Initial or renewed exemption application/request for name acknowledgement/agent registration	$300	$350	17%
Nonrefundable administrative fee (withdrawal of application)	$500 for NDS, $1,000 for IHE	$500 for NDS, $2,000 for IHE	No change for NDS, 100% increase for IHE
Request for change in degree level authorization	N/A	$1,000	N/A
Request duplicate certificate to operate due to school name or address change	$100	$100	No change
Request duplicate agent permit, to replace lost/stolen/misplaced permit	$100	$100	No change
Application fee for each additional site (instructional location)	$100	$300	200%
Application fee for each additional program or modification to an existing program, or program deletion	$100	$100	No change

In addition, a new fee of $1,000 for a request for change in degree level authorization would be added, the fee for each additional instructional location would be increased threefold from $100 to $300, and the application fee for additional programs and modifications to existing programs would now be extended to cover program deletion as well.

Lastly, the proposed changes include a new initial and renewal fee for "out-of-state online institutions of higher education that are not members of NC-SARA." Chapter 380 of the 2020 Acts of Assembly added a definition of "distance learning" and amended § 23.1-219 of the Code of Virginia to add: Any degree-granting postsecondary school providing distance learning to residents of the Commonwealth from a location outside of the Commonwealth shall be certified to operate in the Commonwealth or shall be a participant in a reciprocity agreement to which the Commonwealth belongs for the purpose of consumer protection.[7] Since this requirement creates new duties for the PPE unit, the new fees are intended to cover the expenses that would arise from discharging those duties. SCHEV has indicated that these fees were set to be high enough to "cover reasonable and anticipated administrative costs of regulating an out-of-state institution that is not a SARA member. The most burdensome duty we will have is conducting site visits outside of Virginia, first within the first 18-24 months of certification, and then about every three years regularly. The need for a site visit can also be triggered by an influx of complaints or other information that would raise compliance concerns, so there needs to be funding available for those contingencies."

Estimated Benefits and Costs. The proposed changes to fees would directly increase costs for private postsecondary educational institutions in Virginia and for out-of-state institutions providing distance learning programs in Virginia. As long as the demand for postsecondary educational programs remains robust, these private institutions would most likely pass on the increased costs to their students rather than reduce its staff or program offerings. Depending on enrollment rates, the increased costs would be distributed across a large number of students and are unlikely to have a significant impact on the cost of attending any single program at any particular institution. Virginia students and their families would benefit from the PPE unit's continued ability to ensure the quality of postsecondary education provided by private institutions in the Commonwealth, including maintained capacity for investigating fraudulent practices and greater oversight of online programs, particularly those not part of NC-SARA.

Businesses and Other Entities Affected. The proposed amendments would impact the 126 degree-granting institutions and 165 career-technical schools that the PPE unit currently oversees as well as new private postsecondary education institutions that may be established in the future. SCHEV has indicated that 206 of the 291 postsecondary schools are operated as for-profit businesses. Although an institution's status as a for-profit has no bearing on the fees charged, for-profit institutions tend to have higher enrollment rates and gross tuition revenue and would accordingly fall in the higher fee brackets.

Small Businesses[8] Affected. As per the ABD, about 120 of the private postsecondary education institutions overseen by the PPE unit would meet the definition of a small business; however, some of these may be not-for-profit educational institutions and thus may not be considered businesses in the traditional sense.

Localities[9] Affected.[10] The proposed amendments do not introduce new costs for local governments and are unlikely to affect any locality in particular.

Projected Impact on Employment. As mentioned previously, the proposed fee changes are unlikely to impact employment at private postsecondary education institutions since these costs can be easily spread out over the current and future student body.

Effects on the Use and Value of Private Property. The proposed fee changes are unlikely to affect the use or value of private property for private postsecondary educational institutions. Real estate development costs are not affected.

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[1]See https://law.lis.virginia.gov/vacode/title23.1/chapter2/section23.1-215/.

[2]Section 23.1-213 of the Code of Virginia defines "institution of higher education" as private entities that have received approval from SCHEV to use the term "college" or "university" in its name, enroll students, and offer approved courses for degree credit or programs of study leading to a degree. "Non-college degree school" is defined as any entity that offers courses or programs of study that do not lead to a degree. "Postsecondary school" is defined to include both IHE and NDS. See https://law.lis.virginia.gov/vacode/title23.1/chapter2/section23.1-213/.

[3]Numbers taken from the Agency Background Document (ABD), page 1. See https://townhall.virginia.gov/L/GetFile.cfm?File=100\5391\9259\AgencyStatement_SCHEV_9259_v1.pdf.

[4]See https://law.lis.virginia.gov/vacode/title23.1/chapter2/section23.1-224/.

[5]See https://townhall.virginia.gov/L/ViewAction.cfm?actionid=3048.

[6]SCHEV clarified that, "We give new institutions six years to become accredited. During the pendency, they will only pay the annual fee for unaccredited institutions, not both fees." There are currently only five unaccredited institutions.

[7]See https://lis.virginia.gov/cgi-bin/legp604.exe?201+ful+CHAP0380+hil.

[8]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."

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

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

Agency's Response to Economic Impact Analysis: The State Council of Higher Education for Virginia concurs with the Department of Planning and Budget's economic impact analysis.

Summary:

The proposed amendments increase fees to cover the essential functions of the Private Postsecondary Education unit of the Academic Affairs division of the State Council of Higher Education for Virginia.

8VAC40-31-260. Fees.

A. All fees collected by council staff will be deposited in the State Treasury.

B. All fees are nonrefundable with the exception of withdrawal of an application in which case all fees will be refunded minus a nonrefundable administrative fee noted in subsection D of this section.

C. Fees must be paid with a company check and made payable to the Treasurer of Virginia.

D. The annual fee is based on the annual gross tuition received by each administrative branch of institutions certified to operate in Virginia. For out-of-state institutions certified to operate in Virginia, annual gross tuition means income generated from students enrolled at Virginia locations. The flat fee schedule is as follows:

New school orientation session, per person	$150
Initial fee for all new institutions of higher education	~~$6,000~~ $10,000
Initial fee for all new ~~career-technical~~ non-degree postsecondary schools	$2,500
Annual fee for all unaccredited institutions of higher education	~~$6,000~~ $10,000
Initial fee for out-of-state online institutions of higher education that are not members of NC-SARA	$10,000
Renewal fee for out-of-state online institutions of higher education that are not members of NC-SARA	$10,000
Renewal fee for all postsecondary schools with an annual gross tuition collected less than $50,000, as recorded on most recent financial statement	$250
Renewal fee for all postsecondary schools with an annual gross tuition collected greater than or equal to $50,000 but less than $100,000, as recorded on most recent financial statement	~~$1,000~~ $1,200
Renewal fee for all postsecondary schools with an annual gross tuition collected greater than or equal to $100,000 but less than $500,000, as recorded on most recent financial statement	~~$2,500~~ $3,000
Renewal fee for all postsecondary schools with an annual gross tuition collected greater than or equal to $500,000 but less than $1,000,000, as recorded on most recent financial statement	~~$4,000~~ $6,000
Renewal fee for all postsecondary schools with an annual gross tuition collected greater than or equal to $1,000,000, but less than $5,000,000, as recorded on most recent financial statement	~~$5,000~~ $7,500
Renewal fee for all postsecondary schools with an annual gross tuition collected greater than or equal to $5 million, as recorded on most recent financial statement	$10,000
Returned check fee	$35
Initial or renewed exemption ~~application/request~~ application or request for name ~~acknowledgement/agent~~ acknowledgment or agent registration	~~$300~~ $350
Nonrefundable administrative fee (withdrawal of application)	$500 ~~career-technical,~~ non-degree ~~$1000~~ $2,000 institutions of higher education
Request for change in degree level authorization	$1,000
Request duplicate certificate to operate due to school name or address change	$100
Request duplicate agent permit, to replace ~~lost/stolen/misplaced~~ lost, stolen, or misplaced permit	$100
Application fee for each additional ~~site~~ instructional location	~~$100~~ $300
Application fee for each additional program, ~~or~~ modification to an existing program, or program deletion	$100

E. A school that submits a payment that is returned for any reason must resubmit the required payment, any applicable late fee, and the assessed returned check fee of $35 via a money order or certified bank check only.

VA.R. Doc. No. R21-6185; Filed December 27, 2021, 7:54 p.m.

TITLE 9. ENVIRONMENT

DEPARTMENT OF ENVIRONMENTAL QUALITY

Final Regulation

REGISTRAR'S NOTICE: The Department of Environmental Quality is claiming an exemption from the Administrative Process Act in accordance with the second enactment of Chapter 419 of the 2021 Acts of Assembly, Special Session I, which exempts the actions of the department relating to the adoption of regulations necessary to implement the provisions of the act; however, the department is required to provide an opportunity for public comment on any such regulations prior to their adoption.

Title of Regulation: **9VAC15-100. Small Energy Storage Facilities Permit by Rule (adding 9VAC15-100-10 through 9VAC15-100-130).**

Statutory Authority: §§ 10.1-1197.5 and 10.1-1197.6 of the Code of Virginia.

Effective Date: January 1, 2022.

Agency Contact: Mary E. Major, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4423, FAX (804) 698-4178, or email mary.major@deq.virginia.gov.

Summary:

Pursuant to Chapter 419 of the 2021 Acts of Assembly, Special Session I, the action creates a new regulation, Small Energy Storage Facilities Permit by Rule (9VAC15-100), a permit by rule regulation for energy storage facilities 150 megawatts or less. The regulation establishes criteria, procedures, and permit requirements for a complete application to construct and operate a small energy storage facility. Key application criteria include a public notice and comment period, local government approval, interconnection requirements, natural and cultural resource assessments, site plan, context map, and a fee structure that should be sufficient to support the program.

Chapter 100
Small Energy Storage Facilities Permit by Rule

9VAC15-100-10. Definitions.

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

"Administratively complete application" means an application the department has determined meets the requirements of this chapter.

"Applicant" means the developer, owner, or operator that submits an application to the department for a permit by rule pursuant to this chapter.

"Archaeological field survey" means systematic identification-level archaeological investigations as described in DHR's guidelines for conducting historic resources surveys within the project area and submission of necessary documentation to DHR with recommendations on eligibility of identified resources for listing in the Virginia Landmarks Register and National Register of Historic Places.

"Architectural field survey" means comprehensive, reconnaissance-level documentation as described in DHR's guidelines for conducting historic resources surveys of all standing buildings or structures 50 years of age or older within the project area and surrounding areas with a view to the facility and submission of necessary documentation to DHR with recommendations on eligibility of identified resources for listing in the Virginia Landmarks Register and National Register of Historic Places.

"Begin commercial operation" means to have begun to store and discharge electricity for sale to the grid. This does not include testing to ensure the facility will not cause a reliability problem for the electrical grid system.

"Begin construction" means a continuous program of construction or land-disturbing activity necessary to construct a small energy storage project.

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

"Department" or "DEQ" means the Department of Environmental Quality, the department's director or the director's designee.

"DCR" means the Department of Conservation and Recreation.

"DHR" means the Department of Historic Resources.

"Disturbance zone" means the area within the site directly impacted by land-disturbing activity, including construction and operation of the small energy storage facility and 100 feet from the boundary of the directly impacted area. A facility located within an urban area, as defined by the U.S. Census Bureau, provided it is not a hybrid facility, will be subject to local government zoning requirements. Hybrid facilities will be subject to the requirements of any other small renewable energy project permit by rule regulation that is applicable.

"Document certification" means the statement as prescribed in 9VAC15-100-30 B 2 a, signed by the responsible person and submitted with the application documents or any supplemental information submitted to the department for a PBR.

"DWR" means the Department of Wildlife Resources.

"Historic resource" means any prehistoric or historic district, site, building, structure, object, or cultural landscape that is included or meets the criteria necessary for inclusion in the Virginia Landmarks Register pursuant to the authorities of

§ 10.1-2205 of the Code of Virginia and in accordance with 17VAC5-30-40 through 17VAC5-30-70.

"Hybrid renewable energy and storage facility" or " hybrid facility" means a small energy storage facility and an electrical generation facility that is one of the following: (i) an electrical generation facility with a rated power capacity not exceeding 150 MW in alternating current (AC) that generates electricity only from sunlight or wind with an energy storage facility with a rated power capacity that does not exceed 150 MW in AC; (ii) an electrical generation facility with a rated power capacity not exceeding 100 MW in AC that generates electricity only from falling water, wave motion, tides, or geothermal power with an energy storage facility with a rated power capacity that does not exceed 100MW in AC; or (iii) an electrical generation facility with a rated power capacity not exceeding 20 MW in AC that generates electricity only from biomass, energy from waste, or municipal solid waste with an energy storage facility with a rated power capacity that does not exceed 20 MW in AC.

"Interconnection point" means the point where the small renewable energy project connects to a project substation for transmission to the electrical grid.

"Land disturbance" or "land-disturbing activity" means a man-made change to the land surface that potentially changes the land surface's runoff characteristics, including clearing, grading, or excavation, except that the term shall not include those exemptions specified in § 62.1-44.15:34 of the Code of Virginia.

"Megawatt" or "MW" means a measurement of power; 1,000 kilowatts equals one MW.

"Natural heritage resource" means the habitat of rare, threatened, or endangered plant and animal species, rare or state significant natural communities or geologic sites, and similar features of scientific interest benefiting the welfare of the citizens of the Commonwealth.

"Notice of Intent" or "NOI" means notification, in a manner acceptable to the department, by an applicant stating intent to submit documentation for a permit under this chapter.

"Operator" means the person responsible for the overall operation and management of a small energy storage facility.

"Owner" means the person that owns all, a portion of, or has all or a controlling interest in a small energy storage facility.

"Permit by rule," "PBR," or "permit" means provisions of the regulation stating that a project or activity is deemed to have a permit if it meets the requirements of the provision.

"Person" means any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, county, city, town, or other political subdivision of the Commonwealth, any interstate body, or any other legal entity.

"Preconstruction" means any time prior to beginning land-disturbing activities necessary for the installation of energy generating or energy storage structures at the facility.

"Previously disturbed or repurposed area" means the land area within the property boundary of industrial or commercial properties, including brownfields, or previously mined areas. It does not include active or fallow agricultural land or silvicultural land use.

"Project" refers to all aspects of small energy storage facility development, including planning, permitting, construction and commissioning.

"Rated power capacity" means the maximum amount of stored energy of the energy storage system in kilowatt-hours or megawatt-hours that can be delivered to the grid.

"Responsible person" means:

1. For a corporation or limited liability company, a president, secretary, treasurer, or vice-president in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation or limited liability company or is subject to Title 13.1 of the Code of Virginia;

2. For partnership or sole proprietorship, a general partner or the proprietor, respectively; and

3. For a local government entity subject to Title 15.2 of the Code of Virginia or state, federal, or other public agency, either a principal executive officer or ranking elected official.

"Retrofit" means the addition of an energy storage facility to an existing, permitted small renewable energy project.

"Site" means the area of a project that is under common ownership or operating control. Electrical infrastructure and other appurtenant structures up to the interconnection point shall be considered to be within the site.

"Small energy storage facility" or "facility" means an energy storage facility that uses electrochemical cells to convert chemical energy with a rated power capacity not exceeding 150 MW in AC.

"Small renewable energy project" means (i) an electrical generation facility with a rated power capacity not exceeding 150 MW that generates electricity only from sunlight or wind; (ii) an electrical generation facility with a rated capacity not exceeding 100 MW that generates electricity only from falling water, wave motion, tides, or geothermal power; (iii) an electrical generation facility with a rated power capacity not exceeding 20 MW that generates electricity only from biomass, energy from waste, or municipal solid waste; (iv) an energy storage facility that uses electrochemical cells to convert

chemical energy with a rated power capacity not exceeding 150 MW; or (v) a hybrid project composed of an electrical generation facility that meets the parameters established in subdivision (i), (ii), or (iii) of this definition and an energy storage facility that meets the parameters established in subdivision (iv) of this definition.

"Threatened and endangered," "T&E," "state threatened or endangered species," or "state-listed species" means (i) any wildlife species designated as a Virginia endangered or threatened species by DWR pursuant to the §§ 29.1-563 through 29.1-570 of the Code of Virginia and 4VAC15-20-130 or (ii) any species designated as a Virginia endangered or threatened species by DACS pursuant to §§ 3.2-1000-through 3.2-1100 of the Code of Virginia and 2VAC5-320-10.

"Virginia Natural Landscape Assessment Ecological Cores" means large patches of natural land with at least 100 contiguous acres of interior, which begins 100 meters inward from the nearest edge between natural and unnatural land covers identified by DCR.

"VLR" means the Virginia Landmarks Register.

"VLR-eligible" means those historic resources that meet the criteria necessary for inclusion on the VLR pursuant to 17VAC5-30-40 through 17VAC5-30-70 but are not listed in VLR.

"VLR-listed" means those historic resources that have been listed in the VLR in accordance with the criteria of 17VAC5-30-40 through 17VAC5-30-70.

"Wildlife" means wild animals; except, however, that T&E insect species shall be considered T&E wildlife.

9VAC15-100-20. Applicability.

A. This chapter applies throughout the Commonwealth of Virginia. Nothing in this chapter shall be interpreted to affect the rights of a private property owner.

B. A permit by rule shall be required for small energy storage facilities with a disturbance zone greater than 10 acres.

C. Facilities with a disturbance zone less than or equal to 10 acres shall comply with the requirements of 9VAC15-100-130. Facilities that meet the requirements of that section are deemed to be covered by the permit by rule.

9VAC15-100-30. Application for permit by rule for small energy storage facilities with a disturbance zone greater than 10 acres.

A. The application for a small energy storage facility with a disturbance zone greater than 10 acres, provided that the project does not otherwise meet the criteria for 9VAC15-100-130, shall contain all of the following:

1. An NOI to submit the necessary documentation for a permit by rule, to be published by the department in the Virginia Register of Regulations.

a. The applicant shall submit the NOI in a form approved by the department.

(1) The initial NOI shall be submitted to the department as early in the project development process as practicable, but at least 90 days prior to the start of the public comment period required under 9VAC15-100-90.

(2) The NOI shall be submitted to the chief administrative officer and chief elected official of the locality in which the project is proposed to be located the same time the NOI is submitted to the department.

b. The NOI shall expire if no application has been submitted within 48 months from the NOI submittal date unless the department receives a written request for extension prior to the NOI expiration date. A NOI extension may be granted for an additional 36 months at which time the NOI shall expire.

c. An applicant seeking changes for a project that results in an increase of acreage shall submit a new NOI using the form approved by the department.

d. The applicant shall notify the department of any change of operator, ownership, or controlling interest for a project within 30 days of the transfer. No additional fee shall be assessed.

(1) The original applicant shall notify the department of the change by withdrawing the initial NOI in a form acceptable to the department.

(2) The new applicant shall submit a NOI in a form acceptable to the department.

(3) The department will not consider the change of operator, ownership, or controlling interest for a project effective until the department receives notification from both the original applicant and the new applicant.

2. A certification by the governing body of the locality in which the small renewable energy facility will be located that the project complies with all applicable land use ordinances.

3. Copies of all interconnection studies undertaken by the regional transmission organization or transmission owner, or both, on behalf of the project.

4. A copy of the final interconnection agreement, between the project and the regional transmission organization or transmission owner indicating that the connection of the project will not affect system reliability.

a. If the final agreement is not available, the most recent interconnection study shall be sufficient for the purposes of this subsection.

b. The final agreement shall be provided to the department within 30 days of the date of execution.

c. The department will forward a copy of the agreement or study to the State Corporation Commission.

5. A certification signed and stamped by a professional engineer licensed in Virginia that the maximum storage capacity of the facility, as designed, does not exceed 150 MW.

6. An analysis of potential environmental impacts of the project's operations on attainment of national ambient air quality standards (42 USC § 7409 as implemented by 9VAC5-30).

7. An analysis of the beneficial and adverse impacts of the proposed project on natural resources pursuant to 9VAC15-100-40. For wildlife, that analysis shall be based on information on the presence, activity, and migratory behavior of wildlife to be collected at the site for a period of time dictated by the site conditions and biology of the wildlife being studied, not exceeding 12 months.

8. A mitigation plan pursuant to 9VAC15-100-60 if a determination of likely significant adverse impacts has been made according to 9VAC15-100-50. The plan shall detail actions necessary to avoid, minimize, or otherwise mitigate such impacts, and to measure the efficacy of those actions.

9. A certification signed and stamped by a professional engineer licensed in Virginia that the facility is designed in accordance with 9VAC15-100-80.

10. An operating plan that includes a description of how the project will be operated and any mitigation plan required due to findings under 9VAC15-100-50.

11. A detailed site plan meeting the requirements of 9VAC15-100-70.

12. A certification signed by the applicant that the department has been notified that the applicant intends to apply for or has applied for or obtained all necessary environmental permits for the project.

13. A certification signed by the applicant that the project is being proposed, developed, constructed, or purchased by a person that is not a utility regulated pursuant to Title 56 of the Code of Virginia, or a certification that (i) the project's costs are not recovered from Virginia jurisdictional customers under base rates, a fuel factor charge, or a rate adjustment clause; or (ii) the applicant is a utility aggregation cooperative formed under Article 2 (§ 56-231.38 et seq.) of Chapter 9.1 of Title 56 of the Code of Virginia.

14. A summary report of the 30-day public review and comment period conducted pursuant to 9VAC15-100-90, including a summary of the issues raised by the public, any written comments received, and the applicant's response to those comments.

15. The appropriate fee pursuant to 9VAC15-100-110.

B. An applicant seeking a PBR under this chapter shall submit the following:

1. All items identified in subsection A of this section submitted in a format acceptable to the department and all applicable fees pursuant to 9VAC15-100-110.

2. A cover letter submitted with the application that contains the following:

a. Document certification signed by a responsible person that contains the following statement:

"I certify under penalty of law that this application document and all attachments were prepared under my direction or supervision in accordance with a system designed to ensure 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 and evaluating the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there may be significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

b. The name and contact information of the responsible person signing the document certification required under subdivision 2 a of this subsection; and

c. The name and contact information of the responsible person to receive the permit authorization.

C. Within 90 days of receiving all of the required documents and fees listed in subsection A of this section, the department will, after consultation with DCR, DHR, and DWR, form a determination that an application is an administratively complete application or incomplete.

1. If the department determines that the application meets the requirements of this chapter, the department will form a determination that an application is an administratively complete application and notify the responsible person in writing that the person is authorized to construct and operate the facility pursuant to this chapter.

a. The authorization to construct and operate shall become invalid if (i) a program of continuous construction or modification or retrofit is not begun within 60 months from the date the PBR or modification or retrofit authorization is issued, or (ii) a program of construction or modification or retrofit is discontinued for a period of 24 months or more, except for a department-approved period between phases of a phased construction project. Routine maintenance is not considered either a modification or retrofit of a facility.

b. The department may grant an extension on a case-by-case basis.

c. The applicant for any project for which the PBR or modification authorization has been deemed invalid shall submit a new NOI, application documents, and appropriate fees to reactivate authorization.

2. If the department determines that the application does not meet the requirements of this chapter, the department will form a determination that an application is administratively incomplete, notify the applicant in writing, and specify the deficiencies.

3. If the applicant corrects deficiencies in an incomplete application, (i) the applicant shall notify the department within 30 days of an incomplete notification, (ii) the department will follow the procedures of this subsection, and (iii) the department will notify the applicant within 60 days whether the supplemental information meets the requirements of this chapter.

4. Any case decision by the department pursuant to this subsection shall be subject to the process and appeal provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

9VAC15-100-40. Analysis of the beneficial and adverse impacts on natural resources.

A. The applicant shall conduct a preconstruction wildlife analyses as follows.

1. The applicant shall prepare a wildlife report and map generated either (i) from DWR's Virginia Fish and Wildlife Information Service web-based application or (ii) from a data and mapping system including the most recent data available from DWR's subscriber-based Wildlife Environmental Review Map Service of known wildlife species and habitat features on the site or within two miles of the boundary of the site, known or potential sea turtle nesting beaches located within one-half mile of the disturbance zone, and desktop information for bald eagle nesting locations from the Center for Conservation Biology at the College of William and Mary.

2. The applicant shall assess and describe the expected beneficial and adverse impacts, if any, of the proposed project on wildlife identified by these studies and analyses.

B. The applicant shall perform a preconstruction historic resources analysis conducted by a qualified professional meeting the qualification standards of the Secretary of the Interior's Standards for Archeology and Historic Preservation in the appropriate discipline. Any study or analysis required under this subsection submitted to DHR for review may be considered accepted by DHR if DHR does not provide comments within 30 calendar days from confirmed receipt of an analysis determined to be administratively complete. In this case, the applicant may assume DHR concurrence with the recommendations of the study or analysis and proceed accordingly. The analysis shall include each of the following:

1. Information on known historic resources within the disturbance zone and within one-half mile of the disturbance zone boundary, identified on the context map referenced in 9VAC15-100-70 B, or as an overlay to this context map, as well as in tabular format.

2. An architectural field survey of all architectural resources, including cultural landscapes 50 years of age or older within the disturbance zone and within one-half mile of the disturbance zone boundary, and an evaluation of the eligibility of any identified resource for listing in the VLR. The architectural survey area may be refined by the applicant based on an analysis to exclude areas that have no direct view to the facility. The applicant shall provide detailed justification for any changes to the survey area.

3. An archaeological field survey of the disturbance zone and an evaluation of the eligibility of any identified archaeological site for listing in the VLR. To streamline archaeological investigations, the survey may be guided by a research design that utilizes a probability assessment or predictive modeling. Such a research design shall be approved by DEQ and DHR prior to conducting the fieldwork.

C. For projects subject to 9VAC15-100-120, the applicant shall conduct a preconstruction desktop survey of natural heritage resources and Virginia Natural Lands Assessment Ecological Cores within the disturbance zone within six months prior to the date of the application submittal. The analysis shall include a report of natural heritage resources using either the DCR online information service order form or the DCR subscriber-based Natural Heritage Data Explorer web application and include the most recent data available on the following:

1. Documented occurrences of natural heritage resources within 100 feet of the site;

2. Intersection of the site with predicated suitable habitat models developed by DCR for rare, threatened, and endangered species;

3. Intersection of the site with the Virginia Natural Landscape Assessment Ecological Cores; and

4. Onsite surveys for natural heritage resources recommended by DCR based on the analysis required under this subsection.

9VAC15-100-50. Determination of likely significant adverse impacts for applications.

A. The department will find that significant adverse impacts to wildlife are likely whenever the wildlife analyses prescribed in 9VAC15-100-40 A document that state-listed T&E wildlife species are found to occur within the disturbance zone or the disturbance zone is located on or within one-half mile of a known or potential sea turtle nesting beach.

B. The department will find that significant adverse impacts to historic resources are likely whenever the historic resources analyses prescribed by 9VAC15-100-40 B indicate that the

proposed project is likely to diminish significantly any aspect of a historic resource's integrity.

C. For projects subject to 9VAC15-100-120, the department will find that significant adverse impacts to natural heritage resources and ecological cores are likely whenever the analysis prescribed by any other small renewable energy project permit by rule regulation is applicable indicates that that significant adverse impacts are likely.

9VAC15-100-60. Mitigation plan.

A. The applicant shall prepare a mitigation plan for any resource for which a significant adverse impact determination has been made as a result of the analysis pursuant to 9VAC15-100-50. The plan shall detail actions by the applicant to avoid, minimize, or otherwise mitigate such impacts and shall be an enforceable part of the PBR.

B. Mitigation measures for significant adverse impacts to wildlife shall include the following.

1. For state-listed T&E wildlife, the applicant shall take all reasonable measures to avoid significant adverse impacts or shall demonstrate in the mitigation plan what significant adverse impacts cannot practicably be avoided and why additional proposed actions are reasonable. These additional proposed actions may include best practices to avoid, minimize, or offset adverse impacts to resources analyzed pursuant to 9VAC15-100-40 A or C.

2. For proposed projects where the disturbance zone is located on or within one-half mile of a known or potential sea turtle nesting beach, the applicant shall take all reasonable measures to avoid significant adverse impacts or shall demonstrate in the mitigation plan what significant adverse impacts cannot practicably be avoided and why additional proposed mitigation actions are reasonable. Mitigation measures shall include the following.

a. Avoiding construction within likely sea turtle crawl or nesting habitats during the turtle nesting and hatching season (May 20 through October 31). If avoiding construction during this period is not possible, then conducting daily crawl surveys of the disturbance zone (May 20 through August 31) and one mile beyond the northern and southern reaches of the disturbance zone (sea turtle nest survey zone) between sunrise and 9 a.m. by qualified individuals who have the ability to distinguish accurately between nesting and non-nesting emergences.

b. If construction is scheduled during the nesting season, including measures to protect nests and hatchlings found within the sea turtle nest survey zone.

c. If nighttime construction cannot be avoided, designing project lighting during the construction and operational phases to minimize impacts on nesting sea turtles and hatchlings. Proposed project lighting must be submitted to DWR and the U.S. Fish and Wildlife Service for approval prior to construction.

C. Mitigation measures for significant adverse impacts to historic resources shall include the following.

1. Significant adverse impacts to VLR-eligible or VLR-listed architectural resources shall be minimized to the extent practicable through project design or the installation of vegetative or other screening.

2. If significant adverse impacts to VLR-eligible or VLR-listed architectural resources cannot be avoided or minimized such that impacts are no longer significantly adverse, then the applicant shall develop a reasonable and proportionate mitigation plan that offsets the significantly adverse impacts and has a demonstrable public benefit and benefit for the affected or similar resource.

3. If any identified VLR-eligible or VLR-listed archaeological site cannot be avoided or minimized to such a degree as to avoid a significant adverse impact, significant adverse impacts of the project will be mitigated through archaeological data recovery.

D. For projects subject to 9VAC15-100-120, mitigation measures for significant adverse impacts to natural heritage resources shall be as required for any other small renewable energy project permit by rule regulation that is applicable.

9VAC15-100-70. Site plan and context map requirements.

A. The applicant shall submit a site plan that includes maps showing the physical features, topography, and land cover of the area within the site, both before and after construction of the proposed project. The site plan shall be submitted at a scale sufficient to show and shall include the following: (i) the boundaries of the site, disturbance zone with 100 foot buffer or local zoning setback requirement as applicable, storage infrastructure, open areas, and screening areas; (ii) the location, height, and dimensions of all existing and proposed energy storage systems, other structures, fencing, and other infrastructure; (iii) the location, grades, and dimensions of all temporary and permanent onsite and access roads from the nearest county or state maintained road; (iv) water bodies, waterways, wetlands, and drainage channels; and (v) for facilities subject to 9VAC15-100-30, the location of any mitigation measures and resources subject to mitigation.

B. The applicant shall submit a context map including the area encompassed by the site and within five miles of the site boundary. The context map shall show state and federal resource lands and other protected areas, Chesapeake Bay Resource Protection Areas pursuant to 9VAC25-830-80, historic resources, state roads, waterways, locality boundaries, forests, open spaces, farmland, brownfield sites, and transmission and substation infrastructure.

C. The applicant shall submit post-construction site maps to the department within six months after beginning commercial operation that show the physical features, topography, and land

cover of the area within the site. The maps shall contain the following:

1. The boundaries of the site, disturbance zone with 100-foot buffer or local zoning setback requirement as applicable, open areas, and screening areas;

2. Infrastructure placement;

3. Mitigation required pursuant to 9VAC15-100-60, as applicable; and

4. Location of any avoided cultural resources.

9VAC15-100-80. Small energy storage facility design standards and operational plans.

A. The design and installation of the small energy storage facility shall incorporate any requirements of the mitigation plan that pertain to design and installation if a mitigation plan is required pursuant to 9VAC15-100-50 or 9VAC15-100-60 as applicable.

B. The applicant shall prepare an operation plan detailing operational parameters for the project, including (i) remote monitoring or staffing requirements, (ii) emergency procedures and contacts, (iii) vegetation to be used within the disturbance zone and 100-foot buffer or local zoning setback requirement as applicable, and (iv) application frequency of pesticides or herbicides over the life of the project. Owners and operators are encouraged to utilize the link to the DACS Fieldwatch in 9VAC15-100-120 B 6 prior to the application of either pesticides or herbicides.

9VAC15-100-90. Public participation.

A. The applicant shall conduct a public comment period for public review of all application documents required by 9VAC15-100-30 and include a summary report of the public comment as part of the PBR application. The report shall include documentation of the public comment period and public meeting and include a summary of the issues raised by the public, any written comments received, and the applicant's response to those comments.

B. The applicant shall publish a notice announcing a 30-day comment period. The notice shall be published once a week for two consecutive weeks in a local newspaper of general circulation where the project is to be located. The notice shall include the following:

1. A brief description of the proposed project and its location, including the approximate dimensions of the site, approximate number and configuration of energy storage systems, and approximate maximum height of energy storage systems;

2. A statement that the purpose of the public participation is to (i) acquaint the public with the technical aspects of the proposed project and how the standards and the requirements of this chapter will be met, (ii) identify issues of concern, (iii) facilitate communication, and (iv) establish a dialogue between the owner or operator and persons that may be affected by the project;

3. Announcement of a 30-day comment period in accordance with subsection D of this section, and the name, telephone number, address, and email address of the applicant who can be contacted by the interested persons to answer questions or to whom comments shall be sent;

4. Announcement of the date, time, and place for a public meeting held in accordance with subsection E of this section; and

5. Location where copies of the documentation to be submitted to the department in support of the permit by rule application will be available for inspection.

C. The owner or operator shall place a copy of the documentation in a location accessible to the public during business hours for the duration of the 30-day comment period in the vicinity of the proposed project.

D. The public shall be provided at least 30 days to comment on the technical and the regulatory aspects of the proposal. The comment period shall begin no sooner than 15 days after the applicant initially publishes the notice in the local newspaper.

E. The applicant shall hold a public meeting not earlier than 15 days after the beginning of the 30-day public comment period and no later than seven days before the close of the 30-day comment period. The meeting shall be held in the locality or, if the project is located in more than one locality, in a place proximate to the location of the proposed project.

F. For purposes of this chapter, the applicant and any interested party who submits written comments on the proposal to the applicant during the public comment period or who signs in and provides oral comments at the public meeting shall be deemed to have participated in the proceeding for a permit by rule under this chapter and pursuant to § 10.1-1197.7 B of the Code of Virginia

9VAC15-100-100. Permit by rule change of ownership, project modifications, reporting, and permit termination.

A. A PBR may be transferred to a new owner or operator through an administrative amendment to the permit. The department will incorporate the administrative changes to the PBR after the receipt of notification of the change in a form acceptable to the department, including a written agreement between the existing and new owner or operator containing a specific date for transfer of permit responsibility, coverage, and liability between them. The transfer of the PBR to the new owner or operator shall be effective on the date specified in the written agreement. Information required for a change of ownership shall be submitted to the department within 30 days of the transfer date. The department will not consider the change of operator, ownership, or controlling interest for a facility to be effective until the department receives

notification from both the original applicant and the new applicant.

B. A PBR name may be changed through an administrative amendment to the permit as follows.

1. Information required for a change of ownership shall be submitted to the department within 30 days of the change date.

2. The department will incorporate the administrative changes to the PBR after receipt of the notification in a form acceptable to the department.

C. Modification to an existing PBR, with the exception of administrative changes, shall be in accordance with the provisions of 9VAC15-100-30 B and as follows.

1. The applicant shall submit the modification application and include the facility address, documents, maps, and studies supporting the changes to the existing permit. Information that is unchanged in the existing PBR shall not be submitted. Unchanged information shall be identified and certified as unchanged in the modification application.

2. In addition to the information required in subdivision 1 of this subsection, a modification to an existing PBR shall also require a certification from the local government pursuant to 9VAC15-100-30 A 2, a public comment period pursuant to 9VAC15-100-90, and the appropriate fee pursuant to 9VAC15-100-110.

3. Upon receipt of all required documents and applicable fees, the department will review the modification submittal in accordance with the provisions of 9VAC15-100-30 C.

D. Recordkeeping and reporting shall be performed as follows.

1. The owner or operator shall furnish notification of the following milestones:

a. The date the project began construction within 30 days after such date;

b. The date the project began commercial operation within 30 days of such date;

c. The date of any onsite construction or maintenance that could impact the project's mitigation and avoidance plan within 15 days after such date;

d. A map of the project post construction clearly showing infrastructure configuration relative to any required mitigation and incorporates any onsite changes resulting from any onsite construction or maintenance that could impact the project mitigation and avoidance plan within 90 days of completion of such work; and

e. For projects that contain mitigation for historic resources, a post-construction demonstration of completed mitigation requirements according to the approved mitigation within 90 days of completion of such work.

2. A copy of the site map clearly showing any resources to be avoided or mitigated shall be maintained onsite during construction.

3. Upon request, the owner shall furnish to the department copies of records required to be kept by this PBR.

4. Within 30 days of notification, any information requested by the department.

E. The department may enforce provisions of this chapter in accordance with §§ 10.1-1197.9, 10.1-1197.10, and 10.1-1197.11 of the Code of Virginia. In so doing, the department may:

1. Issue directives in accordance with the law;

2. Issue special orders in accordance with the law;

3. Issue emergency special orders in accordance with the law;

4. Seek injunction, mandamus, or other appropriate remedy as authorized by the law;

5. Seek civil penalties under the law; or

6. Seek remedies under the law, or under other laws including the common law.

F. Pursuant to the Virginia Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia), terminate the permit by rule whenever the department finds that the applicant has:

1. Knowingly or willfully misrepresented or failed to disclose a material fact in any report or certification required under this chapter;

2. Failed to comply with the conditions or commitments stated within the permit by rule application; or

3. Violated the project's mitigation plan.

9VAC15-100-110. Fees.

A. Fees shall be collected for an application for a PBR or an application to retrofit an existing PBR for a project subject either to 9VAC15-100-30 or 9VAC15-100-130. No fee shall be required for administrative permit changes pursuant to 9VAC15-100-100 A or B.

B. Fees for PBR applications or retrofits shall be paid by the applicant as follows.

1. All permit application and retrofit fees if applicable are due at the time of application or retrofit submittal.

2. Fees shall be collected utilizing, where practicable, an online payment system. Until such system is operational, fees shall be paid by check, draft, or postal money order made payable to "Treasurer of Virginia/DEQ" and shall be sent to the Department of Environmental Quality, Receipts Control, P.O. Box 1104, Richmond, VA 23218.

a. Fees shall be in United States currency, except that agencies and institutions of the Commonwealth of Virginia may submit interagency transfers for the amount of the fee.

b. The department may provide a means to pay fees electronically. When fees are collected electronically pursuant to this section through credit cards, business transaction costs to the department associated with processing such payments may be assessed.

3. All incomplete payments shall be deemed nonpayment.

4. No PBR application, modification, or retrofit will be deemed complete until the department receives proper payment.

a. Interest may be charged for late payments at the underpayment rate set forth in § 58.1-15 of the Code of Virginia and is calculated on a monthly basis at the applicable periodic rate. A 10% late payment fee shall be charged to any delinquent (over 90 days past due) account.

b. The department is entitled to all remedies available under the Code of Virginia in collecting any past due amount.

C. Each application for a PBR and each retrofit of a PBR is a separate action and shall be assessed a separate fee. The fee for a permit application or retrofit is identified in Table 1.

Table 1

Facility Type and Size	Permit Fee
Project with a disturbance zone less than or equal to 10 acres	$2,500
Project with a disturbance zone greater than 10 acres	$5,000
Retrofit project	$500

D. All applicants, unless otherwise specified by the department, shall submit the following information along with the fee payment in a form acceptable to the department and include the following information:

1. Applicant name, address, and daytime telephone number;

2. Responsible person name, address, and daytime telephone number if different from the applicant;

3. Name of the project and project location;

4. Whether the fee is for a new PBR issuance or permit retrofit;

5. The amount of fee submitted; and

6. The existing permit number.

9VAC15-100-120. Hybrid projects.

A. Applicants for a hybrid renewable energy and storage facility shall submit one application combining and satisfying the requirements of 9VAC15-100-30 and the application requirements for any other small renewable energy project that is applicable. The department may request any additional information beyond that listed in this section as needed in order that the application and final permit be correct and complete.

B. Applicants for a hybrid facility may combine the requirements for an analysis of the beneficial and adverse impacts on natural resources under 9VAC15-100-40 with those for similar analyses that are required for any other small renewable energy project that is applicable.

C. Applicants for a hybrid facility may combine the mitigation plan requirements of 9VAC15-100-60 with the mitigation plan requirements for any other small renewable energy project that is applicable.

D. Applicants for a hybrid facility may combine the site plan and context map requirements of 9VAC15-100-70 with the site plan and context map requirements for any other small renewable energy project that is applicable.

E. Applicants for a hybrid facility may combine the public participation requirements of 9VAC15-100-90 with the public participation requirements for any other small renewable energy project that is applicable.

F. Applicants for a hybrid facility are not subject to the fee for the small energy storage facility portion of the hybrid facility project set forth in 9VAC15-100-110.

G. The rated capacity of the small energy storage portion of a hybrid renewable energy and storage facility is not added to that of any other small renewable energy project that is part of the overall hybrid facility when determining the hybrid facility's qualification for a permit by rule.

H. The addition of a small energy storage facility subject to this chapter, if identified on the site plan of a permit by rule for a constructed or operating small renewable energy project, shall not be considered a modification to the small renewable energy project.

I. The addition of an electrical storage facility adjacent but beyond the approved site plan of an existing small renewable energy project shall not be considered a hybrid project.

9VAC15-100-130. Small energy storage facilities with a disturbance zone less than or equal to 10 acres or meeting certain categorical criteria.

A. Facilities meeting one of the following conditions shall be subject to this section:

1. Facilities with a disturbance zone less than or equal to 10 acres; or

2. Facilities located on previously disturbed or repurposed areas without regard to the size of the disturbance zone, or the rated power capacity is less than or equal to 150 MW and any impact to undisturbed areas is less than or equal to 10 acres.

B. An application for a PBR under this section shall contain the following:

1. The NOI in a form acceptable to the department;

2. A certification by the governing body of the locality wherein the project will be located that the project complies with all applicable land use ordinances;

3. An interconnection agreement pursuant to 9VAC15-100-30 A 4;

4. A certification signed and stamped by a professional engineer licensed in Virginia that the maximum storage capacity of the facility, as designed, does not exceed 150 MW;

5. A detailed site plan meeting the requirements of 9VAC15-100-70;

6. A certification signed by the applicant that the department has been notified that the applicant intends to apply for or has applied for or obtained all necessary environmental permits for the project; and

7. The appropriate fee pursuant to 9VAC15-100-110.

C. An applicant seeking a PBR under this subsection shall submit the application documents according to the requirements of 9VAC15-100-30 B 2.

D. The owner or operator of a PBR must provide notification to DEQ of operation within 30 days of the start of operation.

E. A facility with a rated power capacity equal to or less than one MW is not required to submit any notification or certification to the department.

VA.R. Doc. No. R22-7054; Filed December 30, 2021, 8:29 p.m.

STATE WATER CONTROL BOARD

Proposed Regulation

Title of Regulation: **9VAC25-260. Water Quality Standards (amending 9VAC25-260-50, 9VAC25-260-140, 9VAC25-260-185, 9VAC25-260-187, 9VAC25-260-310, 9VAC25-260-390, 9VAC25-260-400, 9VAC25-260-410, 9VAC25-260-420, 9VAC25-260-440, 9VAC25-260-470, 9VAC25-260-500).**

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

Public Hearing Information:

February 22, 2022 - noon - Bank of America, 3rd Floor Conference Room, 1111 East Main Street, Richmond, VA

Public Comment Deadline: March 18, 2022.

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

Basis: The federal Clean Water Act authorizes restoration and maintenance of the chemical, physical, and biological integrity of the nation's waters. Section 303(c)(1) of the Clean Water Act requires that the states hold public hearings for the purpose of reviewing applicable water quality standards, and, as appropriate, modifying and adopting standards. Federal regulations at 40 CFR 131 authorize requirements and procedures for developing, reviewing, revising, and approving water quality standards by the states as authorized by § 303(c) of the Clean Water Act. 40 CFR 131 specifically requires the states to adopt criteria to protect designated uses.

The State Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia) authorizes protection and restoration of the quality of state waters, safeguarding the clean waters from pollution, prevention and reduction of pollution, and promotion of water conservation. Section 62.1-44.15 (3a) of the State Water Control Law requires the State Water Control Board to establish standards of quality and to modify, amend, or cancel any such standards or policies. It also requires the board to hold public hearings from time to time for the purpose of reviewing the water quality standards, and, as appropriate, adopting, modifying, or canceling such standards.

The amendments being considered are modifications of criteria that will protect designated uses and criteria and designated uses are requirements of the Water Quality Standards. The authority to adopt standards as provided by the provisions is mandated, although the specific standards to be adopted or modified are discretionary to the U.S. Environmental Protection Agency (EPA) and the state.

Purpose: The rulemaking is essential to the protection of health, safety, or welfare of the citizens of the Commonwealth because proper water quality standards protect water quality and living resources of Virginia's waters for the designated uses of aquatic life, wildlife, recreation, public water supply, shellfish consumption, and fish consumption. The intent of this rulemaking is to protect designated and beneficial uses of state waters by adopting a regulation that is technically correct, necessary, and reasonable.

Substance: This rulemaking will modify, add, or delete any section, criteria, use designation, standard, and policy to conform to EPA guidance, clarify state intent, implement state programs (e.g., permitting, monitoring, and assessments), and improve water quality or protect beneficial uses. The proposed amendments to the Water Quality Standards are as follows:

9VAC25-260-50

Add missing **** (quadruple asterisk) to pH column to clarify that pH criteria apply only to the epilimnion of a lake or reservoir when thermally stratified.

9VAC25-260-140

Add freshwater aluminum criteria for the protection of aquatic life according to the 2018 EPA nationally recommended criteria.

Correct identified errors:

(i) Ammonia CAS number is formatted with dashes, all other CAS numbers do not have dashes

(ii) Ammonia CAS number is incorrect 766414; should be 7664417

(iii) Correct name for Bis2-Chloroisopropyl Ether (2,2'-Oxybis(1-Chloropropane)

(iv) Chlordane CAS number 57749 is for mixed isomers; EPA Regional Screening Level (RSL) uses 12789036 for Chlordane, this is not wrong but inconsistent

(v) Nickel CAS number is incorrect 744002; should be 7440020

(vi) Include CAS number for Uranium (7440611)

(vii) Tributyltin CAS number is incorrect 60105 (no such CAS number); EPA RSL uses E1790678

Delete Bis (chloromethyl) Ether.

Copper Biotic Ligand Model (BLM) Language - Edit language in Table 140.B to state where the board has determined that a sufficient dataset of model input parameters is available, the BLM shall be used to determine copper criteria and that the hardness-based criteria will be used when sufficient input parameters are not available. Language in subsection G is amended similarly.

Update 20 human health criteria for the following 10 parameters to reflect updated exposure factors recommended by EPA in 2011: antimony, 2,3,7,8-tetrachlorodibenzo-p-dioxin, nickel, n-nitrosodimethylamine, n-nitrosodiphenylamine, n-nitrosodi-n-propylamine, total PCBs, selenium, thallium, and zinc A

Add language to footnotes 3 and 4 stating that human health criteria are based on the assumption of an average amount of exposure on a long-term basis.

9VAC25-260-185 B

Submerged Aquatic Vegetation (SAV) and Water Clarity acreages for five Chesapeake Bay segments are increased to match most recent Chesapeake Bay Program recommendations.

9VAC25-260-187

DEQ staff recommend application of lake nutrient criteria to a relatively recently constructed water supply reservoir in the Rappahannock River basin (Lake Mooney).

9VAC25-260-310

Delete special standard y (ammonia criteria for freshwater tidal tributaries of the Potomac River) as it is superseded by freshwater ammonia criteria that became effective in 2020.

Add special standard ii, which is a benthic chlorophyll-a threshold that protects the recreational use from persistent, nuisance filamentous algae in certain main-stem sections of the North Fork Shenandoah River, South Fork Shenandoah River, and Shenandoah River.

9VAC25-260-360 through 9VAC25-260-540

Add, modify, or delete trout waters as appropriate.

Add, modify, or delete public water supplies designations as appropriate.

Adjust temperature criteria or application of temperature criteria to waters stocked with trout by the Department of Wildlife Resources in the winter with the intent of supplying the public with seasonal trout fishing opportunities only in the winter but not in the summer.

Add or correct Class designations as appropriate.

Corrections to section descriptions in river basin tables for clarity or accuracy.

Issues: The primary advantage to the public of the regulatory action is that the updated numerical toxics criteria are based on better scientific information to protect aquatic life and human health. The disadvantage is that criteria that become more stringent may result in increased costs to the regulated community. However, the goal is to set realistic, protective goals in water quality management and to maintain the most scientifically defensible criteria in the Water Quality Standards regulation. EPA has also provided guidance that these criteria are "approvable" under the Clean Water Act.

The advantage to the agency or the Commonwealth that will result from the adoption of these amendments will be more accurate and scientifically defensible permit limits, assessments, and clean-up plans. The regulated community may find that the amendments pertinent to their operations may require additional capital or operating costs for control in their discharge, particularly where the numerical criteria are more stringent.

There is no disadvantage to the agency or the Commonwealth that will result from the adoption of these amendments.

Department of Planning and Budget's Economic Impact Analysis:

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order 14 (as amended, July 16, 2018). The analysis presented represents DPB's best estimate of these economic impacts.[1]

Summary of the Proposed Amendments to Regulation. The State Water Control Board (Board) proposes to amend 9VAC25-260 Water Quality Standards (regulation) to update numerical and narrative criteria, use designations, and other policies based on current scientific information. The proposed changes include: (i) adding freshwater aluminum criteria, (ii) requiring the use of the Copper Biotic Ligand Model, (iii)

updating 20 human health criteria for 10 parameters of water quality, (iv) increasing the acreage for Submerged Aquatic Vegetation and Water Clarity for five Chesapeake Bay segments, (v) applying lake nutrient criteria to Lake Mooney, (vi) adding a special standard that would limit the quantity of the filamentous algae in certain sections of the Shenandoah river, and (vii) modifying trout waters designation and public water supply designation, and adjusting temperature criteria for waters stocked with trout by the Virginia Department of Wildlife Resources in the winter.

Background. The proposed amendments were developed as part of a triennial review of the regulation, which is mandated by federal regulation and state law. The Clean Water Act (CWA) establishes the basic structure for regulating discharges of pollutants into the waters of the United States and regulating quality standards for surface waters.[2] The federal regulations at 40 CFR 131 authorize requirements and procedures for developing, reviewing, revising and approving water quality standards by the states as authorized by section 303(c) of the CWA.[3] 40 CFR 131.20 specifies that states shall hold public hearings at least once every three years for the purpose of reviewing the state's water quality standards, and adopting, modifying or canceling such standards, as appropriate.

The State Water Control Law (Code of Virginia, § 62.1-44.2 et seq.) is intended to protect and restore the quality of state waters, safeguard clean waters from pollution, prevent and reduce pollution, and promote water conservation.[4] Specifically, § 62.1-44.15(3a) requires the Board to establish standards of quality, and also modify, amend or cancel any such standards or policies; that section mirrors 40 CFR 131 in requiring that the Board conduct a triennial review of water quality standards, including holding public hearings.

The water quality standards contained in this regulation are used in setting Virginia Pollutant Discharge Elimination System (VPDES) permit limits and for evaluating the waters of the Commonwealth so that "impaired waters" can be addressed as per the Clean Water Act and Code of Virginia § 62.1-44.19:7.[5] In keeping with the legal mandate, the Board convened a Regulatory Advisory Panel with representatives from various stakeholders to review the current standards and proposed changes.[6] The proposed changes reflect a combination of updated scientific data, newer standards adopted by the U.S. Environmental Protection Agency, information on current conditions as obtained by the Department of Environmental Quality (DEQ), and input from members of the advisory panel.[7] The most significant proposed changes are summarized below.

I. In 9VAC25-260-140, numerical water quality criteria (upper limits) for parameters (various chemicals) that are measured to assess toxicity would be changed as follows:

(i) Add freshwater aluminum criteria for the protection of aquatic life according to the 2018 EPA nationally recommended criteria.[8] Aluminum is currently not included among the parameters used to assess water toxicity.

(ii) Require that the freshwater criteria for copper be calculated using the EPA 2007 Biotic Ligand Model (BLM) in sites where the Board has determined that a sufficient dataset of input parameters is available. The BLM is currently offered as an alternative to sites that have sufficient data; the proposed change would effectively require those sites to use the BLM. Places where the Board has determined that a sufficient dataset is not available will be allowed to continue using the current method of calculating the criteria.[9] A change from the current hardness-based criteria (and, therefore permit limits) to the BLM-based criteria would not always result in more stringent criteria (and permit limits). Less stringent criteria could result from using the BLM depending on the site-specific water chemistry of the receiving waterbody.

(iii) Update criteria for toxicity with respect to human health for the following 10 parameters to reflect updated exposure factors recommended by EPA in 2011: antimony, 2,3,7,8-tetrachlorodibenzo-p-dioxin, nickel, n-nitrosodimethylamine, n-nitrosodiphenylamine, n-nitrosodi-n-propylamine, total PCBs, selenium, thallium, and zinc. The current criteria are based on outdated exposure factors; the new criteria are derived using the latest exposure factors.[10]

Lastly, the Board proposes to make a number of smaller changes such as correcting identification numbers for some chemicals and removing Bis (chloromethyl) Ether since it naturally degrades rapidly in water.

II. Submerged Aquatic Vegetation (SAV) and Water Clarity acreages for five Chesapeake Bay segments would be increased to match the most recent recommendations from the Chesapeake Bay Program (9VAC25-260-185 B). The current criteria are based on outdated water quality models, and the proposed increases would make the rationale for these segments consistent with other parts of the Bay. The criteria are used to determine shallow water SAV use as a designated use, and as such increasing the acreage increases the area that can be protected for such use from the impacts of nutrients and suspended sediments.

III. Lake Mooney, which was recently constructed as a water supply reservoir in Stafford County, would be added to the list of man-made lakes and reservoirs in the state that are subject to nutrient criteria in order to protect aquatic life and recreational designated uses (9VAC25-260-187). DEQ staff proposed this since Lake Mooney is proposed to be designated as a public water source.

IV. The Board proposes to add a benthic chlorophyll-a threshold as a special standard (9VAC25-260-310) to protect recreational use from persistent, nuisance filamentous algae in certain main-stem sections of the North Fork Shenandoah River, South Fork Shenandoah River, and Shenandoah River.[11] Specifically, the proposed language states, "In the wadeable portions of the mainstem sections of the Shenandoah River, North Fork Shenandoah River, and South Fork Shenandoah River listed below, a determination of persistent nuisance filamentous algae impeding the recreation use should be made

when exceedances of the specified benthic chlorophyll-a concentration thresholds occur in more than one recreation season (May 1 to October 31) in three years. "Wadeable" constitutes a stream that can be crossed and sampled safely during a given sampling event occurring within the recreation season." A determination of persistent nuisance filamentous algae could lead to the water being designated as "impaired," which would then require further interventions from DEQ to address the causes and mitigate the algal blooms by implementing total maximum daily loads (TMDL).

The Board proposes to remove special standard "y" pertaining to ammonia criteria for freshwater tidal tributaries of the Potomac River as it is superseded by freshwater ammonia criteria that became effective in 2020.

V. The Board also proposes to update the designations for various sections of river basins, either to change trout waters or public water supply designations or to add or correct class designations, as well as to make the location descriptions more precise (9VAC25-260-360 through 9VAC25-260--540.) For some class III waters that are stocked with trout during the winter by the Department of Wildlife Resources, the proposed changes would add temperature criteria to ensure the water is not allowed to get too warm for the trout. In general, these changes would serve to ensure that the regulation is accurate and that the appropriate criteria are applied to assess water bodies based on the correct classification.

Estimated Benefits and Costs. The proposed amendments broadly benefit the public by ensuring that the numerical toxics criteria that protect aquatic life and human health are updated based on better scientific information. The accurate classification of water bodies would further ensure that public water sources for household consumption and water bodies used purely for recreational purposes are correctly assessed and protected for such use. DEQ and the Commonwealth would benefit from more accurate and scientifically defensible permit limits, assessments, and clean-up plans (TMDLs) in case of legal proceedings brought either by the regulated community or by conservation groups.

However, criteria that become more stringent may result in increased costs to the regulated community. Since these criteria are used to grant permits under VPDES, current permit holders as well as regulants who are assessed for a new permit may face more stringent effluent limits or be subject to monitoring requirements, or may face higher indirect costs by having to process or filter their effluents to meet the new criteria. As mentioned previously, adopting the copper BLM-based criteria may lead to less stringent criteria and permit limits depending on the site-specific water chemistry; thus some current and future VPDES permit holders with copper limits may benefit from this change.

Businesses and Other Entities Affected. All VPDES permit holders with pollutants in their discharge that are being updated with the proposed amendments may be impacted by the proposed changes. Data shared by DEQ show that there are currently 816 VPDES individual permit holders with effluent limits. With regard to the copper BLM, there are 146 VPDES permittees in the Commonwealth that currently have copper effluent limits or copper monitoring requirements in their discharge permit. Of these 146 facilities, 135 discharge to freshwater and may be directly affected by the modified language for the copper BLM. Municipally owned wastewater treatment plants comprise 38% of these permittees, while industrial facilities make up a majority of the rest.[12] There are other permittees that currently do not have copper limits but may be required to have them when their permits are renewed due to the proposed changes.

Similarly, 161 permittees may be affected by the proposed changes to the human health criteria. These permittees currently have either a permit limit derived from at least one of the existing criteria or monitoring requirements. Municipally-owned wastewater treatment plants comprise 34% of these permittees, while industrial facilities make up a majority of the rest. There are other permittees that currently do not have permit limits derived from these criteria, but they may be required to have them when their permits are renewed if the proposed amendments become effective.

Permittees that have aluminum in their effluent and that discharge into freshwater may be affected by the addition of the aluminum criteria. The number of potentially affected permittees is unknown since aluminum would be added as a new parameter.

The proposal to add a benthic chlorophyll-a threshold as a special standard for wadeable portions of the mainstem sections of the Shenandoah River, North Fork Shenandoah River, and South Fork Shenandoah River could result in new costs to the state or to regulants if impairments are identified in the future that necessitate clean-up plans. Due to the geographic nature of the intervention, entities located in the localities that encompass these river section are likely to bear a disproportionate material impact: Augusta, Clark, Lee, Page, Rockingham, Shenandoah and Warren Counties, and the Towns of Luray and Shenandoah.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.[13] An adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined. As noted, the more stringent criteria would lead to higher direct or indirect costs to VPDES permit applicants who would be subject to effluent limits or monitoring criteria. Thus, an adverse impact is indicated.

Small Businesses[14] Affected.[15] The proposed amendments do not appear to adversely affect small businesses. The proposed amendments affect private businesses that have VPDES individual permits. Based on a list of permit holders provided by DEQ, private businesses with individual permits with effluent limits for copper or any of the parameters that have human health criteria are all large corporations in the energy,

chemicals, steel, railway, shipbuilding, agricultural processing, paper milling, and heavy machinery sectors.[16] Thus, an adverse economic impact is not being indicated for small businesses.[17]

Localities[18] Affected.[19] Some localities that operate wastewater treatment plants may be affected by the proposed changes to the criteria for copper, aluminum, or the 10 parameters with human health criteria. Consequently, an adverse economic impact[20] on these localities is indicated because they may face higher costs to monitor or mitigate the pollutant content in the treatment plants' effluent due to the more stringent numeric criteria. However, which localities will be affected by these changes is as yet unknown.

Due to the location-specific nature of adopting a benthic chlorophyll-a threshold as a special standard, entities in the localities that encompass wadeable portions of the mainstem sections of the Shenandoah River, North Fork Shenandoah River, and South Fork Shenandoah River are likely to bear a disproportionate material impact: Augusta, Clark, Lee, Page, Rockingham, Shenandoah and Warren Counties, and the Towns of Luray and Shenandoah. Consequently, an adverse economic impact[21] on these counties and towns is indicated because entities in those localities, including municipal wastewater treatment facilities and industrial facilities, may be subject to TMDLs if these sections of the river are found to be impaired.

Lastly, Stafford County, which contains Lake Mooney, would also be affected by the proposed amendments, but only in the sense that it would contain a water body that is assessed for nutrient content.

Projected Impact on Employment. The proposed amendments do not appear to affect total employment. It is unlikely that the proposed amendments would affect employment in wastewater treatment or water quality management.

Effects on the Use and Value of Private Property. As discussed, the proposed changes in numerical criteria may increase costs for some private businesses. Consequently, the value of these firms may be modestly reduced. The proposed amendments do not affect real estate development costs.

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

[2]See https://www.epa.gov/laws-regulations/summary-clean-water-act for the history of the Clean Water Act

[3]See https://www.law.cornell.edu/cfr/text/40/part-131.

[4]See https://law.lis.virginia.gov/vacode/title62.1/chapter3.1/.

[5]See https://www.epa.gov/tmdl/statute-and-regulations-addressing-impaired-waters-and-tmdls for information on the requirements under the Clean Water Act and https://law.lis.virginia.gov/vacode/title62.1/chapter3.1/section62.1-44.19:7 for the requirements in Virginia statute.

[6]See https://townhall.virginia.gov/L/GetFile.cfm?File=Meeting\103\32600\Minutes_DEQ_32600_v1.pdf and https://townhall.virginia.gov/L/GetFile.cfm?File=Meeting\103\32678\Minutes_DEQ_32678_v1.pdf for minutes from the Regulatory Advisory Panel's two meetings, held in June 2021.

[7]The Board also received a number of public comments, reported on pages 16-23 of the Agency Background Document. See https://townhall.virginia.gov/l/GetFile.cfm?File=103\5637\9438\AgencyStatement_DEQ_9438_v1.pdf.

[8]See https://www.epa.gov/wqc/2018-final-aquatic-life-criteria-aluminum-freshwater.

[9]See https://www.epa.gov/wqs-tech/copper-biotic-ligand-model.

[10]"Exposure factors" are benchmark values for variables like drinking water consumption, consumption of fish, etc. that are used to conduct risk assessments for human exposure to potentially toxic chemicals in the environment. See https://cfpub.epa.gov/ncea/risk/recordisplay.cfm?deid=236252.

[11]This does not include Harmful Algal Blooms, which are monitored by the Virginia Department of Health. See https://www.vdh.virginia.gov/waterborne-hazards-control/algal-bloom-surveillance-map/.

[12]Other individual permit holders that are not private businesses include the Department of Corrections, the Virginia Department of Transportation, and the U.S. Army, Navy and Marine Corps.

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

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

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

[16]Data source: DEQ

[17]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.

[18]"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.

[19]§ 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

[20]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.

[21]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.

Agency's Response to Economic Impact Analysis: The department has reviewed the economic impact analysis prepared by the Department of Planning and Budget and has no comment.

Summary:

The proposed amendments update numerical and narrative criteria, use designations, and other policies based on current scientific information. The proposed changes include: (i) adding freshwater aluminum criteria, (ii) requiring the use of the Copper Biotic Ligand Model, (iii) updating 20 human health criteria for 10 parameters of water quality, (iv) increasing the acreage for Submerged Aquatic Vegetation and Water Clarity for five Chesapeake Bay segments, (v) applying lake nutrient criteria to Lake Mooney, (vi) adding a special standard that would limit the quantity of the filamentous algae in certain sections of the Shenandoah River, and (vii) modifying trout waters designation and public water supply designation and adjusting temperature criteria for waters stocked with trout by the Virginia Department of Wildlife Resources in the winter.

9VAC25-260-50. Numerical criteria for dissolved oxygen, pH, and maximum temperature*.**

CLASS	DESCRIPTION OF WATERS	DISSOLVED OXYGEN (mg/l)****		pH****	Max. Temp. (°C)
		Min.	Daily Avg.		
I	Open Ocean	5.0		6.0-9.0	--
II	Tidal Waters in the Chowan Basin and the Atlantic Ocean Basin	4.0		6.0-9.0	--
II	Tidal Waters in the Chesapeake Bay and its tidal tributaries	see 9VAC25-260-185		6.0-9.0	
III	Nontidal Waters (Coastal and Piedmont Zones)	4.0	5.0	6.0-9.0	32
IV	Mountainous Zones Waters	4.0	5.0	6.0-9.0	31
V	Stockable Trout Waters	5.0	6.0	6.0-9.0	21
VI	Natural Trout Waters	6.0	7.0	6.0-9.0	20
VII	Swamp Waters	*	*	3.7-8.0*	**

*This classification recognizes that the natural quality of these waters may fluctuate outside of the values for D.O. and pH set forth above as water quality criteria in Class I through VI waters. The natural quality of these waters is the water quality found or expected in the absence of human-induced pollution. Water quality standards will not be considered violated when conditions are determined by the board to be natural and not due to human-induced sources. The board may develop site specific criteria for Class VII waters that reflect the natural quality of the waterbody when the evidence is sufficient to demonstrate that the site specific criteria rather than narrative criterion will fully protect aquatic life uses. Virginia Pollutant Discharge Elimination System limitations in Class VII waters shall not cause significant changes to the naturally occurring dissolved oxygen and pH fluctuations in these waters.

**Maximum temperature will be the same as that for Classes I through VI waters as appropriate.

***The water quality criteria in this section do not apply below the lowest flow averaged (arithmetic mean) over a period of seven consecutive days that can be statistically expected to occur once every 10 climatic years (a climatic year begins April 1 and ends March 31). See 9VAC25-260-310 and 9VAC25-260-380 through 9VAC25-260-540 for site specific adjustments to these criteria.

****For a thermally stratified man-made lake or reservoir in Class III, IV, V, or VI waters that are listed in 9VAC25-260-187, these dissolved oxygen and pH criteria apply only to the epilimnion of the waterbody. When these waters are not stratified, the dissolved oxygen and pH criteria apply throughout the water column.

9VAC25-260-140. Criteria for surface water.

EDITOR'S NOTE: Subsections A, C, D, E, and F of 9VAC25-260-140 are not amended; therefore, that text is not set out.

B. The following table is a list of numerical water quality criteria for specific parameters.

Table of Parameters[6, 7]

PARAMETER CAS Number	USE DESIGNATION					
	AQUATIC LIFE				HUMAN HEALTH	
	FRESHWATER		SALTWATER		Public Water Supply[3]	All Other Surface Waters[4]
	Acute[1]	Chronic[2]	Acute[1]	Chronic[2]		
Acenapthene (µg/l) 83329					70	90
Acrolein (µg/l) 107028	3.0	3.0			3	400
Acrylonitrile (µg/l) 107131 Known or suspected carcinogen; human health criteria at risk level 10^{-5}.					0.61	70
Aldrin (µg/l) 309002 Known or suspected carcinogen; human health criteria at risk level 10^{-5}.	3.0		1.3		0.0000077	0.0000077
Aluminum (µg/l) 7429905 Acute and chronic freshwater aluminum criteria values for a site shall be calculated using the 2018 Aluminum Criteria Calculator (Aluminum Criteria Calculator V.2.0.xlsx), or a calculator in R or other software package using the same 1985 Guidelines calculation approach and underlying model equations as in the Aluminum Criteria Calculator V.2.0.xlsx, as defined in EPA's Final Aquatic Life Ambient Water Quality Criteria for Aluminum. (EPA-822-R-18-001, 2018)	1,300 pH= 7.0 Total hardness (CaCO3) = 25 mg/l DOC = 5.0 mg/l	500 pH= 7.0 Total hardness (CaCO3) = 25 mg/l DOC = 5.0 mg/l				

Ammonia (µg/l) ~~766-41-7~~ 7664417 Chronic criterion is a 30-day average concentration not to be exceeded more than once every three years on the average.(see 9VAC25-260-155)						
Anthracene (µg/l) 120127					300	400
Antimony (µg/l) 7440360					~~5.6~~ 5.3	~~640~~ 580
Arsenic (µg/l)[5] 7440382	340	150	69	36	10	
Bacteria (see 9VAC25-260-160 and 9VAC25-260-170)						
Barium (µg/l) 7440393					2,000	
Benzene (µg/l) 71432 Known or suspected carcinogen; human health criteria at risk level 10^{-5}					5.8	160
Benzidine (µg/l) 92875 Known or suspected carcinogen; human health criteria at risk level 10^{-5}					0.0014	0.11
Benzo (a) anthracene (µg/l) 56553 Known or suspected carcinogen; human health criteria at risk level 10^{-5}					0.012	0.013
Benzo (b) fluoranthene (µg/l) 205992 Known or suspected carcinogen; human health criteria at risk level 10^{-5}					0.012	0.013
Benzo (k) fluoranthene (µg/l) 207089 Known or suspected carcinogen; human health criteria at risk level 10^{-5}					0.12	0.13
Benzo (a) pyrene (µg/l) 50328 Known or suspected carcinogen; human health criteria at risk level 10^{-5}					0.0012	0.0013

Bis2-Chloroethyl Ether (µg/l) 111444 Known or suspected carcinogen; human health criteria at risk level 10^{-5}					0.30	22
~~Bis (chloromethyl) Ether 542881~~ ~~Known or suspected carcinogen; human health criteria at risk level 10^{-5}~~					~~0.0015~~	~~0.17~~
~~Bis2-Chloroisopropyl Ether (Bis (2-Chloro-1-methylethyl) Ether)~~ 2,2'-Oxybis(1-Chloropropane) (µg/l) 108601					200	4,000
Bis2-Ethylhexyl Phthalate (µg/l) 117817 Known or suspected carcinogen; human health criteria at risk level 10^{-5}. Synonym = Di-2-Ethylhexyl Phthalate.					3.2	3.7
Bromoform (µg/l) 75252 Known or suspected carcinogen; human health criteria at risk level $10^{-5.}$					70	1,200
Butyl benzyl phthalate (µg/l) 85687					1.0	1.0
Cadmium (µg/l)[5] 7440439 Freshwater values are a function of total hardness as calcium carbonate ($CaCO_3$) mg/l and the WER. The minimum hardness allowed for use in the equation below shall be 25 and the maximum hardness shall be 400 even when the actual ambient hardness is less than 25 or greater than 400. Freshwater acute criterion (µg/l) WER $e^{(0.9789[\ln(\text{hardness})]-3.866)}$ (CF_a) Freshwater chronic criterion (µg/l) WER $e^{(0.7977[\ln(\text{hardness})]-3.909)}$ (CF_c) WER = Water Effect Ratio = 1 unless determined	1.8 $CaCO_3$ = 100	0.72 $CaCO_3$ = 100	33 X WER	7.9 X WER	5	

otherwise under 9VAC25-260-140 F e = natural antilogarithm ln = natural logarithm CF = conversion factor a (acute) or c (chronic) CF_a = 1.136672-[(ln hardness)(0.041838)] CF_c = 1.101672-[(ln hardness)(0.041838)]						
Carbon tetrachloride (µg/l) 56235 Known or suspected carcinogen; human health criteria at risk level 10^{-5}.					4.0	50
Carbaryl (µg/l) 63252	2.1	2.1	1.6			
Chlordane (µg/l) ~~57749~~ 12789036 Known or suspected carcinogen; human health criteria at risk level $10^{-5.}$	2.4	0.0043	0.09	0.0040	0.0031	0.0032
Chloride (µg/l) 16887006 Human health criterion to maintain acceptable taste and aesthetic quality and applies at the drinking water intake. Chloride criteria do not apply in Class II transition zones (see subsection C of this section).	860,000	230,000			250,000	
Chlorine, Total Residual (µg/l) 7782505 In DGIF class i and ii trout waters (9VAC25-260-390 through 9VAC25-260-540) or waters with threatened or endangered species are subject to the halogen ban (9VAC25-260-110).	19 See 9VAC25-260-110	11 See 9VAC25-260-110				
Chlorine Produced Oxidant (µg/l) 7782505			13	7.5		
Chlorobenzene (µg/l) 108907					100	800
Chlorodibromomethane (µg/l) 124481 Known or suspected carcinogen; human health criteria at risk level $10^{-5.}$					8.0	210

Chloroform (µg/l) 67663					60	2,000
2-Chloronaphthalene (µg/l) 91587					800	1,000
2-Chlorophenol (µg/l) 95578					30	800
Chlorpyrifos (µg/l) 2921882	0.083	0.041	0.011	0.0056		
Chromium III (µg/l)[5] 16065831 Freshwater values are a function of total hardness as calcium carbonate $CaCO_3$ mg/l and the WER. The minimum hardness allowed for use in the equation below shall be 25 and the maximum hardness shall be 400 even when the actual ambient hardness is less than 25 or greater than 400. Freshwater acute criterion µg/l WER $[e^{\{0.8190[\ln(\text{hardness})]+3.7256\}}]$ (CF_a) Freshwater chronic criterion µg/l WER $[e^{\{0.8190[\ln(\text{hardness})]+0.6848\}}]$ (CF_c) WER = Water Effect Ratio = 1 unless determined otherwise under 9VAC25-260-140.F e = natural antilogarithm ln = natural logarithm CF = conversion factor a (acute) or c (chronic) CF_a= 0.316 CF_c=0.860	570 ($CaCO_3$ = 100)	74 ($CaCO_3$ = 100)			100 (total Cr)	
Chromium VI (µg/l)[5] 18540299	16	11	1,100	50		
Chrysene (µg/l) 218019 Known or suspected carcinogen; human health criteria at risk level 10^{-5}.					1.2	1.3

Copper (µg/l)[5] 7440508 Freshwater criteria for copper shall be calculated using the EPA 2007 Biotic Ligand Model (see 9VAC25- 260-140 G) where the board has determined that a sufficient dataset of input parameters is available. Where the board has determined that a sufficient dataset is not available, freshwater criteria shall be calculated using the hardness-based equations in this table cell. Freshwater values derived using these equations are a function of total hardness as calcium carbonate $CaCO_3$ mg/l and the WER. The minimum hardness allowed for use in the equation below shall be 25 and the maximum hardness shall be 400 even when the actual ambient hardness is less than 25 or greater than 400. Freshwater acute criterion (µg/l) WER [$e^{\{0.9422[\ln(\text{hardness})]-1.700\}}$] ($CF_a$) Freshwater chronic criterion (µg/l) WER [$e^{\{0.8545[\ln(\text{hardness})]-1.702\}}$] ($CF_c$) WER = Water Effect Ratio = 1 unless determined otherwise under 9VAC25-260-140 F. e = natural antilogarithm ln = natural logarithm CF = conversion factor a (acute) or c (chronic) CF_a = 0.960 CF_c = 0.960 ~~Alternate copper criteria in freshwater: the freshwater criteria for copper can also be calculated using the EPA 2007 Biotic Ligand Model (See 9VAC25-260-140 G).~~ Acute saltwater criterion is a 24-hour average not to be exceeded more than once	13 $CaCO_3$ = 100	9.0 $CaCO_3$ = 100	9.3 X WER	6.0 X WER	1,300	

every three years on the average.						
Cyanide, Free (µg/l) 57125	22	5.2	1.0	1.0	4	400
DDD (µg/l) 72548 Known or suspected carcinogen; human health criteria at risk level 10^{-5}.					0.0012	0.0012
DDE (µg/l) 72559 Known or suspected carcinogen; human health criteria at risk level 10^{-5}.					0.00018	0.00018
DDT (µg/l) 50293 Known or suspected carcinogen; human health criteria at risk level 10^{-5}. Total concentration of DDT and metabolites shall not exceed aquatic life criteria.	1.1	0.0010	0.13	0.0010	0.00030	0.00030
Demeton (µg/l) 8065483		0.1		0.1		
Diazinon (µg/l) 333415	0.17	0.17	0.82	0.82		
Dibenz (a, h) anthracene (µg/l) 53703 Known or suspected carcinogen; human health criteria at risk level 10^{-5}.					0.0012	0.0013
1,2-Dichlorobenzene (µg/l) 95501					1,000	3,000
1,3-Dichlorobenzene (µg/l) 541731					7	10
1,4 Dichlorobenzene (µg/l) 106467					300	900
3,3 Dichlorobenzidine (µg/l) 91941 Known or suspected carcinogen; human health criteria at risk level 10^{-5}.					0.49	1.5
Dichlorobromomethane (µg/l) 75274 Known or suspected carcinogen; human health criteria at risk level 10^{-5}.					9.5	270

1,2 Dichloroethane (µg/l) 107062 Known or suspected carcinogen; human health criteria at risk level 10^{-5}.					99	6,500
1,1 Dichloroethylene (µg/l) 75354					300	20,000
1,2-trans-dichloroethylene (µg/l) 156605					100	4,000
2,4 Dichlorophenol (µg/l) 120832					10	60
2,4 Dichlorophenoxy acetic acid (Chlorophenoxy Herbicide) (2,4-D) (µg/l) 94757					1,300	12,000
1,2-Dichloropropane (µg/l) 78875 Known or suspected carcinogen; human health criteria at risk level 10^{-5}.					9.0	310
1,3-Dichloropropene (µg/l) 542756 Known or suspected carcinogen; human health criteria at risk level 10^{-5}.					2.7	120
Dieldrin (µg/l) 60571 Known or suspected carcinogen; human health criteria at risk level 10^{-5}.	0.24	0.056	0.71	0.0019	0.000012	0.000012
Diethyl Phthalate (µg/l) 84662					600	600
2,4 Dimethylphenol (µg/l) 105679					100	3,000
Dimethyl Phthalate (µg/l) 131113					2,000	2,000
Di-n-Butyl Phthalate (µg/l) 84742					20	30
2,4 Dinitrophenol (µg/l) 51285					10	300
Dinitrophenols (µg/l) 25550587					10	1,000
2-Methyl-4,6-Dinitrophenol (µg/l) 534521					2	30

2,4 Dinitrotoluene (µg/l) 121142 Known or suspected carcinogen; human health criteria at risk level 10^{-5}.					0.49	17
Dioxin 2, 3, 7, 8-tetrachlorodibenzo-p-dioxin (µg/l) 1746016					~~5.0 E-8~~ 4.6 E-8	~~5.1 E-8~~ 4.7 E-8
1,2-Diphenylhydrazine (µg/l) 122667 Known or suspected carcinogen; human health criteria at risk level 10^{-5}.					0.3	2.0
Dissolved Oxygen (µg/l) (See 9VAC25-260-50)						
Alpha-Endosulfan (µg/l) 959988 Total concentration alpha and beta-endosulfan shall not exceed aquatic life criteria.	0.22	0.056	0.034	0.0087	20	30
Beta-Endosulfan (µg/l) 33213659 Total concentration alpha and beta-endosulfan shall not exceed aquatic life criteria.	0.22	0.056	0.034	0.0087	20	40
Endosulfan Sulfate (µg/l) 1031078					20	40
Endrin (µg/l) 72208	0.086	0.036	0.037	0.0023	0.03	0.03
Endrin Aldehyde (µg/l) 7421934					1	1
Ethylbenzene (µg/l) 100414					68	130
Fecal Coliform (see 9VAC25-260-160)						
Fluoranthene (µg/l) 206440					20	20
Fluorene (µg/l) 86737					50	70
Foaming Agents (µg/l) Criterion measured as methylene blue active substances. Criterion to maintain acceptable taste, odor, or aesthetic quality of drinking water and applies at the drinking water intake.					500	

Guthion (µg/l) 86500		0.01		0.01		
Heptachlor (µg/l) 76448 Known or suspected carcinogen; human health criteria at risk level 10^{-5}.	0.52	0.0038	0.053	0.0036	0.000059	0.000059
Heptachlor Epoxide (µg/l) 1024573 Known or suspected carcinogen; human health criteria at risk level 10^{-5}.	0.52	0.0038	0.053	0.0036	0.00032	0.00032
Hexachlorobenzene (µg/l) 118741 Known or suspected carcinogen; human health criteria at risk level 10^{-5}.					0.00079	0.00079
Hexachlorobutadiene (µg/l) 87683 Known or suspected carcinogen; human health criteria at risk level 10^{-5}.					0.1	0.1
Hexachlorocyclohexane Alpha-BHC (µg/l) 319846 Known or suspected carcinogen; human health criteria at risk level 10^{-5}.					0.0036	0.0039
Hexachlorocyclohexane Beta-BHC (µg/l) 319857 Known or suspected carcinogen; human health criteria at risk level 10^{-5}.					0.080	0.14
Hexachlorocyclohexane (µg/l) (Lindane) Gamma-BHC 58899	0.95		0.16		4.2	4.4
Hexachlorocyclohexane (HCH)-Technical (µg/l) 608731 Known or suspected carcinogen; human health criteria at risk level 10^{-5}.					0.066	0.1
Hexachlorocyclopentadiene (µg/l) 77474					4	4
Hexachloroethane (µg/l) 67721 Known or suspected carcinogen; human health criteria at risk level 10^{-5}.					1	1

Hydrogen sulfide (µg/l) 7783064		2.0		2.0		
Indeno (1,2,3,-cd) pyrene (µg/l) 193395 Known or suspected carcinogen; human health criteria at risk level 10^{-5}.					0.012	0.013
Iron (µg/l) 7439896 Criterion to maintain acceptable taste, odor, or aesthetic quality of drinking water and applies at the drinking water intake.					300	
Isophorone (µg/l) 78591 Known or suspected carcinogen; human health criteria at risk level 10^{-5}.					340	18,000
Kepone (µg/l) 143500		zero		zero		
Lead (µg/l)[5] 7439921 Freshwater values are a function of total hardness as calcium carbonate $CaCO_3$ mg/l and the water effect ratio. The minimum hardness allowed for use in the equation below shall be 25 and the maximum hardness shall be 400 even when the actual ambient hardness is less than 25 or greater than 400. Freshwater acute criterion (µg/l) WER [$e^{\{1.273[\ln(\text{hardness})]-1.084\}}$]($CF_a$) Freshwater chronic criterion (µg/l) WER [$e^{\{1.273[\ln(\text{hardness})]-3.259\}}$] ($CF_c$) WER = Water Effect Ratio = 1 unless determined otherwise under 9VAC25-260-140 F e = natural antilogarithm ln = natural logarithm CF = conversion factor a (acute) or c (chronic) CF_a = 1.46203-[(ln hardness)(0.145712)] CF_c = 1.46203-[(ln hardness)(0.145712)]	94 $CaCO_3$ = 100	11 $CaCO_3$ = 100	230 X WER	8.8 X WER	15	

Malathion (µg/l) 121755		0.1		0.1		
Mercury (µg/l) 5 7439976	1.4	0.77	1.8	0.94		
Methyl Bromide (µg/l) 74839					100	10,000
3-Methyl-4-Chlorophenol 59507					500	2,000
Methyl Mercury (Fish Tissue Criterion mg/kg) 8 22967926					0.30	0.30
Methylene Chloride (µg/l) 75092 Known or suspected carcinogen; human health criteria at risk level 10^{-5}. Synonym = Dichloromethane					20	1,000
Methoxychlor (µg/l) 72435		0.03		0.03	0.02	0.02
Mirex (µg/l) 2385855		zero		zero		
Nickel (µg/l)[5] ~~744002~~ 7440020 Freshwater values are a function of total hardness as calcium carbonate $CaCO_3$ mg/l and the WER. The minimum hardness allowed for use in the equation below shall be 25 and the maximum hardness shall be 400 even when the actual ambient hardness is less than 25 or greater than 400. Freshwater acute criterion (µg/l) WER [e $^{\{0.8460[\ln(\text{hardness})] + 1.312\}}$] ($CF_a$) Freshwater chronic criterion (µg/l) WER [e $^{\{0.8460[\ln(\text{hardness})] - 0.8840\}}$] ($CF_c$) WER = Water Effect Ratio = 1 unless determined otherwise under 9VAC25-260-140 F e = natural antilogarithm ln = natural logarithm CF = conversion factor a (acute) or c (chronic) CF_a = 0.998 CF_c = 0.997	180 $CaCO_3$ = 100	20 $CaCO_3$ = 100	74 X WER	8.2 X WER	~~610~~ 470	~~4,600~~ 1,500

Nitrate as N (µg/l) 14797558					10,000	
Nitrobenzene (µg/l) 98953					10	600
N-Nitrosodimethylamine (µg/l) 62759 Known or suspected carcinogen; human health criteria at risk level 10^{-5}.					~~0.0069~~ 0.0065	~~30~~ 27
N-Nitrosodiphenylamine (µg/l) 86306 Known or suspected carcinogen; human health criteria at risk level 10^{-5}.					~~33~~ 30	~~60~~ 55
N-Nitrosodi-n-propylamine (µg/l) 621647 Known or suspected carcinogen; human health criteria at risk level 10^{-5}.					~~0.050~~ 0.047	~~5.1~~ 4.6
Nonylphenol (µg/l) 84852153	28	6.6	7.0	1.7		
Parathion (µg/l) 56382	0.065	0.013				
PCB Total (µg/l) 1336363 Known or suspected carcinogen; human health criteria at risk level 10^{-5}.		0.014		0.030	~~0.00064~~ 0.00058	~~0.00064~~ 0.00058
Pentachlorobenzene (µg/l) 608935					0.1	0.1
Pentachlorophenol (µg/l) 87865 Known or suspected carcinogen; human health criteria risk level at 10^{-5}. Freshwater acute criterion (µg/l) $e^{(1.005(pH)-4.869)}$ Freshwater chronic criterion (µg/l) $e^{(1.005(pH)-5.134)}$	8.7 pH = 7.0	6.7 pH = 7.0	13	7.9	0.3	0.4
pH See 9VAC25-260-50						
Phenol (µg/l) 108952					4,000	300,000
Phosphorus Elemental (µg/l) 7723140				0.10		
Pyrene (µg/l) 129000					20	30

Radionuclides						
Gross Alpha Particle Activity (pCi/L)					15	
Beta Particle & Photon Activity (mrem/yr) (formerly man-made radionuclides)					4	
Combined Radium 226 and 228 (pCi/L)					5	
Uranium (µg/L) 7440611					30	
Selenium (µg/l)[5] 7782492 WER shall not be used for freshwater acute and chronic criteria. Freshwater criteria expressed as total recoverable.	20	5.0	290 X WER	71 X WER	~~170~~ 160	~~4,200~~ 3,800
Silver (µg/l)[5] 7440224 Freshwater values are a function of total hardness as calcium carbonate ($CaCO_3$) mg/l and the WER. The minimum hardness allowed for use in the equation below shall be 25 and the maximum hardness shall be 400 even when the actual ambient hardness is less than 25 or greater than 400. Freshwater acute criterion (µg/l) WER [$e^{\{1.72[\ln(\text{hardness})]-6.52\}}$] ($CF_a$) WER = Water Effect Ratio = 1 unless determined otherwise under 9VAC25-260-140 F e = natural antilogarithm ln = natural logarithm CF = conversion factor a (acute) or c (chronic) CF_a = 0.85	3.4; $CaCO_3$ = 100		1.9 X WER			
Sulfate (µg/l) Criterion to maintain acceptable taste, odor, or aesthetic quality of drinking water and applies at the drinking water intake.					250,000	

Temperature See 9VAC25-260-50						
1,2,4,5-Tetrachlorobenzene 95943					0.03	0.03
1,1,2,2-Tetrachloroethane (µg/l) 79345 Known or suspected carcinogen; human health criteria at risk level 10^{-5}.					2.0	30
Tetrachloroethylene (µg/l) 127184 Known or suspected carcinogen; human health criteria at risk level 10^{-5}.					100	290
Thallium (µg/l) 7440280					~~0.24~~ 0.22	~~0.47~~ 0.43
Toluene (µg/l) 108883					57	520
Total Dissolved Solids (µg/l) Criterion to maintain acceptable taste, odor or aesthetic quality of drinking water and applies at the drinking water intake.					500,000	
Toxaphene (µg/l) 8001352 Known or suspected carcinogen; human health criteria at risk level 10^{-5}.	0.73	0.0002	0.21	0.0002	0.0070	0.0071
Tributyltin (µg/l) ~~60105~~ E1790678	0.46	0.072	0.42	0.0074		
1, 2, 4 Trichlorobenzene (µg/l) 120821 Known or suspected carcinogen; human health criteria at risk level 10^{-5}.					0.71	0.76
1,1,1-Trichloroethane 71556					10,000	200,000
1,1,2-Trichloroethane (µg/l) 79005 Known or suspected carcinogen; human health criteria at risk level 10^{-5}.					5.5	89
Trichloroethylene (µg/l) 79016 Known or suspected carcinogen; human health criteria at risk level 10^{-5}.					6.0	70
2, 4, 5 –Trichlorophenol 95954					300	600

2, 4, 6-Trichlorophenol (µg/l) 88062 Known or suspected carcinogen; human health criteria at risk level 10^{-5}.					15	28
2-(2, 4, 5-Trichlorophenoxy) propionic acid (Silvex) (µg/l) 93721					100	400
Vinyl Chloride (µg/l) 75014 Known or suspected carcinogen; human health criteria at risk level 10^{-5}.					0.22	16
Zinc (µg/l)[5] 7440666 Freshwater values are a function of total hardness as calcium carbonate ($CaCO_3$) mg/l and the WER. The minimum hardness allowed for use in the equation below shall be 25 and the maximum, hardness shall be 400 even when the actual ambient hardness is less than 25 or greater than 400. Freshwater acute criterion (µg/l) WER [$e^{\{0.8473[\ln(\text{hardness})]+0.884\}}$]($CF_a$) Freshwater chronic criterion (µg/l) WER [$e^{\{0.8473[\ln(\text{hardness})]+0.884\}}$] ($CF_c$) WER = Water Effect Ratio = 1 unless determined otherwise under 9VAC25-260-140 F e = natural antilogarithm ln = natural logarithm CF = conversion factor a (acute) or c (chronic) CF_a = 0.978 CF_c = 0.986	120 $CaCO_3$ = 100	120 $CaCO_3$ = 100	90 X WER	81 X WER	~~7,400~~ 7,000	~~26,000~~ 23,000

[1]One hour average concentration not to be exceeded more than once every 3 years on the average, unless otherwise noted.

[2]Four-day average concentration not to be exceeded more than once every 3 years on the average, unless otherwise noted.

[3]Criteria have been calculated to protect human health from toxic effects through drinking water and fish consumption, unless otherwise noted and apply in segments designated as PWS in 9VAC25-260-390 through 9VAC25-260-540. Human health criteria are based on the assumption of average amount of exposure on a long-term basis.

[4]Criteria have been calculated to protect human health from toxic effects through fish consumption, unless otherwise noted and apply in all other surface waters not designated as PWS in 9VAC25-260-390 through 9VAC25-260-540. Human health criteria are based on the assumption of average amount of exposure on a long-term basis.

[5]Acute and chronic saltwater and freshwater aquatic life criteria apply to the biologically available form of the metal and apply as a function of the pollutant's water effect ratio (WER) as defined in 9VAC25-260-140 F (WER X criterion). Metals measured as dissolved shall be considered to be biologically available, or, because local receiving water characteristics may otherwise affect the biological availability of the metal, the biologically available equivalent measurement of the metal can be further defined by determining a water effect ratio (WER) and multiplying the numerical value shown in 9VAC25-260-140 B by the WER. Refer to 9VAC25-260-140 F. Values displayed above in the table are examples and correspond to a WER of 1.0. Metals criteria have been adjusted to convert the total recoverable fraction to dissolved fraction using a conversion factor. Criteria that change with hardness have the conversion factor listed in the table above.

[6]The flows listed below are default design flows for calculating steady state wasteload allocations unless statistically valid methods are employed which demonstrate compliance with the duration and return frequency of the water quality criteria.

Aquatic Life:	
Acute criteria	1Q10
Chronic criteria	7Q10
Chronic criteria (ammonia)	30Q10
Human Health:	
Noncarcinogens	30Q5
Carcinogens	Harmonic mean

The following are defined for this section:

"1Q10" means the lowest flow averaged over a period of 1 day which on a statistical basis can be expected to occur once every 10 climatic years.

"7Q10" means the lowest flow averaged over a period of 7 consecutive days that can be statistically expected to occur once every 10 climatic years.

"30Q5" means the lowest flow averaged over a period of 30 consecutive days that can be statistically expected to occur once every 5 climatic years.

"30Q10" means the lowest flow averaged over a period of 30 consecutive days that can be statistically expected to occur once every 10 climatic years.

"Averaged" means an arithmetic mean.

"Climatic year" means a year beginning on April 1 and ending on March 31.

[7]The criteria listed in this table are two significant digits. For other criteria that are referenced to other sections of this regulation in this table, all numbers listed as criteria values are significant.

[8]The fish tissue criterion for methylmercury applies to a concentration of 0.30 mg/kg as wet weight in edible tissue for species of fish and shellfish resident in a waterbody that are commonly eaten in the area and have commercial, recreational, or subsistence value.

G. Biotic Ligand Model for copper. ~~On a case-by-case basis~~ Where the board determines that a sufficient dataset of input parameters is available, EPA's 2007 copper criteria (EPA-822-F-07-001) biotic ligand model (BLM) for copper ~~may~~ shall be used to determine ~~alternate~~ the applicable copper criteria for freshwater sites. The BLM is a bioavailability model that uses receiving water characteristics to develop site-specific criteria. Site-specific data for 10 parameters are needed to use the BLM. These parameters are temperature, pH, dissolved organic carbon, calcium, magnesium, sodium, potassium, sulfate, chloride, and alkalinity. ~~If sufficient data for these parameters are available, the BLM can be used to calculate alternate criteria values for the copper criteria. The~~ Where the board determines that a sufficient dataset of input parameters is available, the BLM ~~would~~ shall be used instead of the hardness-based criteria and takes the place of the hardness adjustment and the WER. A WER will not be applicable with the BLM.

9VAC25-260-185. Criteria to protect designated uses from the impacts of nutrients and suspended sediment in the Chesapeake Bay and its tidal tributaries.

EDITOR'S NOTE: Subsections A, C, and D of 9VAC25-260-185 are not amended; therefore, that text is not set out.

B. Submerged aquatic vegetation (SAV) and water clarity. Attainment of the shallow-water submerged aquatic vegetation designated use shall be determined using any one of the following criteria:

Designated Use	Chesapeake Bay Program Segment	SAV Acres[1]	Percent Light-Through-Water[2]	Water Clarity Acres[1]	Temporal Application
Shallow water submerged aquatic vegetation use	CB5MH	7,633	22%	14,514	April 1 - October 31
	CB6PH	1,267	22%	3,168	March 1 - November 30
	CB7PH	15,107	22%	34,085	March 1 - November 30
	CB8PH	11	22%	28	March 1 - November 30
	POTTF	2,093	13%	5,233	April 1 - October 31
	POTOH	1,503	13%	3,758	April 1 - October 31
	POTMH	4,250	22%	10,625	April 1 - October 31
	RPPTF	66	13%	165	April 1 - October 31
	RPPOH	4	13%	10	April 1 - October 31
	RPPMH	~~1700~~ 5,380	22%	~~5000~~ 13,450	April 1 - October 31
	CRRMH	768	22%	1,920	April 1 - October 31
	PIAMH	3,479	22%	8,014	April 1 - October 31
	MPNTF	85	13%	213	April 1 - October 31
	MPNOH	-	-	-	-
	PMKTF	187	13%	468	April 1 - October 31
	PMKOH	-	-	-	-
	YRKMH	239	22%	598	April 1 - October 31
	YRKPH	2,793	22%	6,982	March 1 - November 30

	MOBPH	15,901	22%	33,990	March 1 - November 30
	JMSTF2	~~200~~ 266	13%	~~500~~ 665	April 1 - October 31
	JMSTF1	~~1000~~ 1,333	13%	~~2500~~ 3,332	April 1 - October 31
	APPTF	379	13%	948	April 1 - October 31
	JMSOH	15	13%	38	April 1 - October 31
	CHKOH	535	13%	1,338	April 1 - October 31
	JMSMH	~~200~~ 531	22%	~~500~~ 1,328	April 1 - October 31
	JMSPH	~~300~~ 604	22%	~~750~~ 1,510	March 1 - November 30
	WBEMH	-	-	-	-
	SBEMH	-	-	-	-
	EBEMH	-	-	-	-
	ELIPH	-	-	-	-
	LYNPH	107	22%	268	March 1 - November 30
	POCOH	-	-	-	-
	POCMH	4,066	22%	9,368	April 1 - October 31
	TANMH	13,579	22%	22,064	April 1 - October 31

[1]The assessment period for SAV and water clarity acres shall be the single best year in the most recent three consecutive years. When three consecutive years of data are not available, a minimum of three years within the data assessment window shall be used.

[2]Percent light-through-water = $100e^{(-KdZ)}$ where K_d is water column light attenuation coefficient and can be measured directly or converted from a measured secchi depth where $K_d = 1.45/\text{secchi depth}$. Z = depth at location of measurement of K_d.

9VAC25-260-187. Criteria for man-made lakes and reservoirs to protect aquatic life and recreational designated uses from the impacts of nutrients.

EDITOR'S NOTE: Subsections A, C, and D of 9VAC25-260-187 are not amended; therefore, that text is not set out.

B. Whether or not algicide treatments are used, the chlorophyll a criteria apply to all waters on the list. The total phosphorus criteria apply only if a specific man-made lake or reservoir received algicide treatment during the monitoring and assessment period of April 1 through October 31.

The 90th percentile of the chlorophyll a data collected at one meter or less within the lacustrine portion of the man-made lake or reservoir between April 1 and October 31 shall not exceed the chlorophyll a criterion for that waterbody in each of the two most recent monitoring years that chlorophyll a data are available. For a waterbody that received algicide treatment, the median of the total phosphorus data collected at one meter or less within the lacustrine portion of the man-made lake or reservoir between

April 1 and October 31 shall not exceed the total phosphorus criterion in each of the two most recent monitoring years that total phosphorus data are available.

Monitoring data used for assessment shall be from sampling ~~location(s)~~ locations within the lacustrine portion where observations are evenly distributed over the seven months from April 1 through October 31 and are in locations that are representative, either individually or collectively, of the condition of the man-made lake or reservoir.

Man-made Lake or Reservoir Name	Location	Chlorophyll a (µg/L)	Total Phosphorus (µg/L)
Abel Lake	Stafford County	35	40
Airfield Pond	Sussex County	35	40
Amelia Lake	Amelia County	35	40
Aquia Reservoir (Smith Lake)	Stafford County	35	40
Bark Camp Lake (Corder Bottom Lake, Lee/Scott/Wise Lake)	Scott County	35	40
Beaver Creek Reservoir	Albemarle County	35	40
Beaverdam Creek Reservoir (Beaverdam Reservoir)	Bedford County	35	40
Beaverdam Reservoir	Loudoun County	35	40
Bedford Reservoir (Stony Creek Reservoir)	Bedford County	35	40
Big Cherry Lake	Wise County	35	40
Breckenridge Reservoir	Prince William County	35	40
Briery Creek Lake	Prince Edward County	35	40
Brunswick Lake (County Pond)	Brunswick County	35	40
Burke Lake	Fairfax County	60	40
Carvin Cove Reservoir	Botetourt County	35	40
Cherrystone Reservoir	Pittsylvania County	35	40
Chickahominy Lake	Charles City County	35	40
Chris Green Lake	Albemarle County	35	40
Claytor Lake	Pulaski County	25	20
Clifton Forge Reservoir (Smith Creek Reservoir)	Alleghany County	35	20
Coles Run Reservoir	Augusta County	10	10
Curtis Lake	Stafford County	60	40
Diascund Creek Reservoir	New Kent County	35	40
Douthat Lake	Bath County	25	20
Elkhorn Lake	Augusta County	10	10
Emporia Lake (Meherrin Reservoir)	Greensville County	35	40
Fairystone Lake	Henry County	35	40
Falling Creek Reservoir	Chesterfield County	35	40
Fluvanna Ruritan Lake	Fluvanna County	60	40

Fort Pickett Reservoir	Nottoway/Brunswick County	35	40
Gatewood Reservoir	Pulaski County	35	40
Georges Creek Reservoir	Pittsylvania County	35	40
Goose Creek Reservoir	Loudoun County	35	40
Graham Creek Reservoir	Amherst County	35	40
Great Creek Reservoir	Lawrenceville	35	40
Harrison Lake	Charles City County	35	40
Harwood Mills Reservoir	York County	60	40
Hidden Valley Lake	Washington County	35	40
Hogan Lake	Pulaski County	35	40
Holiday Lake	Appomattox County	35	40
Hungry Mother Lake	Smyth County	35	40
Hunting Run Reservoir	Spotsylvania County	35	40
J. W. Flannagan Reservoir	Dickenson County	25	20
Kerr Reservoir, Virginia portion (Buggs Island Lake)	Halifax County	25	30
Keysville Reservoir	Charlotte County	35	40
Lake Albemarle	Albemarle County	35	40
Lake Anna	Louisa ~~County~~, Spotsylvania, Orange Counties	25	30
Lake Arrowhead	Page County	35	40
Lake Burnt Mills	Isle of Wight County	60	40
Lake Chesdin	Chesterfield County	35	40
Lake Cohoon	Suffolk City	60	40
Lake Conner	Halifax County	35	40
Lake Frederick	Frederick County	35	40
Lake Gaston, (Virginia portion)	Brunswick County	25	30
Lake Gordon	Mecklenburg County	35	40
Lake Keokee	Lee County	35	40
Lake Kilby	Suffolk City	60	40
Lake Lawson	Virginia Beach City	60	40
Lake Manassas	Prince William County	35	40
Lake Meade	Suffolk City	60	40
Lake Moomaw	Bath County	10	10
Lake Mooney	Stafford County	25	40
Lake Nelson	Nelson County	60	40
Lake Nottoway (Lee Lake, Nottoway Lake)	Nottoway County	35	40

Lake Orange	Orange County	60	40
Lake Pelham	Culpeper County	35	40
Lake Prince	Suffolk City	60	40
Lake Robertson	Rockbridge County	35	40
Lake Smith	Virginia Beach City	60	40
Lake Whitehurst	Norfolk City	60	40
Lake Wright	Norfolk City	60	40
Lakeview Reservoir	Chesterfield County	35	40
Laurel Bed Lake	Russell County	35	40
Lee Hall Reservoir (Newport News Reservoir)	Newport News City	60	40
Leesville Reservoir	Bedford County	25	30
Little Creek Reservoir	Virginia Beach City	60	40
Little Creek Reservoir	James City County	25	30
Little River Reservoir	Montgomery County	35	40
Lone Star Lake F (Crystal Lake)	Suffolk City	60	40
Lone Star Lake G (Crane Lake)	Suffolk City	60	40
Lone Star Lake I (Butler Lake)	Suffolk City	60	40
Lunga Reservoir	Prince William County	35	40
Lunenburg Beach Lake (Victoria Lake)	Town of Victoria	35	40
Martinsville Reservoir (Beaver Creek Reservoir)	Henry County	35	40
Mill Creek Reservoir	Amherst County	35	40
Modest Creek Reservoir	Town of Victoria	35	40
Motts Run Reservoir	Spotsylvania County	25	30
Mount Jackson Reservoir	Shenandoah County	35	40
Mountain Run Lake	Culpeper County	35	40
Ni Reservoir	Spotsylvania County	35	40
North Fork Pound Reservoir	Wise County	35	40
Northeast Creek Reservoir	Louisa County	35	40
Occoquan Reservoir	Fairfax County	35	40
Pedlar Lake	Amherst County	25	20
Philpott Reservoir	Henry County	25	30
Phelps Creek Reservoir (Brookneal Reservoir)	Campbell County	35	40
Powhatan Lakes (Upper and Lower)	Powhatan County	35	40
Ragged Mountain Reservoir	Albemarle County	35	40

Rivanna Reservoir (South Fork Rivanna Reservoir)	Albemarle County	35	40
Roaring Fork	Pittsylvania County	35	40
Rural Retreat Lake	Wythe County	35	40
Sandy River Reservoir	Prince Edward County	35	40
Shenandoah Lake	Rockingham County	35	40
Silver Lake	Rockingham County	35	40
Smith Mountain Lake	Bedford County	25	30
South Holston Reservoir	Washington County	25	20
Speights Run Lake	Suffolk City	60	40
Spring Hollow Reservoir	Roanoke County	25	20
Staunton Dam Lake	Augusta County	35	40
Stonehouse Creek Reservoir	Amherst County	60	40
Strasburg Reservoir	Shenandoah County	35	40
Stumpy Lake	Virginia Beach	60	40
Sugar Hollow Reservoir	Albemarle County	25	20
Swift Creek Lake	Chesterfield County	35	40
Swift Creek Reservoir	Chesterfield County	35	40
Switzer Lake	Rockingham County	10	10
Talbott Reservoir	Patrick County	35	40
Thrashers Creek Reservoir	Amherst County	35	40
Totier Creek Reservoir	Albemarle County	35	40
Townes Reservoir	Patrick County	25	20
Troublesome Creek Reservoir	Buckingham County	35	40
Waller Mill Reservoir	York County	25	30
Western Branch Reservoir	Suffolk City	25	20
Wise Reservoir	Wise County	25	20

9VAC25-260-310. Special standards and requirements.

The special standards are shown in small letters to correspond to lettering in the basin tables. The special standards are as follows:

EDITOR'S NOTE: Subdivisions a through x of 9VAC25-260-310 are not amended; therefore, that text is not set out.

y. ~~Tidal freshwater Potomac River and tidal tributaries that enter the tidal freshwater Potomac River from Cockpit Point (below Occoquan Bay) to the fall line at Chain Bridge. During November 1 through February 14 of each year the 30-day average concentration of total ammonia nitrogen (in mg N/L) shall not exceed, more than once every three years on the average, the following chronic ammonia criterion:~~

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

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

~~The default design flow for calculating steady state wasteload allocations for this chronic ammonia criterion is the 30Q10, unless statistically valid methods are employed which demonstrate compliance with the duration and return frequency of this water quality criterion.~~ Canceled.

EDITOR'S NOTE: Subdivisions z through hh of 9VAC25-260-310 are not amended; therefore, that text is not set out.

ii. In the wadeable portions of the mainstem sections of the Shenandoah River, North Fork Shenandoah River, and South Fork Shenandoah River listed in the table in this subdivision, a determination of persistent nuisance filamentous algae impeding the recreation use should be made when exceedances of the specified benthic chlorophyll-a concentration thresholds occur in more than one recreation season (May 1 to October 31) in three years. "Wadeable" constitutes a stream that can be crossed and sampled safely during a given sampling event occurring within the recreation season.

Segment	Two-Month Median (mg/m^2)	Seasonal Median (mg/m^2)
Shenandoah River from its confluence of the North Fork and South Fork Shenandoah Rivers downstream to the Virginia-West Virginia state line	150	100
North Fork Shenandoah River from its confluence with Fort Run downstream to its confluence with the South Fork Shenandoah River	150	100
South Fork Shenandoah River from its confluence with the North and South Rivers downstream to its confluence with the North Fork Shenandoah River	150	100

9VAC25-260-390. Potomac River Basin (Potomac River Subbasin).

Potomac River Subbasin

SEC.	CLASS	SP. STDS.	SECTION DESCRIPTION
EDITOR'S NOTE: Sections 1 through 5 and 7 through 12 of 9VAC25-260-390 are not amended; therefore, that text is not set out.			
6	II	b~~, y~~	Tidal portions of tributaries to the Potomac River from Shipping Point to Chain Bridge.

9VAC25-260-400. Potomac River Basin (Shenandoah River Subbasin).

Shenandoah River Subbasin

SEC.	CLASS	SP. STDS.	SECTION DESCRIPTION
1	IV	pH-6.5-9.5, ii	Shenandoah River and its tributaries in Clarke County, Virginia, from the Virginia-West Virginia state line to Lockes Landing, unless otherwise designated in this chapter.
1a	IV	PWS pH-6.5-9.5, ii	Shenandoah River and its tributaries from river mile 24.66 (latitude 39°16'19"; longitude 77°54'33") approximately 0.7 mile downstream of the confluence of the Shenandoah River and Dog Run to 5 miles above Berryville's raw water intake, unless otherwise designated in this chapter.
	V		Stockable Trout Waters in Section 1a
	vi	pH-6.5-9.5	Chapel Run (Clarke County) from its confluence with the Shenandoah River 5.7 miles upstream.
	vi	pH-6.5-9.5	Spout Run (Clarke County) from its confluence with the Shenandoah River (in the vicinity of the Ebenezer Church at Route 604) to its headwaters.
1b			(Deleted)
1c	IV	pH-6.5-9.5, ii	Shenandoah River and its tributaries from a point 5 miles above Berryville's raw water intake to the confluence of the North and South Forks of the Shenandoah River.

	VI		Natural Trout Waters in Section 1c
	iii	pH-6.5-9.5	Page Brook from its confluence with Spout Run, 1 mile upstream.
	***	pH-6.5-9.5	Roseville Run (Clarke County) from its confluence with Spout Run upstream including all named and unnamed tributaries.
	iii	pH-6.5-9.5	Spout Run (Clarke County) from its confluence with the Shenandoah River (in the vicinity of Calmes Neck at Routes 651 and 621), 3.9 miles upstream.
	***	pH-6.5-9.5	Westbrook Run (Clarke County) from its confluence with Spout Run upstream including all named and unnamed tributaries.
1d			(Note: Moved to Section 2b).
2	IV	ESW-~~12,~~14, 15, ii	South Fork Shenandoah River from its confluence with the North Fork Shenandoah River, upstream to a point 5 miles above the Town of Shenandoah's raw water intake and its tributaries to their headwaters in this section, unless otherwise designated in this chapter.
	V		Stockable Trout Waters in Section 2
	vii	pH-6.5-9.5	Bear Lithia Spring from its confluence with the South Fork Shenandoah River 0.8 miles upstream.
	vi	pH-6.5-9.5	Flint Run from its confluence with the South Fork Shenandoah River 4 miles upstream.
	***	pH-6.5-9.5	Gooney Run from the mouth to its confluence with Broad Run above Browntown (in the vicinity of Route 632).
	***	pH-6.5-9.5, hh	Hawksbill Creek from Route 675 in Luray to 1 mile above Route 631.
	VI		Natural Trout Waters in Section 2
	ii	pH-6.5-9.5	Big Creek (Page County) from its confluence with the East Branch Naked Creek upstream including all named and unnamed tributaries.
	ii	pH-6.5-9.5	Big Ugly Run from its confluence with the South Branch Naked Creek upstream including all named and unnamed tributaries.
	ii		Boone Run from 4.6 miles above its confluence with the South Fork Shenandoah River (in the vicinity of Route 637) upstream including all named and unnamed tributaries.
	iii	pH-6.5-9.5	Browns Run from its confluence with Big Run upstream including all named and unnamed tributaries.
	ii		Cub Run (Page County) from Pitt Spring Run upstream including all named and unnamed tributaries.
	***	pH-6.5-9.5	Cub Run from its mouth to Pitt Spring Run.
	i	pH-6.5-9.5	East Branch Naked Creek from its confluence with Naked Creek at Route 759 upstream including all named and unnamed tributaries.
	ii	pH-6.5-9.5	Fultz Run from the Park boundary (river mile 1.8) upstream including all named and unnamed tributaries.
	ii	pH-6.5-9.5	Gooney Run (Warren County) from 6.6 miles above its confluence with the South Fork Shenandoah River 3.9 miles upstream.

	ii	pH-6.5-9.5	Hawksbill Creek in the vicinity of Pine Grove at Route 624 (river mile 17.7) 1.5 miles upstream.
	ii	pH-6.5-9.5	Jeremys Run from the Shenandoah National Park boundary upstream including all named and unnamed tributaries.
	ii	pH-6.5-9.5	Lands Run from its confluence with Gooney Run upstream including all named and unnamed tributaries.
	ii	pH-6.5-9.5	Little Creek (Page County) from its confluence with Big Creek upstream including all named and unnamed tributaries.
	i	pH-6.5-9.5	Little Hawksbill Creek from Route 626 upstream including all named and unnamed tributaries.
	ii		Morgan Run (Page County) from its confluence with Cub Run upstream including all named and unnamed tributaries.
	ii	pH-6.5-9.5	Overall Run from its confluence with the South Fork Shenandoah River 4.8 miles upstream including all named and unnamed tributaries.
	ii	pH-6.5-9.5	Pass Run (Page County) from its confluence with Hawksbill Creek upstream including all named and unnamed tributaries.
	ii		Pitt Spring Run from its confluence with Cub Run upstream including all named and unnamed tributaries.
	ii		Roaring Run from its confluence with Cub Run upstream including all named and unnamed tributaries.
	ii	pH-6.5-9.5	South Branch Naked Creek from 1.7 miles above its confluence with Naked Creek (in the vicinity of Route 607) upstream including all named and unnamed tributaries.
	iv	pH-6.5-9.5	Stony Run (Page County) from 1.6 miles above its confluence with Naked Creek upstream including all named and unnamed tributaries.
	ii	pH-6.5-9.5	West Branch Naked Creek from 2.1 miles above its confluence with Naked Creek upstream including all named and unnamed tributaries.
2a	IV	PWS, pH-6.5-9.5	Happy Creek and Sloan Creek from Front Royal's raw water intake to its headwaters.
2b	IV	PWS, ii	The South Fork Shenandoah River and its tributaries from the Town of Front Royal's raw water intake (at the State Route 619 bridge at Front Royal) to points 5 miles upstream.
2c			(Deleted)
2d			(Deleted)
	V		Stockable Trout Waters in Section 2d
	VI		Natural Trout Waters in Section 2d
3	IV	pH-6.5-9.5, ESW-12, 16, ii	South Fork Shenandoah River from 5 miles above the Town of Shenandoah's raw water intake to its confluence with the North and South Rivers and its tributaries to their headwaters in this section, and the South River and its tributaries from its confluence with the South Fork Shenandoah River to their headwaters, unless otherwise designated in this chapter.
	V		Stockable Trout Waters in Section 3

	vi	pH-6.5-9.5	Hawksbill Creek (Rockingham County) from 0.8 mile above its confluence with the South Fork Shenandoah River 6.6 miles upstream.
	vi	pH-6.5-9.5	Mills Creek (Augusta County) from 1.8 miles above its confluence with Back Creek 2 miles upstream.
	vi	pH-6.5-9.5	North Fork Back Creek (Augusta County) from its confluence with Back Creek 2.6 miles upstream, unless otherwise designated in this chapter.
	VI		Natural Trout Waters in Section 3
	i	pH-6.5-9.5	Bearwallow Run from its confluence with Onemile Run upstream including all named and unnamed tributaries.
	ii	pH-6.5-9.5	Big Run (Rockingham County) from 3.3 miles above its confluence with the South Fork Shenandoah River upstream including all named and unnamed tributaries.
	iii	pH-6.5-9.5	Cold Spring Branch (Augusta County) from Sengers Mountain Lake (Rhema Lake) upstream including all named and unnamed tributaries.
	iv	pH-6.5-9.5	Cool Springs Hollow (Augusta County) from Route 612 upstream including all named and unnamed tributaries.
	ii	pH-6.5-9.5	Deep Run (Rockingham County) from 1.8 miles above its confluence with the South Fork Shenandoah River upstream including all named and unnamed tributaries.
	ii	pH-6.5-9.5	East Fork Back Creek from its confluence with the South Fork Back Creek upstream including all named and unnamed tributaries.
	ii	pH-6.5-9.5	Gap Run from 1.7 miles above its confluence with the South Fork Shenandoah River upstream including all named and unnamed tributaries.
	iii		Inch Branch (Augusta County) from the dam upstream including all named and unnamed tributaries.
	ii		Johns Run (Augusta County) from its confluence with the South River upstream including all named and unnamed tributaries.
	iv		Jones Hollow (Augusta County) from 1.1 miles above its confluence with the South River upstream including all named and unnamed tributaries.
	ii		Kennedy Creek from its confluence with the South River upstream including all named and unnamed tributaries.
	iv	pH-6.5-9.5	Lee Run from 0.6 mile above its confluence with Elk Run 3.3 miles upstream.
	iii	pH-6.5-9.5	Loves Run (Augusta County) from 2.7 miles above its confluence with the South River upstream including all named and unnamed tributaries.
	ii	pH-6.5-9.5	Lower Lewis Run (Rockingham County) from 1.7 miles above its confluence with the South Fork Shenandoah River upstream including all named and unnamed tributaries.
	ii	pH-6.5-9.5	Madison Run (Rockingham County) from 2.9 miles above its confluence with the South Fork Shenandoah River upstream including all named and unnamed tributaries.
	ii	pH-6.5-9.5	Meadow Run (Augusta County) from its confluence with the South River upstream including all named and unnamed tributaries.

	ii	pH-6.5-9.5	North Fork Back Creek (Augusta County) from river mile 2.6 (in the vicinity of its confluence with Williams Creek) upstream including all named and unnamed tributaries.
	i	pH-6.5-9.5	Onemile Run (Rockingham County) from 1.5 miles above its confluence with the South Fork Shenandoah River upstream including all named and unnamed tributaries.
	iv		Orebank Creek from its confluence with Back Creek upstream including all named and unnamed tributaries.
	ii	pH-6.5-9.5	Paine Run (Augusta County) from 1.7 miles above its confluence with the South River upstream including all named and unnamed tributaries.
	ii		Robinson Hollow (Augusta County) from the dam upstream including all named and unnamed tributaries.
	ii	pH-6.5-9.5	Rocky Mountain Run from its confluence with Big Run upstream including all named and unnamed tributaries.
	iv	pH-6.5-9.5	Sawmill Run from 2.5 miles above its confluence with the South River upstream including all named and unnamed tributaries.
	ii	pH-6.5-9.5	South Fork Back Creek from its confluence with Back Creek at Route 814 (river mile 2.1) upstream including all named and unnamed tributaries.
	ii	pH-6.5-9.5	Stony Run (Augusta County) from 3.5 miles above its confluence with the South River upstream including all named and unnamed tributaries.
	iii	pH-6.5-9.5	Stony Run (Rockingham County) from 4.1 miles above its confluence with the South Fork Shenandoah River upstream including all named and unnamed tributaries.
	iii		Toms Branch (Augusta County) from 1.1 miles above its confluence with Back Creek upstream including all named and unnamed tributaries.
	i	pH-6.5-9.5	Twomile Run from 1.4 miles above its confluence with the South Fork Shenandoah River upstream including all named and unnamed tributaries.
	iv	pH-6.5-9.5	Upper Lewis Run from 0.5 mile above its confluence with Lower Lewis Run upstream including all named and unnamed tributaries.
	iv	pH-6.5-9.5	West Swift Run (Rockingham County) from the Route 33 crossing upstream including all named and unnamed tributaries.
	ii	pH-6.5-9.5	Whiteoak Run from its confluence with Madison Run upstream including all named and unnamed tributaries.
3a	IV	pH-6.5-9.5	South River from the former location of the dam above Waynesboro ~~(all waters of the impoundment)~~.
3b	IV	PWS	Coles Run and Mills Creek from South River Sanitary District's raw water intake to their headwaters.
	VI	PWS	Natural Trout Waters in Section 3b
	ii		Coles Run (Augusta County) from 3.9 miles above its confluence with the South River Sanitary District's raw water intake (Coles Run Dam) upstream including all named and unnamed tributaries.
	ii		Mills Creek (Augusta County) from the South River Sanitary District's raw water intake (river mile 3.8) upstream including all named and unnamed tributaries.

3c	IV	PWS pH-6.5-9.5	A tributary to Coles Run from Stuarts Draft raw water intake approximately 0.5 mile south of Stuarts Draft and just off Route 610, to its headwaters.
3d	IV	PWS	South Fork Shenandoah River and its tributaries from the City of Harrisonburg water supply intake near the confluence of Big Run to points 5 miles upstream.
4	IV	pH-6.5-9.5	Middle River and its tributaries from the confluence with the North River upstream to its headwaters, unless otherwise designated in this chapter.
	V		Stockable Trout Waters in Section 4
	v	pH-6.5-9.5	Barterbrook Branch from its confluence with Christians Creek 2.8 miles upstream.
	***	pH-6.5-9.5	East Dry Branch from its confluence with the Buffalo Branch to its confluence with Mountain Run.
	vi	pH-6.5-9.5	Folly Mills Creek from 2.4 miles above its confluence with Christians Creek (in the vicinity of Route 81) 4.5 miles upstream.
	VI		Natural Trout Waters in Section 4
	iv		Buffalo Branch from Route 703 upstream including all named and unnamed tributaries.
	ii		Cabin Mill Run (Augusta County) from the Camp Shenandoah Boy Scout Lake upstream including all named and unnamed tributaries.
	iv		East Dry Branch (Augusta County) from the confluence of Mountain Run upstream including all named and unnamed tributaries.
	iv		Jennings Branch (Augusta County) from the confluence of White Oak Draft upstream including all named and unnamed tributaries.
4a	IV	PWS pH-6.5-9.5	Middle River and its tributaries from Staunton's raw water intake at Gardner Spring to points 5 miles upstream.
5	IV	pH-6.5-9.5	North River and its tributaries from its confluence with the South River upstream to its headwaters, unless otherwise designated in this chapter.
	V		Stockable Trout Waters in Section 5
	v	pH-6.5-9.5	Beaver Creek (Rockingham County) from its confluence with Briery Branch to the spring at a point 2.75 miles upstream.
	v	pH-6.5-9.5	Naked Creek (Augusta County) from 3.7 miles above its confluence with the North River at Route 696, 2 miles upstream.
	VI		Natural Trout Waters in Section 5
	iv		Big Run (Augusta County) from 0.9 mile above its confluence with Little River upstream including all named and unnamed tributaries.
	ii		Black Run (Rockingham County) from its mouth upstream including all named and unnamed tributaries.
	iii		Briery Branch (Rockingham County) from river mile 6.9 upstream including all named and unnamed tributaries.
	iv		Gum Run from its mouth upstream including all named and unnamed tributaries.
	iii		Hone Quarry Run from its confluence with Briery Branch upstream including all named and unnamed tributaries.

	iv		Little River from its confluence with the North River at Route 718 upstream including all named and unnamed tributaries.
	iv		Maple Spring Run from its mouth upstream including all named and unnamed tributaries.
	iv		Mines Run from its confluence with Briery Branch upstream including all named and unnamed tributaries.
	iv		Rocky Run (which is tributary to Briery Branch in Rockingham County) from its mouth upstream including all named and unnamed tributaries.
	iii		Rocky Run (which is tributary to Dry River in Rockingham County) from its mouth upstream including all named and unnamed tributaries.
	ii		Union Springs Run from 3 miles above its confluence with Beaver Creek upstream including all named and unnamed tributaries.
	iv		Wolf Run (Augusta County) from its confluence with Briery Branch upstream including all named and unnamed tributaries.
5a	IV	PWS pH-6.5-9.5	Silver Lake
5b	IV	PWS pH-6.5-9.5	North River and its tributaries from Harrisonburg's raw water intake at Bridgewater to points 5 miles above Bridgewater's raw water intake to include Dry River and Muddy Creek.
	V	PWS	Stockable Trout Waters in Section 5b
	v	pH-6.5-9.5	Mossy Creek from its confluence with the North River 7.1 miles upstream.
	v	pH-6.5-9.5	Spring Creek (Rockingham County) from its confluence with the North River 2 miles upstream.
5c	IV	PWS	Dry River (Rockingham County) from Harrisonburg's raw water intake (approximately 11.7 miles above its confluence with the North River) to a point 5 miles upstream, <u>including Skidmore Fork upstream to the headwaters of Switzer Lake</u>, unless otherwise designated in this chapter.
	V	PWS	Stockable Trout Waters in Section 5c
	viii		Raccoon Run (Rockingham County) from its confluence with Dry River to its headwaters.
	VI	PWS	Natural Trout Waters in Section 5c
	iv		Dry River (Rockingham County) from Harrisonburg's raw water intake (approximately 11.7 miles above its confluence with the North River) to a point 5 miles upstream.
	iv		Dry Run (Rockingham County) from its confluence with Dry River upstream including all named and unnamed tributaries.
	iv		Hopkins Hollow from its confluence with Peach Run upstream including all named and unnamed tributaries.
	iv		Kephart Run from its confluence with Dry River upstream including all named and unnamed tributaries.
5d	VI		Dry River and its tributaries from 5 miles above Harrisonburg's raw water intake to its headwaters.
	<u>V</u>		<u>Stockable Trout Waters in Section 5d</u>

	viii		Switzer Lake from its dam upstream to the impoundment headwaters.
	VI		Natural Trout Waters in Section 5d
	iv		Dry River (Rockingham County) from 5 miles above Harrisonburg's raw water intake upstream including all named and unnamed tributaries.
	ii		Laurel Run (Rockingham County) from its confluence with Dry River upstream including all named and unnamed tributaries.
	ii		Little Laurel Run from its confluence with Dry River upstream including all named and unnamed tributaries.
	ii		Low Place Run from its confluence with Dry River upstream including all named and unnamed tributaries.
	iv		Miller Spring Run from its confluence with Dry River upstream including all named and unnamed tributaries.
	iii		Sand Run from its confluence with Dry River upstream including all named and unnamed tributaries.
	iv		Skidmore Fork from its confluence with Dry River upstream including all named and unnamed tributaries. This does not include Switzer Lake, which is Class V Stockable Trout Waters.
5e	VI	PWS	North River and its tributaries from Staunton Dam to their headwaters unless otherwise designated in this chapter.
	V		Stockable Trout Waters in Section 5e
	iii	ee	Elkhorn Lake from the dam upstream to the impoundment headwaters.
	VI		Natural Trout Waters in Section 5e
	iv		North River from the headwaters of Elkhorn ~~Dam~~ Lake upstream including all named and unnamed tributaries.
6	IV	pH-6.5-9.5, ii	North Fork Shenandoah River from its confluence with the Shenandoah River to its headwaters, unless otherwise designated in this chapter.
	V		Stockable Trout Waters in Section 6
	vi	pH-6.5-9.5	Bear Run from its confluence with Foltz Creek to its headwaters.
	vi	pH-6.5-9.5	Bull Run (Shenandoah County) from its confluence with Foltz Creek to its headwaters.
	vi	pH-6.5-9.5	Falls Run from its confluence with Stony Creek to its headwaters.
	vi	pH-6.5-9.5	Foltz Creek from its confluence with Stony Creek to its headwaters.
	vi	pH-6.5-9.5	Little Passage Creek from its confluence with Passage Creek to the Strasburg Reservoir Dam.
	***	pH-6.5-9.5, hh	Mill Creek from Mount Jackson to Route 720 - 3.5 miles.
	vi	pH-6.5-9.5	Mountain Run from its mouth at Passage Creek to its headwaters.
	***	pH-6.5-9.5	Passage Creek from the U.S. Forest Service line (in the vicinity of Blue Hole and Buzzard Rock) 4 miles upstream.
	vi	pH-6.5-9.5	Passage Creek from 29.6 miles above its confluence with the North Fork Shenandoah River to its headwaters.

	vi	pH-6.5-9.5	Peters Mill Run from the mouth to its headwaters.
	***	pH-6.5-9.5	Shoemaker River from 612 at Hebron Church to its junction with Route 817 at its confluence with Slate Lick Branch.
	v	pH-6.5-9.5	Stony Creek from its confluence with the North Fork Shenandoah River to Route 682.
	***	pH-6.5-9.5	Stony Creek from Route 682 above Edinburg upstream to Basye.
	VI		Natural Trout Waters in Section 6
	ii	pH-6.5-9.5	Anderson Run (Shenandoah County) from 1.1 miles above its confluence with Stony Creek upstream including all named and unnamed tributaries.
	iv		Beech Lick Run from its confluence with the German River upstream including all named and unnamed tributaries.
	iii		Bible Run from its confluence with Little Dry River upstream including all named and unnamed tributaries.
	ii		Camp Rader Run from its confluence with the German River upstream including all named and unnamed tributaries.
	iv		Carr Run from its confluence with Little Dry River upstream including all named and unnamed tributaries.
	iv		Clay Lick Hollow from its confluence with Carr Run upstream including all named and unnamed tributaries.
	iv		Gate Run from its confluence with Little Dry River upstream including all named and unnamed tributaries.
	iv		German River (Rockingham County) from its confluence with the North Fork Shenandoah River at Route 820 upstream including all named and unnamed tributaries.
	ii		Laurel Run (Shenandoah County) from its confluence with Stony Creek upstream including all named and unnamed tributaries.
	ii		Little Stony Creek from its confluence with Stony Creek upstream including all named and unnamed tributaries.
	iv		Marshall Run (Rockingham County) from 1.2 miles above its confluence with the North Fork Shenandoah River upstream including all named and unnamed tributaries.
	iii	pH-6.5-9.5	Mine Run (Shenandoah County) from its confluence with Passage Creek upstream including all named and unnamed tributaries.
	ii	pH-6.5-9.5	Poplar Run (Shenandoah County) from its confluence with Little Stony Creek upstream including all named and unnamed tributaries.
	iv	pH-6.5-9.5	Rattlesnake Run (Rockingham County) from its confluence with Spruce Run upstream including all named and unnamed tributaries.
	iv		Root Run from its confluence with Marshall Run upstream including all named and unnamed tributaries.
	iv		Seventy Buck Lick Run from its confluence with Carr Run upstream including all named and unnamed tributaries.
	iv		Sirks Run (Spring Run) from 1.3 miles above its confluence with Crab Run upstream including all named and unnamed tributaries.

	iv	pH-6.5-9.5	Spruce Run (Rockingham County) from its confluence with Capon Run upstream including all named and unnamed tributaries.
	iv	pH-6.5-9.5	Sumac Run from its confluence with the German River upstream including all named and unnamed tributaries.
6a	~~IV~~ V	PWS pH-6.5-9.5	Little Passage Creek from the Strasburg Reservoir Dam upstream to its headwaters, unless otherwise designated in this chapter.
	V	PWS	Stockable Trout Waters in Section 6a
	vi	pH-6.5-9.5	Little Passage Creek from the Strasburg Reservoir Dam upstream to its headwaters.
6b	IV	PWS pH-6.5-9.5	North Fork Shenandoah River and its tributaries from the Winchester raw water intake to points 5 miles upstream (to include Cedar Creek and its tributaries to their headwaters).
	V	PWS	Stockable Trout Waters in Section 6b
	***	pH-6.5-9.5	Cedar Creek (Shenandoah County) from Route 55 (river mile 23.56) to the U.S. Forest Service Boundary (river mile 32.0) - approximately 7 miles.
	v	PWS pH-6.5-9.5	Meadow Brook (Frederick County) from its confluence with Cedar Creek 5 miles upstream.
	VI	PWS	Natural Trout Waters in Section 6b
	iii	pH-6.5-9.5	Cedar Creek (Shenandoah County) from the U.S. Forest Service boundary (river mile 32.0) near Route 600 upstream including all named and unnamed tributaries.
	ii	pH-6.5-9.5	Duck Run from its confluence with Cedar Creek upstream including all named and unnamed tributaries.
			Paddy Run (Frederick County) from the mouth upstream including all named and unnamed tributaries.
	***		Paddy Run (Frederick County) from its mouth (0.0) to river mile 1.8.
	vi**		Paddy Run (Frederick County) from river mile 1.8 to river mile 8.1-6.3 miles.
	iii	pH-6.5-9.5	Sulphur Springs Gap (Shenandoah County) from its confluence with Cedar Creek 1.9 miles upstream.
6c	IV	PWS pH-6.5-9.5	North Fork Shenandoah River and its tributaries from Strasburg's raw water intake to points 5 miles upstream.
6d	IV	PWS pH-6.5-9.5	North Fork Shenandoah River and its tributaries from Woodstock's raw water intake (approximately 0.25 mile upstream of State Route 609 bridge near Woodstock) to points 5 miles upstream.
6e	IV	PWS pH-6.5-9.5	Smith Creek and its tributaries from New Market's raw water intake to their headwaters.
			Natural Trout Waters in Section 6e
	iv	pH-6.5-9.5	Mountain Run (Fridley Branch, Rockingham County) from Route 722 upstream including all named and unnamed tributaries.
6f	IV	PWS pH-6.5-9.5	North Fork Shenandoah River and its tributaries from the Food Processors Water Coop, Inc. dam at Timberville and the Town of Broadway's intakes on Linville Creek and the North Fork Shenandoah to points 5 miles upstream.

6g	IV		Shoemaker River and its tributaries from Slate Lick Run, and including Slate Lick Run, to its headwaters.
	V		Stockable Trout Waters in Section 6g
	***		Slate Lick Run from its confluence with the Shoemaker River upstream to the 1500 foot elevation.
	VI		Natural Trout Waters in Section 6g
	iv		Long Run (Rockingham County) from its confluence with the Shoemaker River upstream including all named and unnamed tributaries.
	iv		Slate Lick Run from the 1500 foot elevation upstream including all named and unnamed tributaries.
6h	IV	PWS pH-6.5-9.5	Unnamed tributary of North Fork Shenandoah River (on the western slope of Short Mountain opposite Mt. Jackson) from the Town of Mt. Jackson's (inactive mid-1992) raw water intake (north and east dams) to its headwaters.
6i	IV	PWS pH-6.5-9.5	Little Sulfur Creek, Dan's Hollow and Horns Gully (tributaries of the North Fork Shenandoah River on the western slope of Short Mountain opposite Mt. Jackson) which served as a water supply for the Town of Edinburg until March 31, 1992, from the Edinburg intakes upstream to their headwaters.

9VAC25-260-410. James River Basin (Lower).

SEC.	CLASS	SP. STDS.	SECTION DESCRIPTION
EDITOR'S NOTE: Sections 2, 3, and 4 of 9VAC25-260-410 are not amended; therefore, that text is not set out.			
1	II	a,z, bb, ESW-11	James River and its tidal tributaries from Old Point Comfort - Fort Wool to the end of tidal waters (fall line, Mayo's Bridge, 14th Street, Richmond), except prohibited or spoil areas, unless otherwise designated in this chapter.
1a	III		Free flowing or nontidal portions of streams in Section 1, unless otherwise designated in this chapter.
	VII		Swamp waters in Section 1a
			Gunns Run and its tributaries from the head of tide at river mile 2.64 to its headwaters.
1b	II	a,z	Eastern and Western Branches of the Elizabeth River and tidal portions of their tributaries from their confluence with the Elizabeth River to the end of tidal waters.
1c	III		Free flowing portions of the Eastern Branch of the Elizabeth River and its tributaries. Includes Salem Canal up to its intersection with Timberlake Road at N36°48'35.67"/W76°08'31.70".
1d	II	a,z	Southern Branch of the Elizabeth River from its confluence with the Elizabeth River to the lock at Great Bridge.
1e	III		Free flowing portions of the Western Branch of the Elizabeth River and of the Southern Branch of the Elizabeth River from their confluence with the Elizabeth River to the lock at Great Bridge.
1f	II	a	Nansemond River and its tributaries from its confluence with the James River to Suffolk (dam at Lake Meade), unless otherwise designated in this chapter.

1g	~~III~~		~~Shingle Creek from its confluence with the Nansemond River to its headwaters in the Dismal Swamp.~~ (Deleted)
	VII		Swamp waters in Section ~~1g~~ 1f Shingle Creek and its tributaries from the head of tide (approximately 500 feet downstream of Route 13/337) to their headwaters.
1h	III	PWS	Lake Prince, Lake Burnt Mills and Western Branch impoundments for Norfolk raw water supply and Lake Kilby - Cahoon Pond, Lake Meade and Lake Speight impoundments for Portsmouth raw water supply and including all tributaries to these impoundments.
	VII		Swamp waters in Section 1h
			Eley Swamp and its tributaries from Route 736 upstream to their headwaters.
1i	III		Free flowing portions of the Pagan River and its free flowing tributaries.
1j			(Deleted)
1k	III	PWS	Skiffes Creek Reservoir (Newport News water impoundment).
1l	III	PWS	The Lone Star lakes and impoundments in the City of Suffolk, Chuckatuck Creek watershed which serve as a water source for the City of Suffolk.
1m	III	PWS	The Lee Hall Reservoir system, near Skiffes Creek and the Warwick River, in the City of Newport News.
1n	III	PWS	Chuckatuck Creek and its tributaries from Suffolk's raw water intake (at Godwin's Millpond) to a point 5 miles upstream.
1o	II	PWS, bb	James River from City Point (Hopewell) to a point 5 miles upstream.
1p	III	PWS	Free flowing tributaries to section 1o.

9VAC25-260-420. James River Basin (Middle).

SEC.	CLASS	SP. STDS.	SECTION DESCRIPTION
EDITOR'S NOTE: Sections 6 through 10 of 9VAC25-260-420 are not amended; therefore, that text is not set out.			
11	III	ESW-7, 8, 22, 23, 24, 25, 26, 27	James River and its tributaries from, but not including, the Rockfish River to Balcony Falls, unless otherwise designated in this chapter.
	V		Stockable Trout Waters in Section 11
	vi		Dancing Creek from the junction of Routes 610 and 641 to its headwaters.
	vi		North Fork Buffalo River from its confluence with the Buffalo River 1.8 miles upstream.
	vi		Pedlar River from the confluence of Enchanted Creek to Lynchburg's raw water intake.
	vi		Terrapin Creek from its confluence with Otter Creek to its headwaters.
	***		Tye River from Tyro upstream to its confluence with the South and North Fork Tye Rivers.

	VI		Natural Trout Waters in Section 11
	ii		Big Branch from its confluence with the Pedlar River upstream including all named and unnamed tributaries.
	ii		Bluff Creek from its confluence with Enchanted Creek upstream including all named and unnamed tributaries.
	ii		Browns Creek from its confluence with the Pedlar River upstream including all named and unnamed tributaries.
	ii		Campbell Creek (Nelson County) from its confluence with the Tye River upstream including all named and unnamed tributaries.
	ii		Cove Creek from its confluence with the North Fork Buffalo River upstream including all named and unnamed tributaries.
	ii		Coxs Creek from its confluence with the Tye River upstream including all named and unnamed tributaries.
	ii		Crabtree Creek (Nelson County) from its confluence with the South Fork Tye River upstream including all named and unnamed tributaries.
	ii		Crawleys Creek from its confluence with the Piney River upstream including all named and unnamed tributaries.
	ii		Cub Creek (Nelson County) from 1.4 miles above its confluence with the Tye River (in the vicinity of Route 699), upstream including all named and unnamed tributaries.
	ii		Davis Mill Creek from its confluence with the Pedlar River upstream including all named and unnamed tributaries.
	ii		Durham Run from its confluence with the North Fork Tye River upstream including all named and unnamed tributaries.
	ii		Elk Pond Branch from its confluence with the North Fork Piney River upstream including all named and unnamed tributaries.
	ii		Enchanted Creek from its confluence with the Pedlar River upstream including all named and unnamed tributaries.
	ii		Georges Creek from its confluence with the Little Piney River upstream including all named and unnamed tributaries.
	ii		Greasy Spring Branch from its confluence with the South Fork Piney River upstream including all named and unnamed tributaries.
	ii		Harpers Creek from its confluence with the Tye River upstream including all named and unnamed tributaries.
	ii		King Creek from its confluence with the Little Piney River upstream including all named and unnamed tributaries.
	ii		Lady Slipper Run from its confluence with the Pedlar River upstream including all named and unnamed tributaries.
	ii		Little Cove Creek from its confluence with the North Fork Buffalo River upstream including all named and unnamed tributaries.
	iii		Little Irish Creek from its confluence with the Pedlar River upstream including all named and unnamed tributaries.

	ii		Little Piney River from its confluence with the Piney River upstream including all named and unnamed tributaries.
	i		Louisa Spring Branch from its confluence with the North Fork Piney River 1.6 miles upstream.
	ii		Maidenhead Branch from its confluence with the South Fork Tye River upstream including all named and unnamed tributaries.
	ii		Meadow Creek (Nelson County) from its confluence with the South Fork Tye River upstream including all named and unnamed tributaries.
	ii		Mill Creek (Nelson County) from its confluence with the North Fork Tye River upstream including all named and unnamed tributaries.
	ii		Mill Creek (Nelson County) from its confluence with the South Fork Tye River upstream including all named and unnamed tributaries.
	ii		Nicholson Run from its confluence with Lady Slipper Run upstream including all named and unnamed tributaries.
	ii		North Fork Buffalo River from 1.8 miles above its confluence with the Buffalo River upstream including all named and unnamed tributaries.
	i		North Fork Piney River from its confluence with the Piney River upstream including all named and unnamed tributaries.
	iii		North Fork Thrashers Creek from its confluence with Thrashers Creek upstream including all named and unnamed tributaries.
			North Fork Tye River from its confluence with the Tye River upstream including all named and unnamed tributaries.
	iii		(North Fork Tye River from its confluence with the Tye River 1.6 miles upstream.)
	ii		(North Fork Tye River from 1.6 miles above its confluence with the Tye River 8.3 miles upstream.)
	iii		Pedlar River from 5 miles above Lynchburg's raw water intake upstream including all named and unnamed tributaries.
	ii		Piney River from river mile 13.3 upstream including all named and unnamed tributaries.
	ii		Pompey Creek from its confluence with the Little Piney River upstream including all named and unnamed tributaries.
	ii		Reed Creek from the junction of Routes 764 and 638 upstream including all named and unnamed tributaries.
	ii		Rocky Branch from its confluence with the North Fork Buffalo River upstream including all named and unnamed tributaries.
	ii		Rocky Run (Nelson County) from 1.6 miles above its confluence with the Tye River upstream including all named and unnamed tributaries.
	i		Shoe Creek (Nelson County) from its confluence with Piney River upstream including all named and unnamed tributaries.
	iii		Silver Creek from its confluence with the Tye River upstream including all named and unnamed tributaries.

	ii		South Fork Piney River from its confluence with the Piney River upstream including all named and unnamed tributaries.
	ii		South Fork Tye River from its confluence with the Tye River upstream including all named and unnamed tributaries.
	ii		Statons Creek from its confluence with the Pedlar River upstream including all named and unnamed tributaries.
	iii		Wheelers Run from its confluence with the Pedlar River upstream including all named and unnamed tributaries.
	ii		White Rock Creek (Nelson County) from its confluence with the North Fork Tye River upstream including all named and unnamed tributaries.
	ii		Wiggins Branch from its confluence with Statons Creek upstream including all named and unnamed tributaries.
11a	III	PWS	Unnamed tributary to Williams Creek from Sweet Briar College's (inactive) raw water intake to its headwaters.
11b	III	PWS	Buffalo River and its tributaries from Amherst's raw water intake to points 5 miles upstream.
11c	III	PWS	Black Creek and its tributaries from the Nelson County Service Authority intake (approximately ~~1000~~ 1,000 feet downstream of the Route 56 bridge) upstream to their headwaters (including the reservoir).
11d	III		James River and its tributaries from a point 0.25 mile above the confluence of the Tye River to Six Mile Bridge.
11e	III		James River and its tributaries, excluding Blackwater Creek, from Six Mile Bridge to the ~~Business Route 29 bridge~~ 5th Street Bridge in Lynchburg.
11f			(Deleted)
11g	III	PWS	James River and its tributaries from the Business Route 29 bridge in Lynchburg to Reusens Dam to include the City of Lynchburg's alternate raw water intake at the Route 29 bridge and the Amherst County Service Authority's intake on Harris and Graham Creeks.
11h	III	PWS	James River and its tributaries, excluding the Pedlar River, from Reusens Dam to Coleman Dam, including the Eagle Eyrie raw water intake on an unnamed tributary to Judith Creek 1.0 mile from the confluence with Judith Creek, to its headwaters, and also the City of Lynchburg's raw water intake on the James River at Abert.
11i	III	PWS,ESW-5, 8, 2, 23	Pedlar River and its tributaries from Lynchburg's raw water intake to points 5 miles upstream.
	V		Stockable Trout Waters in Section 11i
	vi		Pedlar River from Lynchburg's raw water intake to a point 5 miles upstream.
	VI		Natural Trout Waters in Section 11i
	ii		Brown Mountain Creek from its confluence with the Pedlar River upstream including all named and unnamed tributaries.
	iii		Roberts Creek from its confluence with the Pedlar River upstream including all named and unnamed tributaries.

11j	III		James River and its tributaries from the Owens-Illinois raw water intake near Big Island to Balcony Falls.
	V		Stockable Trout Waters in Section 11j
	vi		Battery Creek from its confluence with the James River to its headwaters.
	vi		Cashaw Creek from its confluence with the James River to its headwaters.
	vi		Otter Creek from its confluence with the James River to a point 4.9 miles upstream.
	vi		Rocky Row Run from its confluence with the James River to its headwaters.
	VI		Natural Trout Waters in Section 11j
	iii		Falling Rock Creek from its confluence with Peters Creek upstream including all named and unnamed tributaries.
	ii		Hunting Creek from a point 3.7 miles from its confluence with the James River upstream including all named and unnamed tributaries.
	iii		Otter Creek from 4.9 miles above its confluence with the James River upstream including all named and unnamed tributaries.
	ii		Peters Creek from a point 0.2 mile above its confluence with the James River upstream including all named and unnamed tributaries.
11k			(Deleted)

9VAC25-260-440. Rappahannock River Basin.

SEC.	CLASS	SP. STDS.	SECTION DESCRIPTION
1	II	a	Rappahannock River and the tidal portions of its tributaries from Stingray and Windmill Points to Route 1 Alternate Bridge at Fredericksburg.
1a	II		Hoskins Creek from the confluence with the Rappahannock River to its tidal headwaters.
2	III		Free flowing tributaries of the Rappahannock from Stingray and Windmill Points upstream to Blandfield Point, unless otherwise designated in this chapter.
	VII		Swamp waters in Section 2
			Cat Point Creek and its tributaries, from their headwaters to the head of tide at river mile 10.54.
			Hoskins Creek and its nontidal tributaries from the head of tidal waters to their headwaters. Mount Landing Creek and its tributaries from the end of tidal waters at river mile 4.4 to their headwaters.
			Piscataway Creek and its tributaries from the confluence of Sturgeon Swamp to their headwaters.
3	III		The Rappahannock River from the Route 1 Alternate Bridge at Fredericksburg upstream to ~~the low dam water intake at Waterloo~~

			~~(Fauquier County)~~ its headwaters, unless otherwise designated in this chapter.
3a	III	PWS	The Rappahannock River and its tributaries from Spotsylvania County's raw water intake near Golin Run to points 5 miles upstream of the Rocky Pen Run Reservoir (Lake Mooney) pump and store intake (excluding Motts Run and tributaries, which is in Section 4c).
3b	III	PWS	The Rappahannock River and its tributaries from the low dam water intake at Waterloo (Fauquier County) to points 5 miles upstream.
4	III	ESW 17,18, 28	Free flowing tributaries of the Rappahannock from ~~Blandfield Point~~ the Route 1 Alternate Bridge at Fredericksburg to its headwaters, unless otherwise designated in this chapter.
	VII		Swamp waters in Section 4 Goldenvale Creek from the head of tidal waters near the confluence with the Rappahannock River to its headwaters.
			Occupacia Creek and its tributaries from the end of tidal waters at river mile 8.89 on Occupacia Creek to their headwaters.
	V		Stockable Trout Waters in Section 4
	***		Hughes River (Madison County) from Route 231 upstream to the upper crossing of Route 707 near the confluence of Rocky Run.
	***		Robinson River from Route 231 to river mile 26.7.
	***		Rose River from its confluence with the Robinson River 2.6 miles upstream.
	***		South River from 5 miles above its confluence with the Rapidan River 3.9 miles upstream.
	VI		Natural Trout Waters in Section 4
	ii		Berry Hollow from its confluence with the Robinson River upstream including all named and unnamed tributaries.
	ii		Bolton Branch from 1.7 miles above its confluence with Hittles Mill Stream upstream including all named and unnamed tributaries.
	ii		Broad Hollow Run from its confluence with Hazel River upstream including all named and unnamed tributaries.
	i		Brokenback Run from its confluence with the Hughes River upstream including all named and unnamed tributaries.
	i		Bush Mountain Stream from its confluence with the Conway River upstream including all named and unnamed tributaries.
	i		Cedar Run (Madison County) from 0.8 mile above its confluence with the Robinson River upstream including all named and unnamed tributaries.
	i		Conway River (Greene County) from the Town of Fletcher upstream including all named and unnamed tributaries.
	ii		Dark Hollow from its confluence with the Rose River upstream including all named and unnamed tributaries.
	i		Devils Ditch from its confluence with the Conway River upstream including all named and unnamed tributaries.

	iii		Entry Run from its confluence with the South River upstream including all named and unnamed tributaries.
	iii		Garth Run from 1.9 miles above its confluence with the Rapidan River at the Route 665 crossing upstream including all named and unnamed tributaries.
	ii		Hannah Run from its confluence with the Hughes River upstream including all named and unnamed tributaries.
	ii		Hazel River (Rappahannock County) from the Route 707 bridge upstream including all named and unnamed tributaries.
	ii		Hogcamp Branch from its confluence with the Rose River upstream including all named and unnamed tributaries.
	i		Hughes River (Madison County) from the upper crossing of Route 707 near the confluence of Rocky Run upstream including all named and unnamed tributaries.
	iii		Indian Run (Rappahannock County) from 3.4 miles above its confluence with the Hittles Mill Stream upstream including all named and unnamed tributaries.
	ii		Jordan River (Rappahannock County) from 10.9 miles above its confluence with the Rappahannock River upstream including all named and unnamed tributaries.
	iii		Kinsey Run from its confluence with the Rapidan River upstream including all named and unnamed tributaries.
	ii		Laurel Prong from its confluence with the Rapidan River upstream including all named and unnamed tributaries.
	ii		Mill Prong from its confluence with the Rapidan River upstream including all named and unnamed tributaries.
	ii		Negro Run (Madison County) from its confluence with the Robinson River upstream including all named and unnamed tributaries.
	ii		North Fork Thornton River from 3.2 miles above its confluence with the Thornton River upstream including all named and unnamed tributaries.
	ii		Piney River (Rappahannock County) from 0.8 mile above its confluence with the North Fork Thornton River upstream including all named and unnamed tributaries.
	ii		Pocosin Hollow from its confluence with the Conway River upstream including all named and unnamed tributaries.
	ii		Ragged Run from 0.6 mile above its confluence with Popham Run upstream including all named and unnamed tributaries.
	i		Rapidan River from Graves Mill (Route 615) upstream including all named and unnamed tributaries.
	ii		Robinson River (Madison County) from river mile 26.7 to river mile 29.7.
	i		Robinson River (Madison County) from river mile 29.7 upstream including all named and unnamed tributaries.

	i		Rose River from river mile 2.6 upstream including all named and unnamed tributaries.
	iv		Rush River (Rappahannock County) from the confluence of Big Devil Stairs (approximate river mile 10.2) upstream including all named and unnamed tributaries.
	ii		Sams Run from its confluence with the Hazel River upstream including all named and unnamed tributaries.
	ii		South River from 8.9 miles above its confluence with the Rapidan River upstream including all named and unnamed tributaries.
	ii		Sprucepine Branch from its confluence with Bearwallow Creek upstream including all named and unnamed tributaries.
	i		Staunton River (Madison County) from its confluence with the Rapidan River upstream including all named and unnamed tributaries.
	ii		Strother Run from its confluence with the Rose River upstream including all named and unnamed tributaries.
	iii		Thornton River (Rappahannock County) from 25.7 miles above its confluence with the Hazel River upstream including all named and unnamed tributaries.
	ii		Wilson Run from its confluence with the Staunton River upstream including all named and unnamed tributaries.
4a			(Deleted)
4b	III	PWS	The Rappahannock River and its tributaries, to include the VEPCO Canal, from Fredericksburg's (inactive May 2000) raw water intake to points 5 miles upstream.
4c	III	PWS	Motts Run and its tributaries.
4d	III		Horsepen Run and its tributaries.
4e	III	PWS	Hunting Run and its tributaries.
4f	III		Wilderness Run and its tributaries.
4g	III		Deep Run and its tributaries (Stafford and Fauquier Counties).
4h			(Deleted)
4i	III	PWS	Mountain Run and its tributaries from Culpeper's raw water intake to points 5 miles upstream.
4j	III	PWS	White Oak Run and its tributaries from the Town of Madison's raw water intake to points 5 miles upstream.
4k	III	PWS	Rapidan River and its tributaries from Orange's raw water intake near Poplar Run to points 5 miles upstream.
4l	III	PWS	Rapidan River and its tributaries from the Rapidan Service Authority's raw water intake (just upstream of the Route 29 bridge) upstream to points 5 miles above the intake.
4m	III	PWS	Rapidan River and its tributaries from the Wilderness Shores raw water intake (Orange County - Rapidan Service Authority) to points 5 miles upstream.

4n	III	PWS	From the dam of the White Run pumped storage reservoir on an unnamed tributary to White Run upstream to its headwaters.

9VAC25-260-470. Chowan and Dismal Swamp (Chowan River Subbasin).

SEC.	CLASS	SP. STDS.	SECTION DESCRIPTION
EDITOR'S NOTE: Sections 1, 3 and 4 of 9VAC25-260-470 are not amended; therefore, that text is not set out.			
2	VII	NEW-21	Blackwater River from the end of tidal waters to its headwaters and its free flowing tributaries in Virginia, unless otherwise designated in this chapter.
2a	VII	PWS	Blackwater River and its tributaries from Norfolk's auxiliary raw water intake near Burdette, Virginia, to points 5 miles above the raw water intake, to include Corrowaugh Swamp to a point 5 miles above the raw water intake.
2b	III		Nottoway River from the end of tidal waters to its headwaters and its free flowing tributaries in Virginia, unless otherwise designated in this chapter.
	VII		Swamp waters in Section 2b
			Assamoosick Swamp and its tributaries from river mile 2.50 to its headwaters.
			Black Branch Swamp from its confluence with the Nottoway River to its headwaters.
			Butterwood Creek from river mile 4.65 (near Route 622) upstream to river mile 14.59 (near Route 643).
			Cabin Point Swamp and its tributaries from its confluence with the Nottoway River to its headwaters.
			Cooks Branch from its confluence with Butterwood Creek to river mile 1.08
			Gosee Swamp and its tributaries from its confluence with the Nottoway River to river mile 6.88.
			Gravelly Run and its tributaries from its confluence with Rowanty Creek to river mile 8.56.
			Harris Swamp and its tributaries from its confluence with the Nottoway River to river mile 8.72.
			Hatcher Run and its tributaries from its confluence with Rowanty Creek to river mile 19.27 excluding Picture Branch.
			Hunting Quarter Swamp and its tributaries from its confluence with the Nottoway River to its headwaters.
			Moores and Jones Holes Swamp and tributaries from their confluence with the Nottoway River to its headwaters.
			Nebletts Mill Run and its tributaries from its confluence with the Nottoway River to its headwaters.
			Raccoon Creek and its tributaries from its confluence with the Nottoway River to its headwaters.
			Rowanty Creek and its tributaries from its confluence with the Nottoway River to Gravelly Run.

			Southwest Swamp and its tributaries from its confluence with Stony Creek to river mile 8.55.
			Three Creek and its tributaries from its confluence with the Nottoway River upstream to its headwaters at Slagles Lake.
2c	III	PWS	Nottoway River and its tributaries from Norfolk's auxiliary raw water intake near Courtland, Virginia, to points 5 miles upstream unless otherwise designated in this chapter.
	VII		Swamp waters in Section 2c
			Assamoosick Swamp and its tributaries from its confluence with the Nottoway River to river mile 2.50.
2d			(Deleted)
2e	III	PWS	Nottoway River and its tributaries from the Georgia-Pacific and the Town of Jarratt's raw water intakes near Jarratt, Virginia, to points 5 miles above the intakes.
2f	III	PWS	Nottoway River and its tributaries from the Town of Blackstone's raw water intake to points 5 miles upstream.
2g	III	PWS	Lazaretto Creek and its tributaries from Crewe's raw water intake to points 5 miles upstream.
2h	III	PWS	Modest Creek and its tributaries from Victoria's raw water intake to their headwaters.
2i	III	PWS	Nottoway River and its tributaries from the Town of Victoria's raw water intake at the Falls (about 200 feet upstream from State Route 49) to points 5 miles upstream.
2j	III	PWS	Big Hounds Creek from the Town of Victoria's auxiliary raw water intake (on Lunenburg Lake) to its headwaters.

9VAC25-260-500. Tennessee and Big Sandy River Basins (Clinch River Subbasin).

SEC.	CLASS	SP. STDS.	SECTION DESCRIPTION
EDITOR'S NOTE: Section 2 of 9VAC25-260-500 is not amended; therefore, that text is not set out.			
1	IV		Powell River and its tributaries from the Virginia-Tennessee state line to their headwaters; Indian Creek and Martin Creek in Virginia, unless otherwise designated in this chapter.
	V		Stockable Trout Waters in Section 1
	vi		Batie Creek from its confluence with the Powell River 0.8 mile upstream.
	vi		Dry Creek from its confluence with Hardy Creek to its headwaters.
	vi		Hardy Creek and its tributaries to their headwaters.
	vi		Lick Branch from its confluence with Indian Creek 1.4 miles upstream.
	vi		Martin Creek (Lee County) from the Virginia-Tennessee state line to its headwaters.
	vii		North Fork Powell River from the confluence of Straight Creek upstream to ~~its headwaters~~ the Keokee Lake dam.
	vi		Poor Valley Branch from its confluence with Martin Creek 1.4 miles upstream.

	vi		Sims Creek from its confluence with the Powell River 1.1 miles upstream to Sims Spring.
	vi		Station Creek at the boundary of the Cumberland Gap National Historical Park (river mile 2.2) 2.6 miles upstream.
	vi		Wallen Creek above its confluence with the Powell River (at Rasnic Hollow) to its headwaters.
	vi		White Branch from its confluence with Poor Valley Branch 0.7 mile upstream (to the Falls at Falling Water Gap).
1a	IV	PWS	Powell River and its tributaries from Pennington Gap's raw water intake to 5 miles upstream.
1b	IV	PWS	Bens Branch from Appalachia's raw water intake to its headwaters.
1c	IV	PWS	South Fork Powell River from Big Stone Gap's raw water intake to its headwaters.
1d	IV	PWS	Benges Branch from Norton's raw water intake to its headwaters.
1e	IV	PWS	Robinette Branch from Norton's raw water intake to its headwaters.
1f	IV	PWS	Fleenortown Creek and its tributaries from the Winn #1 and Barker Springs intakes (which provide raw water to the Town of Jonesville WTP) to points 5 miles upstream.

DOCUMENTS INCORPORATED BY REFERENCE (9VAC25-260)

Chesapeake Bay Program Analytical Segmentation Scheme - Revisions, Decisions and Rationales 1983-2003, EPA 903-R-04-008, CBP/TRS 268/04, October 2004, US EPA Region III Chesapeake Bay Office

Chesapeake Bay Program Analytical Segmentation Scheme - Revisions, Decisions and Rationales 1983-2003, EPA 903-R-05-004, CBP/TRS 278-06, 2005 Addendum, December 2005, US EPA Region III Chesapeake Bay Office

Ambient Water Quality Criteria for Dissolved Oxygen, Water Clarity and Chlorophyll a for the Chesapeake Bay and Its Tidal Tributaries, EPA 903-R-03-002, April 2003 and 2004 Addendum, October 2004, US EPA Region III Chesapeake Bay Office

Ambient Water Quality Criteria for Dissolved Oxygen, Water Clarity and Chlorophyll a for the Chesapeake Bay and Its Tidal Tributaries, EPA 903-R-07-003, CBP/TRS 285/07 2007 Addendum, July 2007, US EPA Region III Chesapeake Bay Office

Technical Support Document for Identification of Chesapeake Bay Designated Uses and Attainability, EPA 903-R-03-004, October 2003 and 2004 Addendum, October 2004, US EPA Region III Chesapeake Bay Office

Ambient Water Quality Criteria for Dissolved Oxygen, Water Clarity and Chlorophyll a for the Chesapeake Bay and its Tidal Tributaries - 2007 Chlorophyll Criteria Addendum, EPA 903-R-07-005, CBP/TRS 288/07, November 2007, U.S. EPA Region III Chesapeake Bay Office

Ambient Water Quality Criteria for Dissolved Oxygen, Water Clarity and Chlorophyll a for the Chesapeake Bay and its Tidal Tributaries - 2008 Technical Support for Criteria Assessment Protocols Addendum, EPA 903-R-08-001, CBP/TRS 290-08, September 2008, U.S. EPA Region III Chesapeake Bay Office

Ambient Water Quality Criteria for Dissolved Oxygen, Water Clarity and Chlorophyll a for the Chesapeake Bay and its Tidal Tributaries - 2010 Technical Support for Criteria Assessment Protocols Addendum, EPA 903-R-10-002, CBP/TRS 301-10, May 2010, U.S. EPA Region III Chesapeake Bay Office

Ambient Water Quality Criteria for Dissolved Oxygen, Water Clarity and Chlorophyll a for the Chesapeake Bay and Its Tidal Tributaries - 2017 Technical Addendum, EPA 903-R-17-002, CBP/TRS 320-17, November 2017, U.S. EPA Region III Chesapeake Bay Office

Aquatic Life Ambient Freshwater Quality Criteria-Copper, EPA-822-R-07-001, U.S. EPA, Office of Water, February 2007 Revision

Final Aquatic Life Ambient Water Quality Criteria for Aluminum, EPA-822-R-18-001, U.S. EPA, Office of Water, December 2018

VA.R. Doc. No. R21-6555; Filed December 28, 2021, 2:28 p.m.

TITLE 12. HEALTH

STATE BOARD OF HEALTH

Emergency Regulation

Title of Regulation: **12VAC5-217. Regulations of the Patient Level Data System (amending 12VAC5-217-20).**

Statutory Authority: §§ 32.1-12 and 32.1-276.6 of the Code of Virginia.

Effective Dates: January 17, 2022, through July 16, 2023.

Agency Contact: Michael Sarkissian, Director, Data and Quality, Office of Information Management, Virginia Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7416, FAX (804) 864-7022, or email vdh_oim_regulations@vdh.virginia.gov.

Preamble:

Section 2.2-4011 B of the Code of Virginia states that agencies may adopt emergency regulations in situations in which Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment, and the regulation is not exempt under the provisions of § 2.2-4006 A 4 of the Code of Virginia.

Item 307 D 1 of Chapter 552 of the 2021 Acts of Assembly, Special Session I, requires inpatient hospitals to report the admission source of any individuals meeting the criteria for voluntary or involuntary psychiatric commitment as outlined in § 16.1-338, 16.1-339, 16.1-340.1, 16.1-345, 37.2-805, 37.2-809, or 37.2-904 of the Code of Virginia to the State Board of Health. The board is required to collect and share such data regarding the admission source of individuals admitted to inpatient hospitals as a psychiatric patient with the Department of Behavioral Health and Developmental Services (DBHDS). The information will be shared using a new field in the patient-level data that DBHDS receives from Virginia Health Information (VHI). The amendment adds a field to report criteria for voluntary or involuntary psychiatric commitment to the data collected and shared via VHI to conform with statute.

12VAC5-217-20. Reporting requirements for patient level data elements.

Every inpatient hospital shall submit a complete filing of each patient level data element listed in the table in this section for each hospital inpatient, including a separate record for each infant, if applicable. Most of these data elements are currently collected from a Uniform Billing Form located in the latest publication of the Uniform Billing Manual prepared by the National Uniform Billing Committee. The Uniform Billing Form and the Uniform Billing Manual are located on the National Uniform Billing Committee's website at www.nubc.org. The Uniform Billing Manual provides a detailed field description and any special instruction pertaining to that element. An asterisk (*) indicates when the required data element is either not on the billing form or in the Uniform Billing Manual. The instructions provided under that particular data element should then be followed. Inpatient hospitals that submit patient level data directly to the board or the nonprofit organization shall submit it in an electronic data format.

Data Element
1. Hospital identifier.* Enter the six-digit Medicare provider number or a number assigned by the board or its designee.
2. Attending physician identifier. Enter the nationally assigned physician identification number, either the Uniform Physician Identification Number (UPIN) or National Provider Identifier (NPI) as approved by the board for the physician assigned as the attending physician for an inpatient.
3. Other physician identifier. Enter the nationally assigned physician identification number, either the Uniform Physician Identification Number (UPIN) or National Provider Identifier (NPI) as approved by the board for the physician identified as the operating physician for the principal procedure reported.
4. Payor identifier.
5. Employer identifier.
6. Patient identifier.* Enter the nine-digit social security number of the patient. If a social security number has not been assigned, leave blank. The nine-digit social security number is not required for patients under four years of age.
7a. Patient sex.
7b. Race code.* If an inpatient hospital collects information regarding the choices listed below, the appropriate one-digit code reflecting the race of the patient should be entered. If a hospital only collects information for categories 0, 1, or 2, then the appropriate code should be entered from those three selections. 0 = White 1 = Black 2 = Other 3 = Asian 4 = American Indian 5 = White Hispanic 6 = Black Hispanic
7c. Date of birth.
7d. Street address, city or county, and zip code.
7e. Employment status code.

7f. Patient status (i.e., discharge). Inpatient codes only.
7g. Birth weight (for infants).* Enter the birth weight of newborns in grams.
8a. Admission type.
8b. Admission source.
8c. Admission date.
8d. Admission hour.
8e. Admission diagnosis code.
9a. Discharge date. Only enter date of discharge.
10. Principal diagnosis code. Enter secondary diagnoses (up to eight). In addition, include diagnoses recorded in the comments section for DX6-DX9.
11. External cause of injury code (E-code). Record all external cause of injury codes in secondary diagnoses position after recording all treated secondary diagnoses.
12. Co-morbid conditions existing but not treated.
13. Principal procedure code and date. Enter other procedures and dates (up to five). In addition, include procedures recorded in the comments section for PX4-PX6.
14. Revenue code (up to 23). Units of service (up to 23). Units of service charges (up to 23).
15. Total charges (by revenue code category or by HCPCS code). (R.C. Code 001 is for total charges. See page 47-1.)
16. Legal status. Enter the legal status of the admission. Legal status applies to voluntary or involuntary psychiatric admissions of minors and adults. 1 = § 16.1-338 Parental admission of minors younger than 14 and nonobjecting minors 14 years of age or older 2 = § 16.1-339 Parental admission of objecting minor 14 years of age or older 3 = § 16.1-340.1 Involuntary temporary detention order (TDO) (minor) 4 = § 16.1-345 Involuntary commitment (minor) 5 = § 37.2-805 Voluntary admission (adult) 6 = § 37.2-809 Involuntary TDO (adult) 7 = § 37.2-904 Sexually violent predators (prisoners or defendants)

VA.R. Doc. No. R22-6605; Filed December 22, 2021, 7:59 p.m.

Emergency Regulation

Title of Regulation: **12VAC5-219. Prescription Drug Price Transparency Regulation (adding 12VAC5-219-10 through 12VAC5-219-140).**

Statutory Authority: §§ 32.1-12 and 32.1-23.4 of the Code of Virginia.

Effective Dates: January 17, 2022, through July 16, 2023.

Agency Contact: Michael Sarkissian, Director, Data and Quality, Office of Information Management, Virginia Department of Health, 9960 Mayland Drive, Suite 401, Richmond, VA 23233, telephone (804) 229-0517, FAX (804) 527-4502, or email vdh_oim_regulations@vdh.virginia.gov.

Preamble:

Section 2.2-4011 B of the Code of Virginia states that agencies may adopt emergency regulations in situations in which Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment, and the regulation is not exempt under the provisions of § 2.2-4006 A 4 of the Code of Virginia.

Chapter 304 of the 2021 Acts of Assembly, Special Session I, requires the specification of prescription drugs for the purpose of data collection and procedures for auditing information provided by health carriers, pharmacy benefits managers, wholesale distributors, and manufacturers, as well as a schedule of civil penalties for failure to report the information required based on the severity of the violation. This action adds a new regulation establishing the requirements to report prescription drug price information to meet the statutory mandate.

Chapter 219
Prescription Drug Price Transparency Regulation

Part I
General Information and Requirements

12VAC5-219-10. Definitions.

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

"Biologic" means a therapeutic drug, made from a living organism such as human, animal, yeast or microorganisms, which is licensed under a Biologic License Application by the FDA.

"Biosimilar" has the same meaning as ascribed to the term in § 54.1-3442.02 of the Code of Virginia.

"Brand-name drug" has the same meaning as ascribed to the term in §§ 54.1-3436.1 and 54.1-3442.02 of the Code of Virginia.

"Carrier" has the same meaning as ascribed to the term in § 38.2-3407.10 of the Code of Virginia.

"Commissioner" means the State Health Commissioner.

"Department" means the Virginia Department of Health.

"Discount" means any price concessions offered or provided by a reporting entity for a prescription drug, including rebates, reductions in price, coupons, out-of-pocket cost assistance, premium assistance, or copay assistance, that has the effect of reducing the cost of a prescription drug.

"Drug product" means a finished dosage form, such as a tablet or solution, that contains a prescription generally, but not necessarily, in association with inactive ingredients and that has been issued a National Drug Code by the FDA.

"Enrollee" has the same meaning as ascribed to the term in § 38.2-3407.10 of the Code of Virginia.

"FDA" means the U.S. Food and Drug Administration.

"Generic drug" has the same meaning as ascribed to the term in § 54.1-3436.1 of the Code of Virginia.

"Health benefit plan" has the same meaning as ascribed to the term in § 38.2-3438 of the Code of Virginia.

"IRS" means the U.S. Internal Revenue Service.

"Launched" means the month and year on which a manufacturer acquired or first marketed a prescription drug for sale in the United States.

"Manufacturer" has the same meaning as ascribed to the term in § 54.1-3401 of the Code of Virginia.

"New prescription drug" has the same meaning as ascribed to the term in § 54.1-3442.02 of the Code of Virginia.

"Nonprofit data services organization" or "NDSO" has the same meaning as ascribed to the term in § 32.1-23.4 of the Code of Virginia.

"Outpatient prescription drug" means a prescription drug that may be obtained only by prescription and dispensed by a pharmacy licensed to dispense prescription drugs in Virginia, including from a retail, outpatient, mail order, or other delivery setting. Outpatient prescription drug excludes prescription drugs provided as part of or incident to and in the same setting as inpatient and outpatient hospital services, hospice services, and dental services.

"Pharmacy benefits management" has the same meaning as ascribed to the term in § 38.2-3407.15:4 of the Code of Virginia.

"Pharmacy benefits manager" or "PBM" has the same meaning as ascribed to the term in § 38.2-3407.15:4 of the Code of Virginia.

"Premium" means the amount members pay to a carrier or health benefit plan for their medical and prescription drug insurance.

"Price" means the amount of money an individual consumer pays at retail for a prescription drug in the absence of a discount.

"Prescription drug" has the same meaning as ascribed to the term in § 54.1-3401 of the Code of Virginia. "Prescription drug" includes biologics and biosimilars for which a prescription is needed.

"Rebate" has the same meaning as ascribed to the term in § 38.2-3407.22 of the Code of Virginia.

"Reporting entity" means carriers, PBMs, wholesale distributors, and manufacturers.

"Specialty drug" means a prescription drug that:

1. Has a price for a 30-day equivalent supply equal to or greater than the current minimum specialty tier eligibility threshold under Medicare Part D as determined by the U.S. Centers for Medicare and Medicaid Services; and

2. Is:

a. Prescribed for a person with a chronic, complex, rare, or life-threatening medical condition;

b. Requires specialized supply chain features, product handling, or administration by the dispensing pharmacy; or

c. Requires specialized clinical care, including intensive clinical monitoring or expanded services for patients such as intensive patient counseling, intensive patient education, or ongoing clinical support beyond traditional dispensing activities.

A prescription drug appearing on Medicare Part D's specialty tier is presumed to be a specialty drug.

"Spending" means the amount of money, expressed in United States dollars, expended after discounts.

"Therapeutically equivalent" means a generic drug that is:

1. Approved as safe and effective;

2. Adequately labeled;

3. Manufactured in compliance with 21 CFR Part 210, 21 CFR Part 211, and 21 CFR Part 212; and

4. Either:

a. A pharmaceutical equivalent to a brand-name drug in that it:

(1) Contains identical amounts of the identical active drug ingredient in the identical dosage form and route of administration; and

(2) Meets compendial or other applicable standards of strength, quality, purity, and identity; or

b. A bioequivalent to a brand-name drug in that:

(1) It does not present a known or potential bioequivalence problem, and they meet an acceptable in vitro standard; or

(2) If it does present such a known or potential problem, it is shown to meet an appropriate bioequivalence standard.

"USAN Council" means the United States Adopted Names Council.

"Utilization management" means strategies, including drug utilization review, prior authorization, step therapy, quantity or dose limits, and comparative effectiveness reviews, to reduce a patient's exposure to inappropriate drugs and lower the cost of treatment.

"Wholesale acquisition cost" or "WAC" has the same meaning as ascribed to the term in §§ 54.1-3436.1 and 54.1-3442.02 of the Code of Virginia.

"Wholesale distributor" has the same meaning as ascribed to the term in § 54.1-3401 of the Code of Virginia.

"30-day equivalent supply" means the total daily dosage units of a prescription drug recommended by its prescribing label as approved by the FDA for 30 days or fewer. If there is more than one such recommended daily dosage, the largest recommended daily dosage will be considered for purposes of determining a 30-day equivalent supply. "30-day equivalent supply" includes a 30-day supply and a single course of treatment under subsection B of § 54.1-3442.02 of the Code of Virginia.

12VAC5-219-20. Registration.

A. Each reporting entity shall furnish to and maintain with the NDSO:

1. Its legal name and any fictitious names under which it operates;

2. Its current mailing address of record; and

3. Its current electronic mailing address of record.

B. The reporting entity shall notify the NDSO in writing of any change in its legal name or addresses of record within 30 calendar days of such change.

C. Each reporting entity shall notify the NDSO of its business closing, discontinuation of business as a carrier, PBM, manufacturer, or wholesale distributor, or acquisition at least 30 days prior to such closure, discontinuation, or acquisition.

1. A reporting entity shall file any report otherwise due on April 1 for the preceding calendar year pursuant to Part II (12VAC5-219-50 et seq.) of this chapter prior to its closure, discontinuation, or acquisition if the reporting entity plans or anticipates that between January 1 and April 1:

a. Its business will close;

b. Its business as a carrier, PBM, manufacturer, or wholesale distributor will be discontinued; or

c. Its acquisition will result in the discontinuation of its business as a carrier, PBM, manufacturer, or wholesale distributor.

2. The legal entity acquiring a reporting entity shall ensure that it complies with the provisions of this chapter.

3. The commissioner shall deem the failure to comply with subdivision C 1 of this section as a failure to report pursuant to Part II (12VAC5-219-50 et seq.) of this chapter.

12VAC5-219-30. Notice.

A. The NDSO shall send to the reporting entity at the last known electronic mailing address of record:

1. An annual notice on or before March 1 regarding its reporting obligations under Part II (12VAC5-219-50 et seq.) of this chapter. Failure to receive this notice does not relieve the reporting entity of the obligation to timely report;

2. Any notices pursuant to subsection C of 12VAC5-219-90; and

3. Any notices pursuant to Article 1 (12VAC5-219-100 et seq.) of Part III of this chapter.

B. If the NDSO determines that it will accept an alternate drug group system other than Medi-Span© for reports due pursuant to Part II (12VAC5-219-50 et seq.) of this chapter:

1. The department shall publish a general notice in the Virginia Register of Regulations that contains the NDSO's determination and the effective date of this determination; and

2. The NDSO shall notify every reporting entity of the NDSO's determination by electronic mail at its electronic mailing address of record.

C. The department shall send notices pursuant to Part III (12VAC5-219-100 et seq.) of this chapter and case decisions to the last known electronic mailing address of record and mailing address of record.

D. The NDSO shall provide any record requested by the commissioner or department related to the enforcement or administration of § 32.1-23.4 of the Code of Virginia or this chapter no more than 10 business days after the request, except as otherwise agreed to between the NDSO and the commissioner or the department.

12VAC5-219-40. Allowable variances.

A. The commissioner may authorize a variance to Part II (12VAC5-219-50 et seq.) of this chapter.

B. A variance shall require advance written approval from the commissioner.

C. The department, the NDSO, or a reporting entity may request a variance at any time by filing the request in writing with the commissioner. The request for a variance shall include:

1. A citation to the specific standard or requirement from which a variance is request;

2. The nature and duration of the variance requested;

3. A description of how compliance with the current standard or requirement is economically burdensome and constitutes an impractical hardship unique to the requester;

4. Statements or evidence why the purpose of the standard or requirement would not be frustrated if the variance were granted;

5. Proposed alternatives to meet the purpose of the standard or requirement; and

6. Other information, if any, believed by the requester to be pertinent to the request.

D. The requester shall provide additional information as may be requested or required by the commissioner to evaluate the variance request.

E. The requester may withdraw a request for a variance at any time.

F. The commissioner shall notify the requester in writing of the commissioner's decision on the variance request. If granted, the commissioner:

1. Shall identify:

a. The standard or requirement to which a variance has been granted;

b. To whom the variance applies; and

c. The effective date and expiration date of the variance; and

2. May attach conditions to a variance that, in the sole judgment of the commissioner, satisfies, supports, or furthers the purpose of the standard or requirement.

G. The requester shall comply with the standard or requirement to which a variance has been requested unless a variance has been granted.

H. The commissioner may rescind or modify a variance if:

1. The impractical hardship unique to the requester changes or no longer exists;

2. Additional information becomes known that alters the basis for the original decision, including if the requester elected to fail to comply with the standard or requirement prior to receiving a variance;

3. The requester fails to meet any conditions attached to the variance; or

4. Results of the variance fail to satisfy, support, or further the purpose of the standard or requirement.

I. If a variance is denied, expires, or is rescinded, the commissioner, the department, or the NDSO, as applicable, shall enforce the standard or requirement to which the variance was granted.

Part II
Reporting Requirements

12VAC5-219-50. Carrier reporting requirements.

A. Every carrier offering a health benefit plan shall report annually by April 1 to the NDSO the information required in this subsection on total annual spending on prescription drugs, before enrollee cost sharing, for each health benefit plan offered by the carrier in the Commonwealth:

1. For covered outpatient prescription drugs that were prescribed to enrollees during the immediately preceding calendar year:

a. The names of the 25 most frequently prescribed outpatient prescription drugs;

b. The names of the 25 outpatient prescription drugs covered at the greatest cost, calculated using the total annual spending by such health benefit plan for each outpatient prescription drug covered by the health benefit plan; and

c. The names of the 25 outpatient prescription drugs that experienced the greatest year-over-year increase in cost, calculated using the total annual spending by a health benefit plan for each outpatient prescription drug covered by the health benefit plan;

2. The percent increase in annual net spending for prescription drugs after accounting for aggregated discounts;

3. The percent increase in premiums that were attributable to each health care service, including prescription drugs;

4. The percentage of specialty drugs with utilization management requirements; and

5. The premium reductions that were attributable to specialty drug utilization management.

B. In determining which outpatient prescription drugs are reportable under subdivision A 1 of this section, the carrier shall:

1. Average the frequency of prescription for all drug products of an outpatient prescription drug for such health benefit plan to determine which outpatient prescription drugs are reportable under subdivision A 1 a of this section;

2. Average the cost, calculated using the total annual spending by such health benefit plan for all drug products of an outpatient prescription drug covered by the health benefit plan, to determine which outpatient prescription drugs are reportable under subdivision A 1 b of this section; and

3. Average the year-over-year increase in cost, calculated using the total annual spending by a health benefit plan for all drug products of an outpatient prescription drug covered by the health benefit plan, to determine which outpatient prescription drugs are reportable under subdivision A 1 c of this section.

C. A carrier may not disclose the identity of a specific health benefit plan or the price charged for a specific prescription drug or class of prescription drugs when submitting a report pursuant to subsection A of this section. A carrier shall use a health benefit plan unique identifier as described in subsection E of this section in lieu of the health benefit plan's identity when submitting a report pursuant to subsection A of this section.

D. Every carrier offering a health benefit plan shall require each PBM with which it enters into a contract for pharmacy benefits management to comply with 12VAC5-219-60.

E. Every carrier shall provide the information specified in subsections B and C of this section on a form prescribed by the department that includes the following data elements:

Data Element Name	Data Element Definition
Carrier tax identification number	The nine-digit tax Taxpayer Identification Number used by the IRS.
Carrier name	The legal name of the reporting entity.
Health benefit plan category	The two-digit health plan category identifier. The first digit corresponds to the insurance line and valid values are D (Medicaid); R (Medicare); C (commercial); and O (other). The second digit corresponds to the insurance policy type and valid values include I (individual); F (fully insured group); S (self insured group); and C (Commonwealth of Virginia employees).
Health benefit plan unique identifier	A unique five-digit incremental number assigned by a carrier to a health benefit plan within a given health benefit plan category for the purpose of anonymizing the health benefit plan's identity.
Proprietary drug name	The brand or trademark name of the prescription drug reported to the FDA.
Non-proprietary drug name	The generic name of the prescription drug assigned by the USAN Council.
WAC unit	The lowest identifiable quantity of the prescription drug that is dispensed, exclusive of any diluent without reference to volume measures pertaining to liquids.
Drug group	The first two digits of the Medi-Span© Generic Product Identifier assigned to the proprietary prescription drug.
Brand-name or generic	Whether the prescription drug is brand-name or generic.
Net spending increase	The percent year-over-year increase in annual net spending for prescription drugs after accounting for aggregated discounts or other reductions in price.
Premium increase	The percent year-over-year increase in premiums that were attributable to each health care service, including prescription drugs.
Specialty drugs with utilization management	The percentage of specialty drugs with utilization management requirements.
Premium reductions	The percent year-over-year of premium reductions that were attributable to specialty drug utilization management.
Comments	A text field for any additional information the carrier wishes to provide.

12VAC5-219-60. Pharmacy benefits manager reporting requirements.

A. Every PBM providing pharmacy benefits management under contract to a carrier shall report annually by April 1 to the NDSO the following information for each prescription drug upon which the carrier is reporting pursuant to 12VAC5-219-50:

1. The aggregate amount of rebates received by the PBM;

2. The aggregate amount of rebates distributed to the relevant health benefit plan; and

3. The aggregate amount of rebates passed on to enrollees of each health benefit plan at the point of sale that reduced the enrollees' applicable deductible, copayment, coinsurance, or other cost-sharing amount.

B. Every PBM shall provide the information specified in subsection A of this section on a form prescribed by the department that includes the following data elements:

Data Element Name	Data Element Definition
PBM tax identification number	The nine-digit tax Taxpayer Identification Number used by the IRS.

PBM name	The legal name of the reporting entity.
Proprietary drug name	The brand or trademark name of the prescription drug reported to the FDA.
Non-proprietary drug name	The generic name of the prescription drug assigned by the USAN Council.
Drug group	The first two digits of the Medi-Span© Generic Product Identifier assigned to the proprietary prescription drug
Brand-name or generic	Whether the prescription drug is brand-name or generic.
Carrier name	The legal name of the carrier to whom rebates were distributed or passed on.
Total rebates	Total aggregate rebates received or negotiated directly with the manufacturer in the last calendar year, for business in the Commonwealth.
Total rebates distributed	Total aggregate rebates distributed to the relevant health benefit plan in the last calendar year, for business in the Commonwealth.
Total rebates passed on	Total aggregate rebates passed on to all enrollees of a health benefit plan at the point of sale that reduced the enrollees' applicable deductible, copayment, coinsurance, or other cost-sharing amount in the last calendar year, for business in the Commonwealth.
Comments	A text field for any additional information the PBM wishes to provide.

12VAC5-219-70. Manufacturer reporting requirements.

A. Every manufacturer shall report annually by April 1 to the NDSO on each of its:

1. Brand-name prescription drug and biologic, other than a biosimilar, with:

a. A WAC of $100 or more for a 30-day supply or a single course of treatment; and

b. Any increase of 15% or more in the WAC of such brand-name drug or biologic over the preceding calendar year;

2. Biosimilar with an initial WAC that is not at least 15% less than the WAC of the referenced brand biologic at the time the biosimilar is launched and that has not been previously been reported to the NDSO; and

3. Generic drug with a price increase that results in an increase in the WAC equal to 200% or more during the preceding 12-month period, when the WAC of such generic drug is equal to or greater than $100, annually adjusted by the Consumer Price Index for All Urban Consumers, for a 30-day supply.

For the purposes of this subdivision, a price increase is the difference between the WAC of the generic drug after increase in the WAC and the average WAC of such generic drug during the previous 12 months.

B. For each prescription drug identified in subsection A of this section, a manufacturer shall report:

1. The name of the prescription drug;

2. Whether the prescription drug is a brand name or generic;

3. The effective date of the change in WAC;

4. Aggregate, company-level research and development costs for the most recent year for which final audit data is available;

5. The name of each of the manufacturer's new prescription drugs approved by the FDA within the previous three calendar years;

6. The name of each of the manufacturer's prescription drugs that, within the previous three calendar years, became subject to generic competition and for which there is a therapeutically equivalent generic version; and

7. A concise statement regarding the factors that caused the increase in WAC.

C. Every manufacturer shall provide the information specified in subsection B of this section on a form prescribed by the department that includes the following data elements:

Data Element Name	Data Element Definition
Manufacturer tax identification number	The nine-digit tax Taxpayer Identification Number (TIN) used by the IRS.
Manufacturer name	The legal name of the reporting entity.
Proprietary drug name	The brand or trademark name of the prescription drug reported to the FDA.
Non-proprietary drug name	The generic name of the prescription drug assigned by the USAN Council.
WAC unit	The lowest identifiable quantity of the prescription drug that is dispensed, exclusive of any diluent without reference to volume measures pertaining to liquids.

Drug group	The first two digits of the Medi-Span© Generic Product Identifier assigned to the prescription drug.
Brand-name drug or generic drug	Whether the report is about a brand-name drug or generic drug.
Subject to generic competition	The month and year of initial generic competition.
Date of initial generic competition	The year of market introduction of the prescription drug.
WAC at market introduction	The manufacturer's list price to wholesalers or direct purchasers in the United States at market introduction, as reported in wholesale price guides or other publications of prescription pricing data; it does not include discounts or reductions in price.
WAC on January 1 of the prior calendar year	The manufacturer's list price in United States dollars per unit, to wholesalers or direct purchasers in the United States on January 1 of the prior calendar year, as reported in wholesale price guides or other publications of prescription drug pricing data; it does not include discounts.
WAC on December 31 of the prior calendar year	The manufacturer's list price in United States dollars per unit, to wholesalers or direct purchasers in the United States on December 31 of the prior calendar year, as reported in wholesale price guides or other publications of prescription drug pricing data; it does not include discounts.
Effective date of change in WAC	The month and year that the WAC changed.
Justification for current-year WAC increase	The reason or reasons that the manufacturer increased the WAC of the prescription drug compared with last year.
Research and development costs	Aggregate, company-level research and development costs in United States dollars for the most recent year for which final audit data is available.
Year of research and development costs	The year in which final audit data is available.
Comments	A text field for any additional information the manufacturer wishes to provide.

D. To satisfy the reporting requirements of this section, a manufacturer may submit information and data that a manufacturer includes in its annual consolidation report on the U.S. Securities and Exchange Commission Form 10-K or any other public disclosure.

12VAC5-219-80. Wholesale distributor reporting requirements.

A. For the purposes of this section, "cost" means the expense incurred and the monetary value of the resources used or consumed in the provision of a prescription drug by a wholesale drug distributor.

B. If the department determines that data received from carriers, PBMs, and manufacturers is insufficient, the department may request wholesale distributors to report the information specified in subsection C of this section.

1. The department shall publish a general notice in the Virginia Register of Regulations that contains its determination, the request for wholesale distributors reporting, and the deadline for wholesale distributors to report pursuant to subsection C of this section.

2. The NDSO shall notify every wholesale distributor of the department's determination and request by electronic mail at its electronic mailing address of record.

C. If requested by the department pursuant to subsection B of this section and no more than 45 calendar days after the publication of the general notice pursuant to subdivision B 1 of this section, a wholesale distributor shall report for the 25 costliest prescription drugs dispensed in the Commonwealth, including each drug product of a reportable prescription drug:

1. The WAC directly negotiated with a manufacturer in the last calendar year;

2. The WAC directly negotiated with a manufacturer in the current calendar year;

3. Aggregate total discounts directly negotiated with a manufacturer in the last calendar year, for business in the Commonwealth, in total; and

4. Aggregate total discounts, dispensing fees, and other fees negotiated in the last calendar year with pharmacies, in total.

D. In determining which prescription drugs are reportable under subsection C of this section, the wholesale distributor

shall average the cost for all drug products of a dispensed prescription drug.

E. Every wholesale distributor shall provide the information specified in subsection C of this section on a form prescribed by the department that includes the following data elements:

Data Element Name	Data Element Description
Wholesale distributor tax identification number	The nine-digit tax Taxpayer Identification Number used by the IRS.
Wholesale distributor name	The legal name of the reporting entity.
Proprietary drug name	The brand or trademark name of the prescription drug reported to the FDA.
Non-proprietary drug name	The generic name of the prescription drug assigned by the USAN Council.
WAC unit	The lowest identifiable quantity of the prescription drug that is dispensed, exclusive of any diluent without reference to volume measures pertaining to liquids.
Drug group	The first two digits of the Medi-Span© Generic Product Identifier assigned to the prescription drug.
Current year minus one WAC	WAC in United States dollars, for each prescription drug for which the wholesale distributor has negotiated with a manufacturer in the last calendar year, related to prescriptions under a health benefit plan issued in the Commonwealth.
Current year WAC	WAC in United States dollars, for each prescription drug for which the wholesale distributor has negotiated with a manufacturer in the current calendar year, related to prescriptions under a health benefit plan issued in the Commonwealth.
Total manufacturer discounts	Total aggregate discounts for each prescription drug directly negotiated with a manufacturer in the last calendar year, for business in the Commonwealth.
Total pharmacy discounts, dispensing fees, and other fees	Total aggregate discounts, dispensing fees, and other fees for each prescription drug negotiated in the last calendar year with a pharmacy.
Comments	A text field for any additional information the wholesale distributor wishes to provide

F. The commissioner, the department, and the NDSO may not disclose:

1. The identity of a specific wholesale distributor;

2. The price charged for a specific prescription drug or class of prescription drugs; or

3. The amount of any discount or fee provided for a specific prescription drug or class of prescription drugs.

12VAC5-219-90. Method of report submission.

A. A reporting entity shall submit any report required by this part to the NDSO through the NDSO's online collection tool.

B. A reporting entity shall submit any required report by uploading electronic spreadsheet files, or other methods as determined by the NDSO, that include all required information for each report and that comply with the NDSO's Prescription Drug Price Transparency Regulation (12VAC5-219) Submission Manual, Version 1.0.

C. The NDSO shall notify each reporting entity in writing at least 30 calendar days before any change in the report collection method.

Part III
Enforcement

Article 1
Data Validation and Audits

12VAC5-219-100. Data validation; notification; response.

A. The NDSO shall:

1. Validate that the data received from each reporting entity pursuant to a report required under Part II (12VAC5-219-50 et seq.) of this chapter is complete no more than 90 calendar days after submission;

2. Notify a reporting entity if the NDSO cannot validate the data submitted pursuant to a report required under Part II (12VAC5-219-50 et seq.) of this chapter;

3. Send the notification specified in subdivision A 2 of this section no more than three business days after completion of the data validation to the reporting entity's email address of record;

4. Identify in the notification specified in subdivision A 2 of this section the specific report and the data elements within the report that are incomplete; and

5. Provide a copy of the notification specified in subdivision A 2 of this section to the commissioner at the same time it is sent to the reporting entity.

B. Each reporting entity notified under subsection A of this section shall make changes necessary to correct the report within 30 calendar days of the notification.

C. If a reporting entity fails to correct the report within 30 calendar days, the NDSO shall:

1. Notify a reporting entity that it has failed to correct the report;

2. Send the notification specified in subdivision A 1 of this section no more than two business days after the reporting entity's failure to report to the reporting entity's email address of record;

3. Identify in the notification specified in subdivision A 1 of this section the specific report and the data elements within the report that have not been corrected; and

4. Provide a copy of the notification specified in subdivision A 1 of this section to the commissioner at the same time it is sent to the reporting entity.

D. If a reporting entity fails to correct the report within 15 calendar days of the second notice:

1. The NDSO shall provide to the commissioner within one business day of the second failure to correct:

a. The copy of the original report submitted by the reporting entity;

b. Any subsequent updated reports that the reporting entity may have filed; and

c. Any correspondence between the NDSO and the reporting entity after the notification sent pursuant to subsection A of this section; and

2. The commissioner shall deem the second failure to correct as a failure to report pursuant to Part II (12VAC5-219-50 et seq.) of this chapter.

12VAC5-219-110. Audit; corrective action plan.

A. When submitting any notification or report to the NDSO, a reporting entity shall include:

1. A signed, written certification of the accuracy of any notification or report filed in a physical format; and

2. Electronic certification of the accuracy of any notification or report filed by email or through the NDSO's online collection tool.

B. The NDSO may verify the accuracy of finalized data reported by a reporting entity through an audit conducted by the NDSO, provided that the NDSO gives notice to the reporting entity at its electronic mailing address of record no fewer than 30 calendar days prior to initiating the audit.

C. The NDSO shall send a copy of the audit findings to the reporting entity no more than five business days after the conclusion of the audit at its email mailing address of record.

D. If any deficiencies are found during the audit:

1. The NDSO shall:

a. Notify a reporting entity by providing a copy of the audit findings no more than five business days after completion of the audit to the reporting entity's email address of record; and

b. Provide a copy of the notification to the commissioner at the same time it is sent to the reporting entity.

2. The reporting entity shall prepare a written corrective action plan addressing each deficiency cited at the time of audit as specified in subsection E of this section.

E. The reporting entity shall submit to the NDSO and the commissioner a corrective action plan no more than 10 business days after receipt of the audit findings and shall include in the corrective action plan:

1. A description of the corrective action to be taken for each deficiency and the position title of the employees to implement the corrective action;

2. The deadline for completion of all corrective action, not to exceed 45 business days from the receipt of the audit findings; and

3. A description of the measures implemented to prevent a recurrence of the deficiency.

F. The reporting entity shall ensure that the person responsible for the implementation of the corrective action plan signs, dates, and indicates their title on the corrective action plan.

G. The NDSO shall:

1. Notify the reporting entity if the NDSO determines any item in the corrective action plan is unacceptable; and

2. Grant the reporting entity two opportunities to revise and resubmit a corrective action plan that the NDSO initially determines to be unacceptable. If the reporting entity revises and resubmits the corrective action plan, the revision is due to the NDSO and the commissioner no more than 15 business days after the NDSO has notified the reporting entity pursuant to subdivision 1 of this subsection.

H. If a reporting entity fails to comply with the corrective action plan:

1. The NDSO shall provide to the commissioner any correspondence between the NDSO and the reporting entity

after the notification sent pursuant to subsection D of this section; and

2. The commissioner shall deem the failure to comply as a failure to report pursuant to Part II (12VAC5-219-50 et seq.) of this chapter.

Article 2
Administrative Process

12VAC5-219-120. Sanctions.

A. A reporting entity may not violate the provisions of this chapter.

B. The commissioner may:

1. Petition an appropriate court for an injunction, mandamus, or other appropriate remedy or imposition of a civil penalty against the reporting entity pursuant to subsection B or C of § 32.1-27 of the Code of Virginia for each violation of this chapter; and

2. Levy a civil penalty upon the reporting entity as specified in subsection B of 12VAC5-219-130 and pursuant to subsection C of § 32.1-23.4 of the Code of Virginia, in accordance with the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) for each violation of Part II (12VAC5-219-50 et seq.).

C. Each day that a reporting entity fails to report in violation of this chapter is a sufficient cause for imposition of one or more sanctions. If a reporting entity knowingly submits false, inaccurate, or misleading data pursuant to the reporting requirements of this chapter, the commissioner shall deem that submission as a failure to report.

12VAC5-219-130. Civil penalty.

A. The commissioner may reduce or waive the civil penalty imposed pursuant to this section if the commissioner, in the commissioner's sole discretion, determines that the violation was reasonable or resulting from good cause.

B. Except as provided in subsection A of this section, the commissioner shall levy a civil penalty upon the reporting entity in an amount of:

1. For the first offense:

a. $500 for the first day in which the reporting entity fails to report;

b. $1,000 for the second day in which the reporting entity fails to report;

c. $1,500 for the third day in which the reporting entity fails to report;

d. $2,000 for the fourth day in which the reporting entity fails to report; and

e. $2,500 for the fifth day and each subsequent day in which the reporting entity fails to report; and

2. For the second offense:

a. $1,000 for the first day in which the reporting entity fails to report;

b. $1,750 for the second day in which the reporting entity fails to report; and

c. $2,500 for the third and each subsequent day in which the reporting entity fails to report; and

3. For the third and all subsequent offenses, $2,500 for each day in which the reporting entity fails to report.

The commissioner shall assess civil penalties in the aggregate on a per day basis.

C. The commissioner shall deem the first day in which the reporting entity fails to report as:

1. April 2 for a reporting entity that fails to submit any information or documentation pursuant to 12VAC5-219-50, 12VAC5-219-60, or 12VAC5-219-70 or for a reporting entity that knowingly submits false, inaccurate, or misleading data pursuant to 12VAC5-219-50, 12VAC5-219-60, or 12VAC5-219-70;

2. The 46th calendar day after the publication of the general notice pursuant to subdivision A 1 of 12VAC5-219-80 for a wholesale distributor that that fails to submit any information or documentation or that knowingly submits false, inaccurate, or misleading data;

3. The 16th calendar day after notification pursuant to subdivision C 1 of 12VAC5-219-100 for a reporting entity that fails to correct its report submitted pursuant to Part II (12VAC5-219-50 et seq.) of this chapter; and

4. The calendar day immediately succeeding the deadline of a corrective action plan for a reporting entity that fails to comply with its corrective action plan approved pursuant to 12VAC5-219-110.

D. Civil penalties are due 15 calendar days after the date of receipt of the notice of civil penalty imposition or 31 calendar days after the service of a case decision after an informal fact finding proceeding, whichever is later.

E. A reporting entity shall remit a check or money order for a civil penalty payable to the Treasurer of Virginia.

1. If a check, money draft, or similar instrument for payment of a civil penalty is not honored by the bank or financial institution named, the reporting entity shall remit funds sufficient to cover the original civil penalty amount, plus a $50 dishonored payment fee.

2. Unless otherwise provided, the commissioner may not refund civil penalties or fees.

F. A civil penalty imposed pursuant to subsection B of this section is a debt to the Commonwealth and may be sued for and recovered in the name of the Commonwealth.

1. On all past due civil penalties, the commissioner shall assess and charge:

a. Interest at the judgment rate as provided in § 6.2-302 of the Code of Virginia on the unpaid balance unless a higher interest rate is authorized by contract with the debtor or provided otherwise by statute, which shall accrue on the 60th day after the date of the initial written demand for payment;

b. An additional amount that approximates the administrative costs arising under § 2.2-4806 of the Code of Virginia; and

c. Late penalty fees of 10% of the past due civil penalties.

2. The commissioner may refer a past due civil penalty for collection by the Division of Debt Collection of the Office of the Attorney General.

12VAC5-219-140. Informal fact-finding proceeding.

A. A reporting entity may dispute the imposition of a civil penalty pursuant to subdivision B 2 of 12VAC5-219-120 by requesting an informal fact finding proceeding pursuant to § 2.2-4019 of the Code of Virginia:

1. In writing to the commissioner; and

2. No more than 14 calendar days after the date of receipt of the notice of civil penalty imposition.

B. In requesting an informal fact finding proceeding pursuant to subsection A of this section, a reporting entity:

1. Shall identify with specificity the reason or alleged good cause for its failure to report; and

2. May present factual data, argument, information, or proof in support of its reason or alleged good cause for its failure to report.

C. The request for an informal fact finding proceeding:

1. May not toll the imposition of a civil penalty on a per day basis, as specified in subsection B of 12VAC5-219-130; and

2. Shall toll all assessments and charges under subdivision F 1 of 12VAC5-219-130 until a case decision after an informal fact finding proceeding has been served.

D. If a reporting entity does not request an informal fact finding proceeding pursuant to subsection A of this section, the civil penalty imposed pursuant to subdivision B 2 of 12VAC5-219-120 shall be final on the 15th calendar day after the date of receipt of the notice of civil penalty imposition.

E. If a reporting entity remains aggrieved by a case decision after an informal fact finding proceeding, it may seek review of the case decision in accordance with Article 5 (§ 2.2-4025 et seq.) of Chapter 40 of Title 2.2. of the Code of Virginia.

DOCUMENTS INCORPORATED BY REFERENCE (12VAC5-219)

Prescription Drug Price Transparency Regulation Submission Manual, Version 1.0, 2021, Virginia Health Information (eff. 8/2021)

VA.R. Doc. No. R22-6828; Filed December 22, 2021, 7:57 p.m.

Final Regulation

Title of Regulation: **12VAC5-525. Regulations for Physician Assistant Scholarships (adding 12VAC5-525-10 through 12VAC5-525-140).**

Statutory Authority: § 32.1-122.6:03 of the Code of Virginia.

Effective Date: February 17, 2022.

Agency Contact: Olivette Burroughs, Statewide Health Workforce Manager, Virginia Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7431, FAX (804) 864-7440, or email olivette.buroughs@vdh.virginia.gov.

Summary:

The action creates a new regulation to comply with § 32.1-122.6:03 of the Code of Virginia, which requires the establishment of an annual physician assistant scholarship program for students who intend to enter an accredited physician assistant program. The substantive elements are modeled after similar scholarship incentive programs and include definitions; eligibility and selection criteria; conditions of participation; processes for applying, selecting a practice site, deferring or waiving scholarship, and repayment in cases of default; number of scholarships one student may have and amount of scholarships available to each student; reporting requirements; contract contents; and what constitutes a breach of contract.

Changes since the proposed include (i) changing the term "participant" to "recipient"; (ii) clarifying that the cumulative grade point average to be eligible for the scholarship must be at least 3.0; (iii) defining the maximum number of scholarships that each applicant is eligible to receive; (iv) clarifying the award amount, the number of scholarships available, and how awards are determined; (v) including websites where the scholarship eligibility guidelines are located and where maps of the Health Professional Shortage Areas can be found to assist recipients in fulfilling their obligation; (vi) clarifying the obligation of the start date, that failure to transfer to an eligible practice site is a breach of contract, that leaving the Commonwealth prior to completing training or service obligation also constitutes a breach of contract and the associated penalties if such scholarship obligations are not completed; and (vii) clarifying what events are eligible for deferment, waivers, and variances and how to submit a request.

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

Chapter 525
Regulations for Physician Assistant Scholarships

12VAC5-525-10. Definitions.

The following words and terms when used in this chapter shall have the following meanings:

"Approved physician assistant program" means a fully accredited physician assistant school in Virginia as approved by the board.

"Board" or "Board of Health" means the State Board of Health.

"Commissioner" means the State Health Commissioner.

"Department" means Virginia Department of Health.

"Full-time" means at least 32 hours per week for 45 weeks per year.

"Health professional shortage area" or "HPSA" means an area in Virginia designated by the U.S. Secretary of Health and Human Services as having a shortage of health professionals in accordance with the procedures of the Public Health Service Act (42 USC § 254e) and implementing regulations (42 CFR Part 5).

"Interest" means the legal rate of interest pursuant to § 6.2-302 of the Code of Virginia.

[~~Participant"" or "recipient" means an eligible registered physician assistant student of an approved physician assistant program who enters into a contract with the commissioner and participates in the scholarship program.~~]

"Penalty" means twice the amount of all monetary payments to the scholarship [~~participant~~ award recipient], less any service obligation completed.

"Physician assistant" or "PA" means an individual who has met the requirements of the Board of Medicine for licensure and who works under the supervision of a licensed doctor of medicine, osteopathy, or podiatry as defined in § 54.1-2900 of the Code of Virginia.

"Practice" means the practice of medicine by a recipient in one of the defined primary care specialties in a location within Virginia that is designated as a health professional shortage area or a Virginia medically underserved area to fulfill the recipient's service obligation.

"Primary care" means the specialties of family practice medicine, general internal medicine, pediatric medicine, and obstetrics and gynecology.

["Recipient" means an eligible registered physician assistant student of an approved physician assistant program who enters into a contract with the commissioner and participates in the scholarship program.]

"Virginia medically underserved area" or "VMUA" means an area in Virginia designated by the State Board of Health in accordance with the Rules and Regulations for the Identification of Medically Underserved Areas in Virginia (12VAC5-540) or § 32.1-122.5 of the Code of Virginia.

12VAC5-525-20. Physician assistant scholarship committee.

All scholarship awards shall be made by the physician assistant scholarship committee appointed by the board. The physician assistant scholarship committee shall consist of eight members: four deans or directors of physician assistant programs or their designees, two former scholarship [award] recipients, and two members with experience in the administration of student financial aid programs. Committee appointments shall be for two-year terms, and members shall not serve for more than two successive terms.

12VAC5-525-30. Eligibility for scholarships.

In order to be considered for a scholarship [award], an applicant shall:

1. Be a United States citizen, national, or a qualified alien pursuant to 8 USC § 1621;

2. Be accepted for enrollment or enrolled in an approved PA program in the Commonwealth of Virginia preparing him for examination for licensure as a PA in the Commonwealth of Virginia;

3. If already enrolled in an approved PA program in the Commonwealth, the student must have a cumulative grade point average of [at least] 3.0;

4. Submit a completed application form and appropriate grade transcript prior to the established deadline dates;

5. Demonstrate financial need, which is verified by the school's financial aid officer or authorized person, as part of the application process; and

6. Not have an active military obligation.

An applicant who fails to meet all of these requirements shall be ineligible for a scholarship.

12VAC5-525-40. Conditions of scholarships.

A. Prior to becoming a [~~participant~~ recipient] in the PA scholarship program, the applicant shall enter into a contract with the commissioner agreeing to the terms and conditions upon which the scholarship is granted.

B. For each $5000 of scholarship money received, the [~~participant~~ recipient] agrees to engage in the equivalent of one year of full-time primary care medical practice in a HPSA or VMUA within the Commonwealth. The recipient shall notify the department, within 180 days of being awarded a PA

degree, of the type of practice to be performed and give the name and address of the employer for approval. Voluntary military service, even if stationed in Virginia, cannot be used to repay the service obligation required when a scholarship is awarded.

C. If a [~~participant~~ recipient] fails to complete his studies, the full amount of the scholarship or scholarships received, plus the applicable interest charge, shall be repaid.

D. If upon graduation a [~~participant~~ recipient] leaves the Commonwealth or fails to engage or ceases to engage in primary care medical practice in Virginia before all employment conditions of the scholarship award are fulfilled, the [~~participant~~ recipient] shall repay the award amount reduced by the proportion of obligated years served plus the applicable interest and penalty. [The penalty is twice the amount of the scholarship award received plus interest, less any service obligation completed.]

E. If the [~~participant~~ recipient] is in default due to death or permanent disability so as not to be able to engage in medical practice, the [~~participant~~ recipient] or his personal representative [~~, upon repayment of the total amount of scholarship funds received plus applicable interest, may be relieved of his obligation under the contract to engage in medical practice. For participants completing part of the PA obligation prior to becoming permanently disabled or in the event of death, the total amount of scholarship funds owed shall be reduced by the proportion of obligated years served. The obligation to make restitution may be waived by the board upon application of the participant or the participant's personal representative to the board~~ may request the board waive his obligation under the contract as described in 12VAC5-525-130].

F. All default payments shall be made payable to the Commonwealth of Virginia.

12VAC5-525-50. Number of applications per student.

Scholarships are awarded for single academic years. However, the same student may, after demonstrating satisfactory progress in his studies, which is demonstrated by a cumulative grade point average of [at least] 3.0, apply for and receive scholarship awards for a succeeding academic year or years. No student shall receive scholarships for more than a total of [~~four~~ three] years.

12VAC5-525-60. Amounts of scholarships.

The [amount and] number of [~~scholarships awarded shall be dependent upon the amount of money appropriated by the General Assembly, the amount of funds available within the Physician Assistant Scholarship Fund administered by the board,~~ scholarship awards shall be determined annually as provided in the Appropriation Act] and [based on] the number of qualified applicants. Each [~~participant~~ recipient] shall receive an award of $5,000 per year [, based upon the availability of funds].

12VAC5-525-70. How to apply.

Eligible applicants shall submit a complete application made available by the department on the department's website [at http://www.vdh.virginia.gov]. A complete application shall include documentation of all eligibility requirements. The deadline for submission of the application shall be announced by the department on the department's website.

12VAC5-525-80. Selection criteria.

Applicants shall be competitively reviewed and selected for participation in the Physician Assistant Scholarship Program based upon the following criteria pursuant to § 32.1-122.6:03 of the Code of Virginia:

1. Qualifications. All of an individual's professional qualifications and competency to practice in an underserved area will be considered, including eligibility for Virginia licensure, professional achievements, and other indicators of competency received from supervisors, program directors, or other individuals who have previously entered into an employment contract with the individual.

2. Virginia residents. Preferential consideration shall be given to individuals who are or have been Virginia residents (verification will be obtained by the Virginia Physician Assistant Scholarship Program).

3. Residents of medically underserved areas. Preferential consideration shall be given to individuals who reside in rural, Virginia medically underserved areas, or health professional shortage areas (verification shall be obtained by the Virginia Physician Assistant Scholarship Program).

12VAC5-525-90. Scholarship contract.

Applicants selected to receive scholarship awards by the physician assistant scholarship committee shall sign and return a written contract to the department by the specified deadline date. Failure to return the contract by the specified deadline date may result in the award being rescinded. At minimum, the scholarship contract shall include the following elements:

1. The total amount of the award and the award period;

2. Agreement to pursue a degree at an accredited PA program in the Commonwealth of Virginia that is approved by the board;

3. Agreement to begin continuous full-time employment within 180 days of the recipient's [~~graduation~~ completion of training];

4. Agreement to comply with all reporting requirements;

5. Agreement to the terms of service requiring continuous full-time primary care medical practice in the

Commonwealth for a specified period of time and the terms and conditions associated with a breach of contract;

6. Signature of the applicant; and

7. Signature of the commissioner or his designee.

A recipient may terminate a contract while enrolled in school after notice to the board and upon repayment within 90 days of the entire amount of the scholarship [award] plus interest.

12VAC5-525-100. Practice site selection.

Each recipient shall perform his service obligation at a practice site in either a health professional shortage area or a Virginia medically underserved area. The [~~participant~~ recipient] shall agree to provide health services without discrimination, regardless of a patient's ability to pay. Maps of health professional shortage areas and Virginia medically underserved areas shall be available on the department's website [at http://www.vdh.virginia.gov].

12VAC5-525-105. Change of practice site.

Should any [~~participant~~ recipient] find that he is unable to fulfill the service commitment at the practice site to which he has committed to practice, he may request approval of a change of practice site. Such requests shall be made in writing. The department in its discretion may approve such a request. All practice sites, including changes of practice sites, shall be selected with the approval of the commissioner.

[Failure of the recipient to transfer to another site shall be deemed to be a breach of the contract.

In the event of a breach of contract and in accordance with the terms of the contract, the recipient shall make default payments as described in 12VAC5-510-30.]

In the event of a dispute between the [~~participant~~ recipient] and the practice site, every effort shall be made to resolve the dispute before reassignment will be permitted.

12VAC5-525-110. Reporting requirements.

A. Each [~~participant~~ recipient] shall provide information as required by the department to verify compliance with the practice requirements of the PA scholarship program (e.g., verification of employment in a primary care setting form once every [~~six months)~~ 180 days)].

B. Each [~~participant~~ recipient] shall promptly notify the department in writing within 30 days if any of the following events occur:

1. [~~Participant~~ Recipient] changes name;

2. [~~Participant~~ Recipient] changes address;

3. [~~Participant~~ Recipient] changes practice site. [~~Participant~~ Recipient] is required to request in writing and obtain prior approval of changes in practice site;

4. [~~Participant~~ Recipient] no longer intends or is able to fulfill service obligation as a PA in the Commonwealth;

5. [~~Participant~~ Recipient] ceases to practice as a PA; or

6. [~~Participant~~ Recipient] ceases or no longer intends to complete his PA academic program.

12VAC5-525-120. Breach of contract.

The following shall constitute a breach of contract:

1. The recipient fails to complete his PA studies;

2. [The recipient leaves the Commonwealth of Virginia prior to completing studies or service obligation;

3.] The recipient fails to begin or complete the term of obligated service under the terms and conditions of the scholarship contract;

[~~3.~~ 4.] The recipient falsifies or misrepresents information on the program application, the verification of employment forms, or other required documents; and

[~~4.~~ 5.] The recipient's employment is terminated for good cause as determined by the employer and confirmed by the department. If employment is terminated for reasons beyond the [~~participant's~~ recipient's] control (e.g., closure of site), the [~~participant~~ recipient] shall transfer to another site approved by the board in the Commonwealth within [~~six months~~ 180 days] of termination. Failure of [~~participant~~ recipient] to transfer to another site shall be deemed to be a breach of the contract.

In the event of a breach of contract and in accordance with the terms of the contract, the recipient shall make default payments as described in 12VAC5-525-40. In the event of a breach of contract where the recipient has partially fulfilled his obligation, the total amount of reimbursement shall be prorated by the proportion of obligation completed.

12VAC5-525-130. [~~Deferment and~~ Deferments,] waivers [, and variances].

A. [In the event that a recipient is unable to find employment at an approved practice site or complete physician assistant school, a recipient may request a deferment of service obligation to secure employment at an approved practice site or to complete physician assistant school in Virginia.]

If the [~~participant~~ recipient] is in default due to death or permanent disability so as not to be able to engage in primary care practice in a region designated as a HPSA or VMUA in the Commonwealth, the [~~participant~~ recipient] or his personal representative may be relieved of his obligation under the contract to engage in practice, upon repayment of the total amount of scholarship [award] received plus applicable interest. For [~~participants~~ recipients] completing part of the obligation prior to becoming permanently disabled or in the event of death, the total amount of scholarship funds owed shall be reduced by the proportion of obligated years served.

The obligation to make restitution may be waived by the board upon application of the [~~participant~~ recipient] or the [~~participant's~~ recipient's] personal representative to the board.

B. Individual cases of undue hardship may be considered for a variance by the board of payment or service pursuant to § 32.1-12 of the Code of Virginia.

C. [~~All requests for deferments, waivers, or variances must be submitted in writing to the department for consideration and final disposition by the board~~ A variance, waiver, or deferment request must be submitted in writing to the department and be approved by the board. These requests shall be submitted on a Variance/Hardship Form].

12VAC5-525-140. Fulfillment after default payments.

In the event that a recipient, in accordance with the terms of the contract, fully repays the Commonwealth for part or all of any scholarship [award] because of breach of contract and later fulfills the terms of the contract after repayment, the Commonwealth shall reimburse the award amount repaid by the recipient minus applicable interest and fees.

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 (12VAC5-525)

[~~Verification of Employment form (rev. 6/2016)~~

~~Physician Assistant Scholarship Program Application (includes Application Checklist and Requirements) (rev. 11/2016)~~

Verification of Employment form (rev. 1/2022)

Physician Assistant Scholarship Program Application (includes Application Checklist and Requirements) (rev. 1/2022)

Variance/Hardship Form (rev. 1/2022)]

VA.R. Doc. No. R15-4416; Filed December 22, 2021, 8:23 p.m.

Proposed Regulation

Title of Regulation: **12VAC5-630. Private Well Regulations (amending 12VAC5-630-10, 12VAC5-630-20, 12VAC5-630-30, 12VAC5-630-50 through 12VAC5-630-120, 12VAC5-630-140 through 12VAC5-630-330, 12VAC5-630-350, 12VAC5-630-360, 12VAC5-630-380 through 12VAC5-630-460; adding 12VAC5-630-331, 12VAC5-630-431; repealing 12VAC5-630-40, 12VAC5-630-370, 12VAC5-630-480).**

Statutory Authority: §§ 32.1-12 and 32.1-176 of the Code of Virginia.

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: March 18, 2022.

Agency Contact: Lance Gregory, Director, Division of Onsite Sewage and Water Services, Virginia Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7491, FAX (804) 864-7475, or email lance.gregory@vdh.virginia.gov.

Basis: Sections 32.1-12 and 32.1-176.4 of the Code of Virginia provide that the State Board of Health has the duty to protect the public health and to ensure that groundwater resources are not adversely affected by the construction and location of private wells.

Purpose: The private well industry has experienced significant advancements since promulgation of Private Well Regulations (12VAC5-630) in 1990, including improvements in the materials and equipment used to construct private wells, changes in the regulatory oversight of water well systems providers, and changes in other regulations having nexus with 12VAC5-630. New information and research has improved understanding of risk to public health and groundwater resources with regards to the location and construction of private wells. Examples include advancements in alternative onsite sewage treatment system design, promulgation of standards related to reclaimed water, federal guidelines related to emerging contaminants, regulation of groundwater withdrawal by the Department of Environmental Quality, and activities such as hydraulic fracturing and underground injection of treated effluent. Stakeholders have also identified inconsistencies between 12VAC5-630 and other regulations related to private wells and groundwater resources, including references to repealed sections of the Code of Virginia and the need to correlate to other regulatory requirements for wells constructed in designated groundwater management areas. The proposed amendments update private well location and construction criteria recognizing current industry standards and improve consistency with other regulations and protection of public health and groundwater resources. The regulatory change is essential to public health and safety because some of the current regulations are based on outdated location and construction standards.

Substance: The following substantive changes and new substantive provisions are proposed to the existing regulatory language:

Revision and addition of definitions for consistency with the Code of Virginia, other regulations related to private wells and groundwater resources, and current industry standards. Revision of administrative processes to reflect current law and to improve consistency with other department regulations, such as the Sewage Handling and Disposal Regulations (12VAC5-610), which establish minimum separation distance from private wells. Clarification of grout materials.

Improvement of standards regarding well abandonment protocols. Revision of the separation distance requirements between sources of contamination and abandoned wells. Improvement of consistency between private well construction reporting requirements and well construction and reporting requirements in the Groundwater Withdrawal Regulations (9VAC25-610). Removal or revision of references to obsolete or repealed regulations and statutes. Revision of current construction standard exemptions for Class IIIC and Class IV wells. Clarification of disinfection procedures and standards for yield and storage requirements. Revision of the Private Well Classification System so that Class IV well construction standards mirror Class III wells. Establishment of a standard procedure for converting existing Class IV wells to Class III wells. Identification of reasonable exemptions (e.g., dewatering wells). Clarification of regulatory authority relative to observation wells. Establishment of minimum private well construction criteria based on geologic conditions, such as requiring a mechanical seal at the termination of well casing into bedrock. Requirement that all private well components meet national lead-free standards. Establishment of criteria to acknowledge nationally recognized standards and certifications (e.g., National Sanitation Foundation) for approval of private well components, including standard methods, materials, products, analytical, and permeability standards. Establishment of a minimum separation distance from utilities, property lines, permanently abandoned onsite sewage systems, reuse water lines, and possible other sources of contamination. Establishment of quality standards for water used during well construction.

Issues: Primary advantages include clarity in requirements for well location and construction, which benefit both water well systems providers and well owners, and enhanced protection of public health and groundwater quality by means of improved setback distance requirements. Disadvantages to the public are not apparent in the proposed revisions.

Primary advantages and disadvantages to the agency or Commonwealth of the action are that revisions will assist the agency in making improvements to the permitting process by addressing inconsistencies in the existing regulation. The revisions will assist the Commonwealth by enhanced protection of public health and the environment. Disadvantages are not apparent in the proposed revisions.

Department of Planning and Budget's Economic Impact Analysis:

Adverse impact notification sent to Joint Commission on Administrative Rules, House Committee on Appropriations, and Senate Committee on Finance (§ 2.2-4007.04 C of the Code of Virginia): Yes[1] Not Needed

If/when this economic impact analysis (EIA) is published in the Virginia Register of Regulations, notification will be sent to each member of the General Assembly (§ 2.2-4007.04 B of the Code of Virginia).

Summary of the Proposed Amendments to Regulation. As the result of a periodic review and advice from the Office of the Attorney General, the State Board of Health (Board) proposes numerous amendments to the Private Well Regulations (regulation). Beyond clarifying changes and additions, the Board proposes to (i) create Class IV (private wells that are not used for drinking water) well subclasses that mirror Class III (private wells that are used for drinking water) well subclasses, (ii) change the required minimum distance for a private well from a building foundation, (iii) provide a shorter minimum distance from a permanently abandoned sewage disposal system than from an active system,(iv) reduce the validity time for construction permits, (v) shorten the time with which an appeal must be filed, (vi) require that materials used in private wells be lead free, (vii) require that water used during well construction be obtained from a pure water source or be disinfected, (viii) require that when PVC casing is terminated in bedrock, the well casing be sealed using a mechanical seal or packer, (ix) provide an additional method to abandon a bored well so that it is no longer considered a well with respect to separation distances, and (x) eliminate the exemption for dewatering wells from the regulation.

Background. The regulation establishes the minimum location and construction requirements for private wells installed in the Commonwealth. On August 17, 2016, the Virginia Department of Health (VDH) began a periodic review of the regulation. VDH also formed a Private Well Regulations Workgroup in August 2016. The purpose of the workgroup was to assist VDH in the development of proposed revisions to the regulation.

Estimated Benefits and Costs

Classification. In the regulation, Class III wells are private wells constructed to be used as a source of drinking water. There are three subclasses: 1) Class IIIA - drilled wells in which the annular space around the casing is grouted to a minimum depth of 20 feet, 2) Class IIIB - drilled wells in which the casing is installed to a minimum depth of 50 feet and the annular space around the casing is grouted to at least 50 feet, and 3) Class IIIC - drilled, bored, driven or jetted wells other than Class IIIA and Class IIIB. Class IV wells are private wells constructed for a purpose other than use as a source of drinking water. The current regulation has no subclasses for Class IV.

The regulation includes minimum required distances between wells and specified structures or topographical features. These minimum distances are to help prevent contamination.

For some of the specified structures or topographical features, the minimum distance is shorter for Class IIIA and Class IIB than for Class IIIC and Class IV. The attributes of Class IIIA and Class IIB enable them to be safely closer to the specified structures or topographical features than Class IIIC can be. The Board proposes to create subclasses for Class IV that are identical in description of attributes (other than use for drinking water) to the Class III subclasses. Under the proposed regulation, Class IVA and Class IVB would have the same shorter minimum distances that Class IIIA and Class IIB have.

This would be beneficial for owners of future wells that will not be used for drinking water that have the A or B attributes in that they would have greater flexibility in locating their well. Since Class IVA and Class IVB have the same relevant attributes as Class IIIA and Class IIIB wells, this should not effectively increase health risk.

Minimum Separation Distance

In the current regulation, the minimum required distance between private wells (of all classifications) and termite-treated building foundations is 50 feet. The minimum required distance between private wells (of all classifications) and building foundations that have not been termite treated is 10 feet. Based on a joint investigation conducted by VDH's Office of Environmental Health Services and Office of Epidemiology, the agency believes that the current technology used in termite treatments does not produce a contamination threat that would necessitate greater separation distances. Thus, the Board proposes to not distinguish between building foundations that have or have not been termite treated. The Board does propose to require that the minimum distance be 15 feet rather than 10 feet.

Minimum Distance between Private Well and Building Foundation

Building Foundation	Current Regulation	Proposed Regulation
Untreated	10 feet	15 feet
Termite Treated	50 feet	15 feet

The proposal to not distinguish between building foundations that have or have not been termite treated would produce much greater location flexibility for planned private wells near building foundations that have been termite treated. Increasing the minimum distance from 10 to 15 feet would moderately reduce location flexibility for planned private wells near untreated building foundations.

The current regulation applies the same required private well setback from a permanently abandoned sewage disposal system as it does to an active sewage disposal system: 100 feet for Class IIIC or IV, 50 feet for Class IIIA or B. Under the proposed regulation, the required private well setback from a permanently abandoned sewage disposal system is 25 feet, regardless of classification. This would produce much greater location flexibility for planned private wells near a permanently abandoned sewage disposal system.

Time. In the current regulation, construction permits for private wells are valid for 54 months. The Board proposes to have construction permits be valid for 18 months, which can be renewed once for an effective total of 36 months. The permit fee remains at $300; there is no additional fee for renewing. VDH reports that 88% of private wells are installed within 18 months, and 95% of private wells are installed within 36 months. So most owners and water well systems providers (businesses that install wells) would not be affected. Conditions can significantly change within three years. What may have been safe conditions for a well when the permit is first issued may no longer be so more than three years later. Thus, this proposed amendment may be beneficial in that it may reduce the likelihood that wells are constructed that produce contaminated water. For approximately 5% of owners it may cost an additional $300 fee and the time associated with applying for and receiving another construction permit.

The regulation allows for appeals from a denial, revocation, or voidance of a construction permit, inspection statement, or request for variance for a private well. The current regulation requires that the appeal be made within 60 days of the date of the denial, revocation or voidance. The Board proposes to reduce the deadline to within 30 days. This makes it more difficult for owners (or water well systems providers) to appeal in that preparing grounds for appeal may be time consuming; but it may also reduce VDH staff time expended in that there may be fewer appeals made.

Other. The Board proposes to specify that materials used in private wells be lead free. According to VDH, most or all water well systems providers are already using lead free materials. To the extent that any are using materials with lead, this proposed amendment may be beneficial in that it may reduce health risk associated with lead.

The Board proposes to specify that water used during well construction be obtained from a suitable source or the well being constructed. A suitable source means a pure water source, or, when a pure water source is not locally available, water taken from another source then disinfected using compounds meeting NSF/ANSI Standard 60 environmental specifications. Again, VDH believes most or all water well systems providers are already meeting this proposed requirement. To the extent that any water well systems providers are not, this proposed amendment may be beneficial in that it may reduce the likelihood of contamination.

The Board also proposes to specify that when PVC casing is terminated in bedrock, the well casing shall be sealed using a mechanical seal or packer. According to VDH, this is standard industry practice. Not doing so risks contamination. Depending on the well diameter, the cost of a single mechanical seal or packer ranges between $15 and $175 retail.[2] To the extent that any water well systems providers are not sealing the well casing using a mechanical seal or packer when PVC casing is terminated in bedrock, this proposed amendment would be beneficial in that it would likely reduce the chance of contamination.

Under the current regulation, bored wells can only be abandoned via the clean fill method.[3] The Board proposes to allow an additional option, the grout abandonment method.[4] To the extent that the grout abandonment method is less costly or otherwise preferable for some owners and water well systems providers, this proposed amendment is beneficial.

A dewatering well is a driven well constructed for the sole purpose of lowering the water table and kept in operation for a period of 60 days or less. Dewatering wells are used to allow construction in areas where a high water table hinders or prohibits construction and are always temporary in nature. The current regulation exempts dewatering wells from construction permits and construction requirements. Pursuant to advice from the Office of the Attorney General, the Board proposes to eliminate these exemptions. This proposal would very likely increase construction costs for dewatering wells. VDH believes that fewer than ten projects would be affected per year.

Businesses and Other Entities Affected. The proposed amendments potentially affect homeowners using private wells as a source of drinking water, individuals and businesses using private wells for nonpotable uses, business using wells for drinking water that do not meet the definition of a waterworks,[5] water well systems providers that install private wells, and property owners and contractors that use dewatering wells. VDH estimates that there are approximately 700,000 homes in Virginia that rely on a private well as a source of drinking water. VDH issues approximately 500 to 600 permits per year for agricultural wells, irrigation wells, geothermal heat pump wells, and other nonpotable uses. The agency estimates that there are approximately 500 water well systems providers in the Commonwealth.

Localities[6] Affected.[7] The proposed regulation applies equally throughout the Commonwealth. Localities named in § 32.1-176.4 A of the Code of Virginia (Counties of Fairfax, Goochland, James City, Loudoun, Powhatan, and Prince William and the City of Suffolk) and § 32.1-176.5 B of the Code of Virginia (Counties of Albemarle, Bedford, Chesterfield, Clarke, Culpeper, Fairfax, Fauquier, Goochland, James City, Loudoun, Orange, Powhatan, Prince William, Rappahannock, Stafford, Warren, and York, and the Cities of Manassas, Manassas Park, Suffolk, and Virginia Beach) and having authority to adopt ordinances establishing standards pertaining to private well location, testing of water, and well abandonment may need to modify ordinances to be consistent with the proposed regulatory changes.

Projected Impact on Employment. The proposed amendments would not likely substantially affect total employment.

Effects on the Use and Value of Private Property. The proposal to create Class IV well subclasses that mirror Class III well subclasses produces greater flexibility for property owners in locating wells that are not used for drinking water. This may reduce real estate development costs. The proposed substantial decrease in minimum distance between private wells (of all classifications) and termite-treated building foundations would increase location flexibility for all types of private wells that are near termite-treated building foundations, also potentially reducing real estate development costs. The proposal to provide a shorter minimum distance from a permanently abandoned sewage disposal system than from an active system would increase location flexibility for all types of private wells that are near a permanently abandoned sewage disposal system, which also may reduce real estate development costs for private wells near such systems. The proposal to allow the grout abandonment method for abandoning bored wells may reduce costs for owners of land with one or more well that they wish to abandon.

The proposal to no longer exempt dewatering wells from construction permits and construction requirements would very likely increase real estate development costs on property where such wells are necessary. The proposed five-foot increase in minimum distance between private wells (of all classifications) and nontreated building foundations is a small increase, but may nevertheless preclude a least-costly well location.

Adverse Effect on Small Businesses.[8] Types and Estimated Number of Small Businesses Affected. The proposed amendments potentially affect the thousands of small businesses that use private wells for nonpotable uses, or use wells for drinking water that do not meet the definition of a waterworks. The approximate 500 water well systems providers, most of which are likely small businesses, are also affected, as are small contractors that use dewatering wells.

Costs and Other Effects. The proposal to no longer exempt dewatering wells from construction permits and construction requirements would very likely increase real estate development costs on property owned by small businesses where such wells are necessary. The proposed five-foot increase in minimum distance between private wells and nontreated building foundations may preclude a least-costly well location, increasing development costs for some small businesses. The proposal to reduce the validity time for construction permits may cause some small businesses to incur an additional $300 fee and the time associated with applying for and receiving another construction permit.

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

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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]Source: Virginia Department of Health

[3]The specifics of the clean fill method can be seen here: https://townhall.virginia.gov/l/ViewXML.cfm?textid=13418

[4]The specifics of the grout abandonment method can also be seen at https://townhall.virginia.gov/l/ViewXML.cfm?textid=13418

[5]Section 32.1-167 of the Code of Virginia defines "waterworks" as "a system that serves piped water for human consumption to at least 15 service connections or 25 or more individuals for at least 60 days out of the year. "Waterworks" includes all structures, equipment, and appurtenances used in the storage, collection, purification, treatment, and distribution of pure water except the piping and fixtures inside the building where such water is delivered."

[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]Section 2.2-4007.04 of the Code of Virginia defines "particularly affected" as bearing disproportionate material impact.

[8]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."

Agency's Response to the Economic Impact Analysis: The agency concurs with the economic impact analysis submitted by the Department of Planning and Budget. The Virginia Department of Health would like to provide the following point of clarification with regards to dewatering wells.

The economic impact analysis (page 5, paragraph 4) states "(t)he current regulation exempts dewatering wells from construction permits and construction requirements. Pursuant to advice from the Office of the Attorney General, the Board proposes to eliminate these exemptions."

The economic impact analysis (page 7, paragraph 2) states "(t)he proposal to no longer exempt dewatering wells from construction permits and construction requirements would very likely increase real estate development costs on property where such wells are necessary."

To clarify, the proposed revision to 12VAC5-630-30: the applicability of the regulation excludes dewatering wells abandoned within 60 days of construction from the requirements of the chapter (12VAC5-630-30 B 10). Based on this proposed revision, the discontinuation of the exemption of dewatering wells from construction permits and requirements will apply only to dewatering wells intended for usage exceeding 60 days.

Summary:

The proposed amendments include (i) revising and adding definitions for consistency with the Code of Virginia, other regulations related to private wells and groundwater resources, and current industry standards; (ii) revising administrative processes to reflect current law and to improve consistency with other department regulations, such as the Sewage Handling and Disposal Regulations (12VAC5-610), which establish minimum separation distance from private wells; (iii) clarifying grout materials; (iv) revising well abandonment protocols and the separation distance requirements between sources of contamination and abandoned wells; (v) making private well construction reporting requirements and well construction and reporting requirements in the Groundwater Withdrawal Regulations (9VAC25-610) consistent; (vi) removing references to obsolete or repealed regulations and statutes; (vii) revising construction standard exemptions for Class IIIC and Class IV wells; (viii) clarifying disinfection procedures and standards for yield and storage requirements; (ix) revising the Private Well Classification System so that Class IV well construction standards mirror Class III wells; (x) establishing a standard procedure for converting existing Class IV wells to Class III wells; (xi) creating reasonable exemptions to the regulations; (xii) clarifying regulatory authority over observation wells; (xiii) establishing minimum private well construction criteria based on geologic conditions, such as requiring a mechanical seal at the termination of well casing into bedrock; (xiv) requiring that all private well components meet national lead-free standards; (xv) establishing criteria to acknowledge nationally recognized standards and certifications for approval of private well components, including standard methods, materials, products, analytical, and permeability standards; (xvi) establishing a minimum separation distance from utilities, property lines, permanently abandoned onsite sewage systems, reuse water lines, and possible other sources of contamination; and (xvii) establishing quality standards for water used during well construction.

12VAC5-630-10. Definitions.

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

"Abandoned well" means a private well ~~whose~~ from which the pump has been disconnected for reasons other than repair or replacement, or ~~whose~~ the use of which has been discontinued or which has been pronounced abandoned by the owner. A temporarily abandoned well is a well that is intended to be returned to service as a source of water at some future time. A permanently abandoned well is a well that is not intended to be used ~~as a source of water at any future time~~. Abandoned ~~wells must meet the~~ well requirements ~~of~~ are found in 12VAC5-630-450.

"Agent" means a legally authorized representative of the owner.

"Agricultural operation" means an operation devoted to the bona fide production of crops, animals, or fowl, including the production of fruits and vegetables of all kinds; meat, dairy, and poultry products; nuts, tobacco, nursery and floral products; and the production and harvest of products from silviculture activity.

"Annular space" means the space between the well bore ~~hole~~ wall and the outside of a water well casing pipe~~,~~ or between a casing pipe and a liner pipe.

"Aquifer" means a geologic formation, group of formations, or part of a formation~~,~~ that ~~transmits water~~ has the capability to store and transmit water in sufficient quantity to constitute a usable supply source.

"Bedrock" means ~~any solid rock underlying soil, sand, or clay~~ the solid, potentially fractured and fissured rock formations that occur beneath soils, underlying sediment deposits, or weathered material.

"Beneficial use" means use of water that includes domestic, agricultural, commercial, industrial, and investigative purposes.

"Bioretention pond" means a best management practice structure engineered for the purpose of reducing the pollutant load in storm water runoff to surface water and groundwater systems.

"Biosolids" means solid, semisolid, or liquid materials removed from municipal sewage and treated to be suitable for recycling as fertilizer.

"Board" means the State Board of Health.

"Bored well" means a well that is excavated by means of a soil auger (hand or power) as distinguished from a well which is drilled, driven, dug, or jetted.

"Casing" means a hollow cylindrical device (typically steel, plastic, or concrete) that is installed in a well to maintain the well opening and to provide a seal.

"Clean fill" means any combination of undisturbed soil and natural earth material, commercially available quarried sand or gravel product, and cuttings from the well being constructed, provided that the materials do not contain contaminated media. In this context, undisturbed soil and natural earth materials refers to unconsolidated mineral and organic material on the immediate surface of the Earth that developed naturally on the property on which it originates.

"Closed-loop ground-source heat pump well" means a well consisting of a sealed loop of plastic pipe buried vertically beneath the earth's surface to allow heat transfer between the fluid in the pipe and the earth. Horizontal closed-loop ground source heat pump pipe configurations installed in trenches, including those which may intercept shallow groundwater, are excluded.

"Coliform" means a broad group of naturally occurring bacteria species found in soils and rocks. Coliform bacteria are more prevalent in near surface soils, and their presence in well water may indicate the possible presence of more harmful pathogens.

"Collapsing material" means ~~any~~ soil or gravel material ~~which~~ that collapses upon itself forming a seal with the casing and leaves no voids around the casing.

"Commercially dependent well" means a well that is the sole source of water for a commercial facility that requires the water from the well for continued operation. Examples include wells serving an ice plant, a car wash facility, or as irrigation for commercial nurseries, or agricultural wells that provide water for livestock or irrigation.

"Commissioner" means the State Health Commissioner, who is the chief executive officer of the board, a deputy commissioner, or ~~his~~ a subordinate who has been delegated powers in accordance with subdivision 2 of 12VAC5-630-90 ~~B~~ of this chapter.

~~"Confined aquifer" means an aquifer that is confined by an overlying impermeable formation.~~

"Consolidated rock" means a formation consisting entirely of a natural rock formation that contains no soil and does not collapse against the well casing.

"Construction dewatering" means the process of draining an excavated area that is flooded with rain water or groundwater before construction can start.

"Construction of wells" means acts necessary to locate and construct private wells~~, including the location of private wells, the boring, digging, drilling, or otherwise excavating of a well hole and the installation of casing with or without well screens, or well curbing~~.

"Contaminated media" means soil, sediment, dredged material, or debris that, as a result of a release or human use, has absorbed or adsorbed physical, chemical, or radiological substances at concentrations above those consistent with nearby or undisturbed soil or natural earth materials.

"Controlled low strength material" or "flowable fill" means a slurry comprised of cement, water, and fine aggregate or filler (including coal ash, foundry sand, quarry fines, and baghouse dust in any combination).

"Cuttings" means the solid material, saturated or unsaturated, removed from a borehole drilled by rotary, percussion, or auger methods.

"Deep well ejector pump system" means a well that utilizes a casing adapter and a deep well ejector. These wells must maintain a constant vacuum to operate.

~~"Dewatering well" means a driven well constructed for the sole purpose of lowering the water table and kept in operation for a period of 60 days or less. Dewatering wells are used to allow construction in areas where a high water table hinders or prohibits construction and are always temporary in nature.~~

"Department" means the Virginia Department of Health.

"Deputy commissioner" means a person who serves as a deputy commissioner in accordance with § 32.1-22 of the Code of Virginia.

"DEQ" means the Virginia Department of Environmental Quality.

"Disinfection" means ~~the destruction of all~~ a process that inactivates or destroys pathogenic organisms in water by use of a disinfectant.

"Division" means the Division of On-Site Sewage and Water Services, Environmental Engineering, and Marina Programs within the department.

"District health department" means a consolidation of local health departments as authorized in § 32.1-31 C of the Code of Virginia.

"DPOR" means the Virginia Department of Professional and Occupational Regulation.

"Drilled shallow well suction pump system" means a drilled well two inches or less in diameter that utilizes an offset pump to draw water from the well through the casing. These wells must maintain a constant vacuum in order to operate.

"Drilled well" means a well that is excavated wholly or in part by means of a drill (either percussion or rotary) ~~which~~ that operates by cutting or abrasion.

"Driven well" means a well that is constructed by driving a pipe, at the end of which there is a drive point and screen, without the use of ~~any~~ a drilling, boring, or jetting device.

"Dug well" means a well that is excavated by means of picks, shovels, or other hand tools~~,~~ or by means of a power shovel or other dredging or trenching machinery, as distinguished from a bored, drilled, driven, or jetted well.

"Emergency well replacement" means the replacement of an existing private drinking water well, heat pump well, or commercially dependent well that has failed to deliver the water needed for its intended use. ~~Such~~ The failure requires the drilling of a new well or extensive modifications to the existing well. The replacement of failed noncommercial irrigation wells~~,~~ and other types of private wells are not considered emergencies.

"Gravel pack" means sand or gravel placed outside a well screen in a well to assist the flow of water into the well screen and to inhibit clogging of the screen.

~~"Ground water"~~ "Groundwater" means ~~any~~ water, except capillary moisture, beneath the land surface in the zone of saturation or beneath the bed of ~~any~~ a stream, lake, reservoir or other body of surface water within the boundaries of this Commonwealth, whatever may be the subsurface geologic structure in which ~~such~~ the water stands, flows, percolates, or otherwise occurs.

"Groundwater management area" means a geographically defined groundwater area in which the State Water Control Board has deemed the levels, supply, or quality of groundwater to be adverse to public welfare, health, and safety pursuant to 9VAC25-600.

"Grout" means ~~any~~ a stable, impervious bonding material, reasonably free of shrinkage, ~~which~~ that is capable of providing a watertight seal in the annular spaces of a water well throughout the depth required, to protect against the intrusion of objectionable matter.

"Human consumption" means drinking, food preparation, dishwashing, bathing, showering, hand washing, teeth brushing, and maintaining oral hygiene.

"Jetted well" means a well that is excavated using water pumped under pressure through a special washing point to create a water jet ~~which~~ that cuts, abrades, or erodes material to form the well.

"Lead free" means the following:

1. When used with respect to solders and flux, refers to solder and flux containing not more than 0.2% lead.

2. When used with respect to pipes, pipe fittings, plumbing fittings, and plumbing fixtures, refers to the weighted average of wetted surfaces of pipes, pipe fittings, plumbing fittings, and plumbing fixtures containing not more than 0.25% lead.

"Local health department" means the department established in each city and county in accordance with § 32.1-30 of the Code of Virginia.

"Noncollapsing material" means soil or gravel material ~~which~~ that can maintain an open well bore ~~hole~~ long enough to grout the annular space between a well and the well bore ~~hole~~. For the purpose of this chapter, soil or gravel material ~~which~~ that collapsed upon itself but created voids around the casing is considered noncollapsing material.

"Nonpublic water" means pure water that is not provided by a waterworks.

"Observation well" or "monitoring well" means a well constructed to measure hydrogeologic parameters~~, such as the fluctuation of water levels,~~ or for scientific monitoring of the quality of ~~ground water~~ groundwater, or for both purposes.

"Owner" means ~~any person, who owns, leases,~~ the Commonwealth or any of its political subdivisions, including sanitary districts, sanitation district commissions and authorities, an individual, a group of individuals acting individually or as a group, a public or private institution, corporation, company, partnership, firm, or association that owns or proposes to own or lease a private well.

"Person" means ~~any and all persons, including individuals, firms, partnerships, associations, public or private institutions, municipalities or political subdivisions, governmental agencies, or private or public corporations organized under the law of this Commonwealth or any other state or country~~ an individual, corporation, partnership, association, or any other legal entity.

"Pollutant" means substances, including solid waste, sewage, effluent, radioactive materials, petroleum products, manufactured chemical products, and industrial byproducts, that can detrimentally affect the quality of water.

"Private well" means ~~any~~ a water well constructed for a person on land ~~which~~ that is owned or leased by that person and is usually intended for household, ~~ground water~~ groundwater source heat pump, agricultural use, industrial use, or other nonpublic water well.

"Pure water" means water of a quality suitable for human consumption that is (i) sanitary and normally free of minerals, organic substances, and toxic agents in excess of reasonable amounts and (ii) adequate in quantity and quality for the minimum health requirements of the persons served.

"Reclaimed water" means treated wastewater that can be used for beneficial purposes, determined by the degree of treatment achieved.

"Remediation well" means an observation or monitoring well in use for recovery or treatment of one or more pollutants.

"Replacement well" means a well being constructed to take the place of an existing well that is being taken out of service and is being abandoned.

"Sanitary survey" means an investigation of ~~any condition that may affect public health~~ obvious sources of potentially toxic or dangerous substances within 200 feet of a proposed private well.

"Screen" means the intake section of a well casing that obtains water from an unconsolidated aquifer providing for the water to flow freely and adding structural support to the bore hole. Screens are used to increase well yield or prevent the entry of sediment, or both.

"Sewage" means water carried and nonwater carried human excrement, kitchen, laundry, shower, bath, or lavatory wastes separately or together with ~~such~~ underground, surface, storm and other water and liquid industrial wastes as may be present from residences, buildings, vehicles, industrial establishments, or other places.

"Sewage disposal system" means a sewerage system or treatment works designed not to result in a point source discharge.

"Sewer" means ~~any sanitary or combined sewer~~ a pipe or conduit used to convey sewage or ~~municipal or~~ industrial ~~wastes~~ waste streams.

"Sewerage system" means pipelines or conduits, pumping stations and force mains, and all other construction, devices, and appliances appurtenant thereto~~,~~ used for the collection and conveyance of sewage to a treatment works or point of ultimate disposal.

"Subsurface soil absorption" means a process ~~which~~ that utilizes the soil to treat and dispose of sewage effluent.

"Treatment works" means ~~any~~ a device or system used in the storage, treatment, disposal, or reclamation of sewage or combinations of sewage and industrial wastes, including ~~but not limited to~~ pumping, power, and other equipment and appurtenances, septic tanks, and ~~any~~ works, including land, that are or will be (i) an integral part of the treatment process or (ii) used for the ultimate disposal of residues or effluents resulting from ~~such~~ the treatment.

"Tremie pipe" means a tube through which grout, filter media, or other flowing material is placed by gravity feed or pumping. The pipe is placed at the lowermost part of the well feature being treated (inner casing or annular space), and the bottom of the pipe remains submerged in the material being placed as the pipe is raised in order to prevent uneven distribution or bridging.

"Variance" means a conditional waiver of a specific regulation ~~which~~ that is granted to a specific owner relating to a specific situation or facility and may be for a specified time period.

"Water quality" means the chemical, physical, bacteriological, and radiological characteristics of water with respect to its suitability for a particular purpose.

"Water table" means the uppermost surface of ~~ground water~~ groundwater saturation in an unconfined aquifer. The level in the saturated zone at which the pressure is equal to atmospheric pressure.

"Water well" or "well" means ~~any~~ an artificial opening or artificially altered natural opening, however made, by which ~~ground water~~ groundwater is sought or through which ~~ground water~~ groundwater flows under natural pressure or is intended to be artificially drawn~~; provided this definition shall not include wells drilled for the following purposes: (i) exploration or production of oil or gas, (ii) building foundation investigation and construction, (iii) elevator shafts, (iv) grounding of electrical apparatus, or (v) the modification or development of springs~~.

"Water well systems" means the water well to reach groundwater and the well pump and tank, including pipe and wire, up to and including the pint of connection to plumbing and electrical systems.

"Water well systems provider" means the person certified by DPOR to provide the drilling, installation, maintenance, or repair of a water wells or water well systems.

"Waterworks" means a system that serves piped water for human consumption to at least 15 service connections or 25 or more individuals for at least 60 days out of the year. "Waterworks" includes all structures, equipment, and appurtenances used in the storage, treatment, and distribution of pure water except the piping and fixtures inside the building where the water is delivered.

"Well area" means an area designated on a construction permit as appropriate for the construction of a private well.

"Well bore" means a vertical hole advanced into the earth, however created, by a water well system provider, in which a well is constructed.

"Well site" means the location on the ground surface of a property designated on a construction permit for the construction of a private well.

"Work days" or "working days" means days on which the department, the district health department, or the local health department, as applicable in context, is open for business, excluding holidays and closures."

"Yield" means the quantity of water, usually measured in volume of water per unit time, which may flow or which may be pumped, from a well or well field.

12VAC5-630-20. Authority for regulations.

Title 32.1 of the Code of Virginia, and specifically §§ 32.1-12 and ~~32.1-176.4~~ 32.1-176.2 of the Code of Virginia, provide that the ~~State Board of Health~~ board has the duty to protect the public health and to ensure that ~~ground water~~ groundwater resources are not adversely affected by the construction and location of private wells. In order to discharge this duty, the board is empowered, pursuant to §§ 32.1-12 and 32.1-176.4 of the Code of Virginia, to ~~supervise and~~ regulate the construction and location of private wells within the Commonwealth.

12VAC5-630-30. Purpose and applicability of regulations.

~~These regulations have~~ A. Purpose. This chapter has been promulgated by the ~~State Board of Health~~ board to:

1. Ensure that all private wells are located, constructed, and maintained in a manner ~~which~~ that does not adversely affect ~~ground water~~ groundwater resources~~,~~ or the public welfare, safety, and health;

2. Guide the ~~State Health Commissioner~~ commissioner in ~~his determination of~~ determining whether a permit for construction of a private well should be issued or denied;

3. Guide the owner or ~~his~~ the owner's agent in the requirements necessary to secure a permit for construction of a private well; ~~and~~

4. Guide the owner or ~~his~~ the owner's agent in the requirements necessary to secure an inspection statement following construction; and

5. Guide the owner or the owner's agent in the requirements necessary to abandon a private well (temporarily or permanently) when the well is not in use.

B. Applicability. This chapter applies to owners of a private well. The following wells are excluded from the requirements of this chapter:

1. Wells constructed as a groundwater source for a waterworks as regulated by 12VAC5-590.

2. Wells constructed for the purpose of building, roadway, or other geotechnical foundation investigation, design, or construction, provided that the well, including an unimproved well bore, is abandoned in such a manner as to prevent it from being a channel of vertical movement of surface water or a source of contamination into the ground.

3. Wells constructed for the purpose of an elevator shaft.

4. Wells constructed for the purpose of constructing an extensometer or similar scientific instrument.

5. Wells constructed for the purpose of grounding of electrical apparatus.

6. Wells constructed for the purpose of the modification or development of springs.

7. Wells constructed for the purpose of underground injection as regulated by 40 CFR Part 144.

8. Wells constructed for the purpose of the observation or monitoring of groundwater elevation or quality, except as governed by 12VAC5-630-420 B and C.

9. Well bores, including direct push well bores and hand tool made well bores, advanced for the purpose of collecting soil or groundwater samples for analysis with or without temporary installation of casing or screen, provided that the well bore is abandoned after the sample is collected in such a manner as to prevent it from being a channel of vertical movement of surface water or a source of contamination into groundwater.

10. Wells constructed for the purpose of construction dewatering, provided that the well is abandoned within 60 days of construction by the removal of the well point, well casing, screening, and other appurtenances associated with the construction and operation of the well and completion of abandonment in such a manner as to prevent it from being a channel of vertical movement of surface water or a source of contamination into groundwater.

11. Wells constructed to provide cathodic protection, provided that the well is abandoned after use in such a manner as to prevent it from being a channel of vertical movement of surface water or a source of contamination into groundwater.

12VAC5-630-40. ~~Relationship to Virginia Sewage Handling and Disposal Regulations.~~ (Repealed.)

~~This chapter supersedes 12VAC5-610-1150 of the Virginia Sewage Handling and Disposal Regulations, and 12VAC5-610-1140 B and C of the Virginia Sewage Handling and Disposal Regulations which address private wells, and were adopted by the State Board of Health pursuant to Title 32.1 of the Code of Virginia.~~

12VAC5-630-50. Relationship to the State Water Control Board.

This chapter is independent of all regulations promulgated by the State Water Control Board. ~~Ground water~~ Groundwater users located in a ~~ground water~~ groundwater management area may be required to obtain a permit from the State Water Control Board in addition to obtaining a permit from the Department of Health. In addition to the reporting requirements contained in this chapter, § 62.1-258 of the Code of Virginia requires that private wells constructed in a

groundwater management area be registered by the water well systems provider with the State Water Control Board within 30 days of the completion of construction. Private wells constructed in groundwater management areas are subject to 9VAC25-610.

12VAC5-630-60. Relationship to the Department of Environmental Quality~~, Waste Management Division~~.

This chapter establishes minimum standards for the protection of public health and ~~ground water~~ groundwater resources. Observation wells, monitoring wells, and remediation wells constructed under the supervision of ~~the Virginia Department of Environmental Quality, Waste Management Division,~~ DEQ are governed by 12VAC5-630-420.

12VAC5-630-70. Relationship to the Uniform Statewide Building Code.

This chapter is independent of and in addition to the requirements of the Uniform Statewide Building Code (13VAC5-63). ~~All persons~~ Persons required to obtain a well permit by this chapter shall furnish a copy of the permit to the local building official, upon request, when making application for a building permit. Prior to obtaining an occupancy permit, an applicant shall furnish the local building official with a copy of the inspection statement demonstrating the water supply has been inspected, sampled and tested (when applicable), and approved by the district or local health department.

12VAC5-630-80. Relationship to the Department of Professional and Occupational Regulation.

~~In~~ Persons engaged in the construction, repair, or alteration of a private well shall be licensed and certified in accordance with ~~§ 54.1-1100~~ §§ 54.1-1103 and 54.1-1129.1 of the Code of Virginia~~, any contractor constructing a water well to reach ground water shall possess, as a minimum, a valid Class B contractors license~~.

12VAC5-630-90. Administration of regulations.

This chapter is administered by the following:

~~A.~~ 1. The ~~State Board of Health, hereinafter referred to as the board,~~ board has the responsibility to promulgate, amend, and repeal regulations necessary to ensure the proper location, construction ~~and location~~, repair, and abandonment of private wells.

~~B.~~ 2. The ~~State Health Commissioner, hereinafter referred to as the~~ commissioner~~,~~ is the chief executive officer of the ~~State Department of Health~~ department. The commissioner has the authority to act, within the scope of regulations promulgated by the board~~,~~ and for the board when it is not in session. The commissioner may delegate ~~his~~ powers under this chapter in writing to ~~any~~ a subordinate~~, with the exception of (i) his;~~ however, the power to (i) issue variances under § 32.1-12 of the Code of Virginia and 12VAC5-630-170, and (ii) ~~his power to~~ issue orders under § 32.1-26 of the Code of Virginia and 12VAC5-630-140 and 12VAC5-630-150 B ~~and (iii) the power to revoke permits or inspection statements under 12VAC5-630-290, which~~ may ~~only~~ not be delegated ~~pursuant to § 32.1-22 of the Code of Virginia~~.

The commissioner has final authority to adjudicate contested case decisions of subordinates delegated powers under this section prior to appeal of such case decisions to the circuit court.

~~C.~~ 3. The ~~State Department of Health hereinafter referred to as~~ department is designated as the primary agent of the commissioner for the purpose of administering this chapter.

~~D.~~ 4. The district or local health departments are responsible for implementing and enforcing the regulatory activities required by this chapter.

12VAC5-630-100. Right of entry and inspections.

In accordance with the provisions of ~~§§~~ § 32.1-25 ~~and 32.1-12 and 32.1-176.6~~ of the Code of Virginia, the commissioner or ~~his~~ the commissioner's designee shall have the right to enter any property to ensure compliance with this chapter. In accordance with the provisions of § 32.1-176.6 of the Code of Virginia, the department has the authority to conduct such inspections as it may find reasonably necessary to ensure that the construction work conforms to applicable construction standards.

12VAC5-630-110. Compliance with the Administrative Process Act.

The provisions of the Virginia Administrative Process Act (§ ~~9-6.14:1~~ 2.2-4000 et seq. of the Code of Virginia) shall govern the promulgation and administration of this chapter, including governing the procedures for rendering case decisions as defined in § 2.2-4001 of the Code of Virginia, and shall be applicable to the appeal of ~~any~~ a case decision based upon this chapter.

12VAC5-630-120. Powers and procedures of regulations not exclusive.

The commissioner may enforce this chapter through ~~any~~ means lawfully available.

12VAC5-630-140. Emergency order.

If an emergency exists the commissioner may issue an emergency order as is necessary for preservation of public health, safety, and welfare or to protect ~~ground water~~ groundwater resources. The emergency order shall state the reasons and precise factual basis upon which the emergency order is issued. The emergency order shall state the time period for which it is effective. Emergency orders will be publicized in a manner deemed appropriate by the commissioner. The provisions of 12VAC5-630-150 C and D shall not apply to emergency orders issued pursuant to this section.

12VAC5-630-150. Enforcement of regulations.

A. Notice. Subject to the exceptions ~~below~~ in this section, whenever the commissioner or the district or local health department has reason to believe a violation of any of this chapter has occurred or is occurring, the alleged violator shall be notified. ~~Such~~ The notice shall be made in writing, shall be delivered personally or sent by certified mail, shall cite the regulation ~~or regulations that are~~ allegedly being violated, shall state the facts ~~which~~ that form the basis for believing the violation has occurred or is occurring, shall include a request for a specific action by the recipient by a specified time, and shall state the penalties associated with such violation. ~~When the~~ The commissioner ~~deems~~ may deem it necessary~~, he may~~ to initiate criminal prosecution or seek civil relief through mandamus ~~or,~~ injunction, or other appropriate remedy prior to giving notice.

B. Orders. Pursuant to the authority granted in § 32.1-26 of the Code of Virginia, the commissioner may issue orders to require ~~any~~ an owner, or other person, to comply with the provisions of this chapter. The order shall be signed by the commissioner and may require:

1. The immediate cessation and correction of the violation;

2. Appropriate remedial action to ensure that the violation does not recur;

3. The submission to the commissioner for review and approval of a plan to prevent future violations to the commissioner for review and approval;

4. The submission of an application for a variance; or

5. ~~Any other~~ Other corrective action deemed necessary for proper compliance with the chapter.

C. Hearing before the issuance of an order. Before the issuance of an order described in ~~12VAC5-630-150~~ this section, a hearing must be held, with at least 30 days of notice by certified mail to the affected owner or other person of the time, place, and purpose thereof~~,~~ for the purpose of adjudicating the alleged violation ~~or violations~~ of this chapter. The procedures at the hearing shall be in accordance with 12VAC5-630-180 A or B ~~of this chapter~~ and ~~with §§ 9-6.14:11 through 9-6.14:14 of the Code of Virginia~~ the Virginia Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

D. Order; when effective. ~~All orders~~ Orders issued pursuant to ~~12VAC5-630-150~~ this section shall become effective not less than 15 days after mailing a copy thereof by certified mail to the last known address of the owner or person violating this chapter. ~~Violation of an order is a Class 1 misdemeanor. See § 32.1-27 of the Code of Virginia.~~

E. Compliance with effective orders. The commissioner may enforce ~~all~~ orders. Should any owner or other person fail to comply with any order, the commissioner may:

1. Apply to an appropriate court for an injunction or other legal process to prevent or stop any practice in violation of the order;

2. Commence administrative proceedings to suspend or revoke the construction permit;

3. Request the Attorney General to bring an action for civil penalty, injunction, or other appropriate remedy; or

4. Request the Commonwealth's Attorney to bring a criminal action.

F. Not exclusive means of enforcement. Nothing contained in 12VAC5-630-140 or ~~12VAC5-630-150~~ this section shall be interpreted to require the commissioner to issue an order prior to commencing administrative proceedings or seeking enforcement of ~~any~~ regulations or statute through an injunction, mandamus, other appropriate remedy, or criminal prosecution.

12VAC5-630-160. Suspension of regulations during disasters.

If in the case of a man-made or natural disaster, the commissioner finds that certain regulations cannot be complied with and that the public health is better served by not fully complying with this chapter, ~~he~~ the commissioner may authorize the suspension of the application of the chapter for specifically affected localities and institute a provisional regulatory plan until the disaster is abated.

12VAC5-630-170. Variances.

~~Only the~~ A. The commissioner ~~or the deputy commissioners~~ may grant a variance to this chapter. ~~(See §§ 32.1-12 and 32.1-22 of the Code of Virginia and 12VAC5-630-90 B.)~~ The commissioner ~~or the deputy commissioners~~ shall follow the appropriate procedures set forth in this ~~subsection~~ section in granting a variance.

~~A.~~ B. Requirements for a variance. The commissioner may grant a variance if a thorough investigation reveals that the hardship imposed by this chapter (may be economic) outweighs the benefits that may be received by the public~~.~~ ~~Further~~, and that the granting of such a variance shall not subject the public to unreasonable health risks or jeopardize ~~ground water~~ groundwater resources.

~~Exception:~~ The commissioner shall not grant a variance for an improperly located Class IV well that was located pursuant to an express Class IV permit, as described under 12VAC5-630-260 and 12VAC5-630-270, if the improper location of the well is a result of the failure by the owner, ~~his~~ the owner's agent, or the ~~well driller~~ water well systems provider to provide complete or accurate information on the site plan submitted with the application or to install the well in accordance with the permit.

~~B.~~ C. Application for a variance. Any owner who seeks a variance shall apply in writing within the time period specified

in 12VAC5-630-210 ~~B~~. The application shall be signed by the owner, addressed, and sent to the commissioner ~~at the State Department of Health in Richmond~~. The application shall include:

1. A citation to the section from which a variance is requested;

2. The nature and duration of the variance requested;

3. Any relevant analytical results, including results of relevant tests conducted pursuant to the requirements of this chapter;

4. The hardship imposed by the specific requirement of this chapter;

5. Statements or evidence why the public health and welfare as well as the ~~ground water~~ groundwater resources would not be degraded if the variance were granted;

~~5.~~ 6. Suggested conditions that might be imposed on the granting of a variance that would limit the detrimental impact on the public health and welfare or ~~ground water~~ groundwater resources;

~~6.~~ 7. Other information, if any, believed pertinent by the applicant; and

~~7. Such other~~ 8. Other information ~~as~~ that the district or local health department or commissioner may require.

~~C.~~ D. Evaluation of a variance application.

1. The commissioner shall act on ~~any~~ a variance request submitted pursuant to ~~12VAC5-630-170 B~~ subsection C of this section within 60 calendar days of receipt of the request.

2. In the evaluation of a variance application, the commissioner shall consider the following factors:

a. The effect that ~~such a~~ the variance would have on the construction, location, or operation of the private well;

b. The cost and other economic considerations imposed by this requirement;

c. The effect that ~~such a~~ the variance would have on protection of the public health;

d. The effect that ~~such a~~ the variance would have on protection of ~~ground water~~ groundwater resources;

e. Relevant analytical results, including results of tests conducted pursuant to the requirements of this chapter;

f. The hardship imposed by enforcing the specific requirements of this chapter;

g. Suggested conditions that might be imposed on the granting of a variance that would limit detrimental impact on the public health and welfare;

h. Other information, if any, believed pertinent by the applicant; and

~~e. Such other~~ i. Other factors as the commissioner may deem appropriate.

~~D.~~ E. Disposition of a variance request.

1. The commissioner may deny ~~any~~ an application for a variance by sending a denial notice to the applicant by certified mail. The notice shall be in writing and shall state the reasons for the denial.

2. If the commissioner proposes to grant a variance request submitted pursuant to ~~12VAC5-630-170 B~~ subsection C of this section, the applicant shall be notified in writing of this decision. ~~Such~~ The notice shall identify the variance, any conditions to the variance, and private well covered~~,~~ and shall specify the period of time for which the variance will be effective. The effective date of a variance shall be as stated in the variance.

3. No owner may challenge the terms or conditions set forth in the variance after 30 calendar days have elapsed from the effective date of the variance.

~~E.~~ F. Posting of variances. ~~All variances~~ Variances granted to ~~any~~ private wells are transferable from owner to owner unless otherwise stated, but not transferable to another private well. ~~Each~~ The variance shall be attached to the permit to which it is granted. ~~Each~~ The variance is revoked when the permit to which it is attached is revoked.

~~F.~~ G. Hearings on disposition of variances. Subject to the time limitations specified in 12VAC5-630-210, hearings on denials of an application for a variance or on challenges to the terms and conditions of a granted variance may be held pursuant to subdivision 1 or 2 of 12VAC5-630-180 ~~A or B~~, except that informal hearings under subdivision 1 of 12VAC5-630-180 ~~A~~ shall be held by the commissioner or ~~his~~ the commissioner's designee.

12VAC5-630-180. Hearing types.

Hearings before the commissioner or the commissioner's designees shall include any of the following forms depending on the nature of the controversy and the interests of the parties involved.

~~A.~~ 1. Informal hearings. An informal hearing is a meeting with a district or local health department with the district or local health director presiding and held in conformance with ~~§ 9-6.14:11~~ § 2.2-4019 of the Code of Virginia. The district or local health department director shall consider all evidence presented at the meeting ~~which~~ that is relevant to the issue in controversy. Presentation of evidence, however, is entirely voluntary. The district or local health department shall have no subpoena power. No verbatim record need be taken at the informal hearing. The local or district health director shall review the facts presented and based on those facts render a decision. A written copy of the decision and the basis for the decision shall be sent to the appellant within 15 work days of the hearing, unless the parties mutually

agree to a later date in order to allow the department to evaluate additional evidence. If the decision is adverse to the interests of the appellant, an aggrieved appellant may request an adjudicatory hearing pursuant to ~~12VAC5-630-180-B below~~ subdivision 2 of this section.

~~B.~~ 2. Adjudicatory hearing. The adjudicatory hearing is a formal, public adjudicatory proceeding ~~before the commissioner, or a designated hearing officer, and held in conformance with § 9-6.14:12~~ conducted pursuant to § 2.2-4020 of the Code of Virginia. ~~An adjudicatory hearing includes the following features:~~

~~1. Notice. Notice which states the time and place and the issues involved in the prospective hearing shall be sent to the owner or other person who is the subject of the hearing. Notice shall be sent by certified mail at least 15 calendar days before the hearing is to take place.~~

~~2. Record. A record of the hearing shall be made by a court reporter. A copy of the transcript of the hearing, if transcribed, will be provided within a reasonable time to any person upon written request and payment of the cost.~~

~~3. Evidence. All interested parties may attend the hearing and submit oral and documentary evidence and rebuttal proofs, expert or otherwise, that are material and relevant to the issues in controversy. The admissibility of evidence shall be determined in accordance with § 9-6.14:12 of the Code of Virginia.~~

~~4. Counsel. All parties may be accompanied by and represented by counsel and are entitled to conduct such cross examination as may elicit a full and fair disclosure of the facts.~~

~~5. Subpoena. Pursuant to § 9-6.14:13 of the Code of Virginia, the commissioner or hearing officer may issue subpoenas on behalf of himself or any person or owner for the attendance of witnesses and the production of books, papers or maps. Failure to appear or to testify or to produce documents without adequate excuse may be reported by the commissioner to the appropriate circuit court for enforcement.~~

~~6. Judgment and final order.~~ The commissioner ~~may~~ shall designate a hearing officer ~~or subordinate~~ to conduct the hearing as provided in ~~§ 9-6.14:12~~ § 2.2-4024 of the Code of Virginia~~,~~ and to make written recommended findings of fact and conclusions of law to be submitted for review and final decision by the commissioner. The final decision of the commissioner shall be reduced to writing and will contain the explicit findings of fact upon which ~~his~~ the decision is based. Certified copies of the decision shall be delivered to the owner affected by it. Notice of a decision will be served upon the parties and become a part of the record. Service may be by personal service or certified mail return receipt requested.

12VAC5-630-190. Request for hearing.

A request for an informal hearing shall be made by sending the request in writing to the district or local health department. A request for an adjudicatory hearing shall be made in writing and directed to the commissioner ~~at the State Department of Health in Richmond~~. Requests for hearings shall cite the ~~reason(s)~~ reason for the hearing request and shall cite ~~the section(s)~~ any section of this chapter involved.

12VAC5-630-200. Hearing as a matter of right.

~~Any~~ An owner or other person whose rights, duties, or privileges have been, or may be affected by ~~any~~ a decision of the board or its subordinates in the administration of this chapter shall have a right to both informal and adjudicatory hearings. The commissioner may require participation in an informal hearing before granting the request for a full adjudicatory hearing. ~~Exception:~~ No person other than an owner shall have the right to an adjudicatory hearing to challenge the issuance of either a construction permit or inspection statement unless the person can demonstrate at an informal hearing that the minimum standards contained in this chapter have not been applied and that ~~he~~ the person will be injured in some manner by the issuance of the permit or that ~~ground-water~~ groundwater resources will be damaged by the issuance of the permit.

12VAC5-630-210. Appeals.

~~Any~~ An appeal from a denial, revocation, or voidance of a construction permit, inspection statement, or request for variance for a private well must be made in writing and received by the department within ~~60~~ 30 days of the date of the denial, revocation, or voidance.

~~A. Any request for hearing on the denial of an application for a variance pursuant to 12VAC5-630-170-D-1 must be made in writing and received within 60 days of receipt of the denial notice.~~

~~B. Any~~ A ~~request for a variance must be made in writing and received by the department prior to the denial of the private well permit, or within 60 days after such denial.~~

~~C. In the event a person applies for a variance within the 60-day period provided by subsection B above, the date for appealing the denial of the permit, pursuant to subsection A above, shall commence from the date on which the department acts on the request for a variance.~~

~~D.~~ Pursuant to the Administrative Process Act ~~(§ 9-6.14:1~~ (§ 2.2-4000 et seq. of the Code of Virginia) an aggrieved ~~owner~~ party may appeal a final decision of the commissioner to an appropriate circuit court.

12VAC5-630-220. Permits and inspection statement; general.

A. All private wells shall be constructed and located in compliance with the requirements as set forth in this chapter.

~~A. Except as provided in 12VAC5-630-220 B below, after~~ B. After the effective date of this chapter, no person shall construct, alter, ~~rehabilitate,~~ abandon, or ~~extend~~ increase the depth of a private well~~,~~ or allow the construction, alteration, ~~rehabilitation,~~ abandonment, or ~~extension~~ activity to increase the depth of a private well~~,~~ without a written construction permit from the commissioner. Conditions may be imposed on the issuance of ~~any~~ a permit and no private well shall be constructed or modified in violation of those conditions. The replacement of a well pump, ~~or~~ the replacement of a well seal or cap with an equivalent well seal or cap, or the vertical extension of the well casing above the ground surface shall not be considered a well ~~modification~~ alteration.

~~B. No permit shall be required for the construction, operation, or abandonment of dewatering wells. Furthermore, dewatering wells are exempted from the construction requirements found in 12VAC5-630-410. All dewatering wells shall be abandoned within 60 days of construction. Abandonment in this case means the removal of the well point, well casing, screening, and other appurtenances associated with the construction and operation of the well.~~

C. Except as provided in 12VAC5-630-320, no person shall place a private well in operation~~,~~ or cause or allow a private well to be placed in operation~~,~~ without obtaining a written inspection statement pursuant to 12VAC5-630-310 and 12VAC5-630-330.

D. Except as provided in 12VAC5-630-270, 12VAC5-630-290, and 12VAC5-630-300, construction permits for a private well shall be deemed valid for a period of ~~54~~ 18 months from the date of issuance, with provision for one 18-month renewal.

12VAC5-630-230. Procedures for obtaining a construction permit for a private well.

A. Construction permits are issued by the authority of the commissioner. ~~All requests~~ Requests for a private well construction permit shall be by written application, signed by the owner or ~~his~~ the owner's agent, and shall be directed to the district or local health department. ~~All applications~~ Applications shall be made on an application form provided by the district or local health department and approved by the commissioner.

B. An application shall be deemed completed upon receipt by the district or local health department of a signed and dated application, together with the appropriate fee, containing the following information:

1. The property owner's name, address, and telephone number;

2. The applicant's name, address, and phone number (if different from subdivision 1 ~~above~~ of this subsection);

3. A statement signed by the property owner, or ~~his~~ the owner's agent, granting the ~~Health Department~~ department access to the site for the purposes of evaluating the suitability of the site for a well and allowing the department access to inspect the well after it is installed;

4. A statement indicating whether the adjacent property is used for an agricultural operation;

5. Information required per 12VAC5-630-380 E if necessary.

6. A site plan showing the proposed well site, property boundaries, accurate locations of actual or proposed sewage disposal systems, recorded easements, and other sources of contamination within 100 feet of the proposed well site, and at the option of the applicant a proposed well design; and

~~5.~~ 7. When deemed necessary because of geological or other natural conditions, plans and specifications detailing how the well will be constructed.

12VAC5-630-240. Issuance of the construction permit.

A. A construction permit shall be issued to the owner by the commissioner no later than 60 days after receipt of a complete ~~and approvable~~ application submitted under 12VAC5-630-230 that meets requirements for issuance of the permit. If applicable, the applicant shall comply with 12VAC5-630-340 prior to issuance of the permit.

B. The permit shall indicate a well site or a well area.

1. A well site shall be designated as a specific location that can be identified on the property by means of measurement from identified fixed points on the property.

2. A well area may be designated as a polygon or as a defined radius around a proposed well site. The well area shall be described in sufficient detail that it can be identified on the property by means of measurement from identified fixed points on the property.

12VAC5-630-250. Emergency procedures.

Applications for replacement wells that meet the definition of an emergency well replacement (12VAC5-630-10) shall have priority over normal applications for private well permits. Emergency procedures are as follows:

~~A.~~ 1. Drinking water wells. ~~In the event~~ When a private drinking water well has failed and must be replaced, ~~the local health department will~~ a licensed onsite soil evaluator, professional engineer, or licensed water well systems provider shall conduct a sanitary survey of the property and surrounding area to determine the most suitable location. If a site is found that meets the minimum site requirements of this chapter, including the minimum separation distances contained in Table 3.1 and 12VAC5-630-380 ~~F~~ H, the local health department will issue a permit for that site. If a site cannot be located that meets the minimum separation distances listed in Table 3.1 and 12VAC5-630-380 ~~F~~ H, the local health department shall identify a site that complies with the minimum separation distances to the greatest extent

possible. However, the replacement well shall not be located closer to ~~any~~ a source of contamination than the existing well it is replacing. Replacement drinking water wells must meet the sampling requirements of ~~12VAC5-630-370 D and E~~ 12VAC5-630-431 E and F.

~~B.~~ 2. Heat pump wells or commercially dependent wells. If a heat pump well or commercially dependent well must be replaced, the applicant shall propose a replacement site based on the technical requirements of the heat pump system or commercial establishment. ~~The local health department will conduct a sanitary survey of the property and surrounding area to determine if the site meets the minimum site requirements of this chapter including the minimum separation distances contained in Table 3.1 and 12VAC5-630-380 F.~~ A licensed onsite soil evaluator, professional engineer, or water well systems provider shall conduct a sanitary survey of the property and surrounding area to determine the most suitable location. If the site meets the minimum requirements of this chapter, the local health department will issue a permit for that site. If a site cannot be located that meets the minimum separation distances listed in Table 3.1 ~~and 12VAC5-630-380 F~~, the local health department shall identify a site that complies with the minimum separation distances to the greatest extent possible. However, the replacement well shall not be located closer to ~~any~~ a source of contamination than the existing well it is replacing. If the replacement heat pump well or commercially dependent well must be placed closer to a sewage disposal system (but no closer than the existing well it is replacing) the well shall be sampled for fecal coliforms. If fecal coliforms are present in the sample and further investigation reveals that the groundwater is contaminated, the well shall be abandoned.

12VAC5-630-260. Express Class IV construction permits.

~~If~~ A. When a Class IV well is proposed for property that does not have an onsite sewage disposal system, either active or inactive, an application may be made for an express Class IV construction permit. An application for an express Class IV construction permit shall be made on a form provided by the district or local health department and approved by the commissioner.

B. An application shall be deemed completed upon receipt by the district or local health department of a signed and dated application, together with the appropriate fee, containing the following information:

1. The property owner's name, address, telephone number, and personal signature. The owner's signature will acknowledge that the permit will be issued without the benefit of a site visit by the local health department prior to the issuance of the construction permit; that the permit is being issued based upon the information provided on the accompanying site plan; that the property owner also acknowledges that if the well is found not to comply with the minimum separation distances or ~~any~~ other provision of this chapter, the well must be abandoned at the direction of the local or district health director; and that a variance will not be considered if the improper location of the well is a result of the failure by the owner, ~~his~~ the owner's agent, or the ~~well driller~~ water well systems provider to provide complete or accurate information on the site plan submitted with the application or to install the well in accordance with the permit~~.~~;

2. Address and directions to the property;

3. The proposed use of the well;

4. The name, address, telephone number, ~~Class B (minimum)~~ license number, and signature of the ~~well driller~~ water well systems provider who is to construct the well;

5. A statement signed by the property owner (and not ~~his~~ the owner's agent) granting the department access to the site for the purposes of inspecting the property and the well during and after its installation until the well is approved by the department or ~~any~~ a required abandonment is completed; and

6. A site plan showing the proposed well site, property boundaries, recorded easements, and accurate locations of actual or proposed sources of contamination (including~~, but not limited to~~ those listed in Table 3.1 of 12VAC5-630-380) within 100 feet of the proposed well site, and at the option of the applicant a proposed well design. If the proposed well site is located on or at the base of sloping topography, the minimum separation distances shown on the site plan for ~~any~~ sources of contamination within a 60 degree arc slope of the proposed well site must be increased 25 feet for every 5.0% slope.

12VAC5-630-270. Issuance of express Class IV construction permits and final inspection.

A. Issuance of express Class IV construction permit. Upon receipt of a complete and approvable application, as defined in 12VAC5-630-260, by a local or district health department with multiple ~~sanitarians~~ environmental health specialists, the department shall exercise ~~all~~ due diligence to issue a permit either on the date of receipt or the following business day. If the local or district office has only one assigned ~~sanitarian~~ environmental health specialist, the local or district department will exercise ~~all~~ due diligence to issue the permit as soon as possible. Failure by the department to issue the permit within the specified time does not authorize the construction of the well without a permit. If applicable, the applicant shall comply with 12VAC5-630-340 prior to the issuance of the permit.

B. Validity of express Class IV construction permits. Express Class IV construction permits shall only be valid for a period of 30 days from the date of issuance.

C. Inspection. If, upon inspection of the well, it is found that the well location does not comply with the minimum

separation distances or ~~any~~ other provision of this chapter, no inspection statement shall be issued and the well shall be immediately abandoned by the property owner in accordance with 12VAC5-630-450 upon notification and direction by the local or district health director. The commissioner shall not grant a variance if the improper location of the well is a result of the failure by the owner, ~~his~~ the owner's agent, or the ~~well driller~~ water well systems provider to provide complete or accurate information on the site plan submitted with the application or to install the well in accordance with the permit.

The construction of the well shall also comply with this chapter.

12VAC5-630-271. Express geothermal well permits.

A. The issuance of an express geothermal permit is contingent upon proper registration and payment of application fees and applies to the construction of wells used solely for a closed-loop geothermal heating system.

B. A single application and a single fee are required for any geothermal well system. The fee is the same as for a single private well. A registration statement for closed loop construction permitting shall be made on a form provided and approved by the division. The registration shall include the following information:

1. The property owner's name, address, and telephone number;

2. The address of and directions to the property;

3. The proposed use of the well;

4. The name, address, telephone number, and contractor license number of the ~~well driller~~ water well systems provider;

5. A statement signed by the property owner granting the department access to the site for the purpose of inspecting the property and the well during and after the well installation until the well is approved by the department or ~~any~~ required corrections are made;

6. A site plan, drawn to scale, showing the proposed well site ~~or sites~~, property boundaries, recorded easements, and accurate locations of actual or proposed sources of contamination (including ~~but not limited to~~ those listed in Table 3.1 of 12VAC5-630-380) within 100 feet of the proposed well site ~~or sites~~; and

7. A statement signed by the licensed ~~well driller~~ water well systems provider that the location and construction of the well ~~or wells~~ will comply with the requirements of this chapter.

C. A single application fee is required for any geothermal well system, regardless of the number of wells included in the system. The fee is the same as for a single private well.

12VAC5-630-272. Issuance of express geothermal well construction permit, inspection, and final approval.

A. Issuance of the express geothermal well permit. Upon receipt of a complete registration statement and the appropriate fee, the department will acknowledge receipt of the registration statement and issue the permit with a copy given to the contractor. The construction of the geothermal heating system may begin immediately upon submission of a complete registration statement and counter-signature denoting receipt by the department.

B. Inspection. The department, at its sole discretion, may inspect the closed-loop geothermal well ~~any time~~ from after acceptance of the registration statement until after the installation is approved. If, upon inspection of the well, it is found that the well location does not comply with the minimum separation distances or ~~any~~ other provision of this chapter, no inspection statement shall be issued until the deficiencies have been corrected.

C. Final approval. Upon receipt of the Uniform Water Well Completion Report, as required in 12VAC5-630-440, and completion of ~~any~~ inspections deemed necessary to ensure compliance with this chapter, ~~or~~ unless the department has evidence to indicate that the well is not in compliance with the requirements of this chapter, the local health department will provide the owner with a statement that the wells are approved for use.

12VAC5-630-280. Denial of a construction permit.

If it is determined that (i) the proposed design is inadequate ~~or that~~; (ii) site, geological, hydrological, or other conditions exist that do not comply with this chapter or would preclude the safe and proper operation of a private well system~~, or that~~; (iii) the installation of the well would create an actual or potential health hazard or nuisance~~,~~; or (iv) the proposed design would adversely impact the ~~ground water~~ groundwater resource, the permit shall be denied and the owner shall be notified in writing, by certified mail, of the basis for the denial. The notification shall also state that the owner has the right to appeal the denial.

12VAC5-630-290. Revocation of construction permits or inspection statements.

~~The~~ In accordance with 12VAC5-630-331, the commissioner may revoke a construction permit or inspection statement for any of the following reasons:

1. Failure to comply with the conditions of the permit;

2. Violation of ~~any of~~ this chapter for which no variance has been issued;

3. Facts become known which reveal that a potential health hazard would be created or that the ~~ground water~~ groundwater resources may be adversely affected by allowing the proposed well to be installed or completed.

12VAC5-630-300. Voidance of construction permits.

~~Null and void. All~~ A. In accordance with 12VAC5-630-331, the commissioner has authority to declare well construction permits ~~are~~ or inspection statements null and void when (i) conditions such as house location, sewage system location, sewerage system location, topography, drainage ways, or other site conditions are changed from those shown on the application~~,~~ or (ii) conditions are changed from those shown on the construction permit~~, or (iii)~~.

B. Construction permits are null and void when more than ~~54~~ 18 months elapse from the date the permit was issued or renewed. Reapplication for the purposes of having an expired permit reissued shall be the responsibility of the owner, and ~~such~~ reapplication shall be handled as an initial application and comply ~~fully~~ with 12VAC5-630-230.

12VAC5-630-310. Statement required upon completion of construction.

~~Upon~~ Within 30 days of completion of the construction, alteration, ~~rehabilitation,~~ abandonment, or ~~extension~~ deepening of a private well, the owner ~~or~~, the owner's agent, or water well systems provider shall ~~submit to~~ furnish the district or local health department a ~~statement, signed by the contractor, upon the form set out in 12VAC5-630-490,~~ completed uniform water well completion report (GW-2). The GW-2 shall be signed by the water well systems provider and state that the well was installed, constructed, or abandoned in accordance with the permit, and ~~further~~ that the well complies with ~~all~~ applicable state and local regulations, ordinances, and laws.

12VAC5-630-320. Inspection and correction.

No well shall be placed in operation, except for the purposes of testing the mechanical soundness of the system, until inspected by the district or local health department, corrections are made if necessary, and the owner has been issued an inspection statement by the district or local health department.

12VAC5-630-330. Issuance of the inspection statement.

Upon satisfactory completion of the requirements of 12VAC5-630-310, 12VAC5-630-320, 12VAC5-630-370, 12VAC5-630-430, and 12VAC5-630-440, the commissioner shall issue an inspection statement to the owner. The issuance of an inspection statement does not denote or imply ~~any~~ a warranty or guarantee of the water quality or quantity by the department or that the private well will function for ~~any~~ a specified ~~period of~~ time. It shall be the responsibility of the owner or ~~any~~ subsequent owner to maintain, repair, replace, or to comply with the requirements to abandon ~~any~~ a private well.

12VAC5-630-331. Enforcement, notices, informal conferences.

A. The commissioner may, after providing a notice of intent to revoke a construction permit or inspection statement, and after providing an opportunity for an informal conference in accordance with § 2.2-4019 of the Code of Virginia, revoke or declare null and void a construction permit or inspection statement for flagrant or continuing violation of this chapter. Any person to whom a notice of revocation or null and void is directed shall immediately comply with the notice. Upon revocation, the former construction permit or inspection statement holder shall be given an opportunity for appeal of the revocation in accordance with the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

B. The commissioner may summarily suspend an inspection statement to operate a private well if continued operation constitutes a substantial and imminent threat to public health. Upon receipt of such notice that an inspection statement is suspended, the well owner shall cease private well operations immediately. Whenever an inspection statement is suspended, the holder of the inspection statement shall be notified in writing by certified mail or by hand delivery. Upon service of notice that the inspection statement is immediately suspended, the former inspection statement holder shall be given an opportunity for an informal conference in accordance with § 2.2-4019 of the Code of Virginia. The request for an informal conference shall be in writing and shall be filed with the local health department by the former holder of the inspection statement. If written request for an informal conference is not filed within 10 working days after the service of notice, the suspension is sustained. Each holder of a suspended permit shall be afforded an opportunity for an informal conference within three working days of receipt of a request for the informal conference. The commissioner may end the suspension at any time if the reasons for the suspension no longer exist.

C. Any person affected by a determination issued in connection with the enforcement of this chapter may challenge such determination in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

D. All private wells shall be constructed, operated, and maintained in compliance with the requirements as set forth in this chapter. The commissioner may enforce this chapter through any means lawfully available pursuant to § 32.1-27 of the Code of Virginia, and nothing in this chapter shall be construed as preventing the commissioner from making efforts to obtain compliance through warning, conference, or any other appropriate enforcement means.

12VAC5-630-350. General.

This chapter does not apply to private wells constructed, altered, ~~rehabilitated or extended~~ or abandoned prior to ~~the effective date of these regulations~~ September 1, 1990, unless ~~the~~ such private well ~~construction~~ is ~~modified or expanded~~ subsequently altered or abandoned after ~~the effective date of these regulations~~ September 1, 1990, in which case such

alteration or abandonment shall be performed in accordance with this chapter.

The class of well to be constructed shall be determined by the local or district health department or the division.

12VAC5-630-360. Classes of water wells.

~~The following classes~~ Classes of private wells ~~are~~ established for purposes of this chapter~~. These classes~~ are in addition to those established in the current ~~Commonwealth of Virginia~~ Waterworks Regulations ~~(12VAC5-590-10 et seq.)~~ (12VAC5-590) and are intended for use for private well systems:

1. Class III - Private wells constructed to be used as a source of drinking water. There are three subclasses:

a. Class IIIA - Drilled wells in which the annular space around the casing is grouted to a minimum depth of 20 feet.

(1) The well shall be drilled and cased to a depth of at least 100 feet.

(2) The cased drill hole shall pass through at least 50 feet of collapsing material such as caving sand, gravel, or other material that will collapse against the casing.

b. Class IIIB - Drilled wells in which the casing is installed to a minimum depth of 50 feet and the annular space around the casing is grouted to at least 50 feet.

c. Class IIIC - Drilled, bored, driven, or jetted wells other than Class IIIA and Class IIIB.

2. Class IV - Private wells constructed for ~~any~~ a purpose other than use as a source of drinking water. There are three subclasses:

a. Class IVA - Drilled wells in which the annular space around the casing is grouted to a minimum depth of 20 feet.

(1) The well shall be drilled and cased to a depth of at least 100 feet.

(2) The cased drill hole shall pass through at least 50 feet of collapsing material such as caving sand, gravel, or other material that will collapse against the casing.

b. Class IVB - Drilled wells in which the casing is installed to a minimum depth of 50 feet and the annular space around the casing is grouted to at least 50 feet.

c. Class IVC - Drilled, bored, driven, or jetted wells other than Class IVA and Class IVB.

3. Conversion of well class. A Class IV well may be converted to a corresponding Class III well provided the well meets (i) the location and construction standards set forth in this chapter and the water quality standards set forth in 12VAC5-630-431 and (ii) a construction permit application and a revised GW-2 form are submitted to the department.

12VAC5-630-370. ~~Water quality and quantity.~~ (Repealed.)

~~A. Class IV wells exempt. The water quality requirements contained in this section apply only to Class III private wells. Class IV private wells (wells not constructed as a source of drinking water) are not subject to any quality requirements. These regulations contain no well yield requirements. See 12VAC5-630-460 for suggested minimum well yields for residential supplies.~~

~~B. Sample tap. A sample tap shall be provided at or near the water entry point into the system so that samples may be taken directly from the source; this requirement may be met by utilizing the first tap on a line near where the plumbing enters the house (may be a hose bib), provided the tap precedes any water treatment devices.~~

~~C. Disinfection. The entire water system including the well shall be disinfected prior to use (12VAC5-630-430 and 12VAC5-630-470).~~

~~D. Sampling. After operating the well to remove any remaining disinfectant, a sample of the water from the well shall be collected for bacteriological examination. The sample may be collected by the owner, well driller, or other person in accordance with procedures established by the department and provided the sample is submitted to a private laboratory certified by the Department of General Services, Division of Consolidated Laboratory Services, for analysis.~~

~~E. Test interpretation. A Class III private well shall be considered satisfactory if the water sample(s) test(s) negative for coliform organisms as described in subdivision 1 or 2 below. Sources with positive counts shall be tested as described in subdivision 3 below to determine if the water supply is amenable to continuous disinfection (chlorination). Samples that exhibit confluent growth shall be considered inconclusive and another sample shall be collected.~~

~~1. Where a private well has no unsatisfactory water sample within the previous 12 months, one water sample which tests negative for coliform bacteria shall be considered satisfactory for coliform organisms.~~

~~2. Where a private well has had one or more positive water samples within the past 12 months for coliform bacteria, at least two consecutive samples must be collected and found negative for coliform organisms before the supply may be considered satisfactory for coliform organisms. The samples must collected at least 24 hours apart and the well may not be disinfected between samples.~~

~~3. When a private well does not test satisfactory for coliform organisms continuous disinfection may be recommended to the homeowner if the water supply is found to be suitable for continuous disinfection. A minimum of 10 samples shall be collected and tested for total coliform using an MPN methodology. The geometric mean of the samples shall be calculated and if the result is less than 100 organisms per 100~~

~~ml, the supply shall be considered satisfactory for continuous disinfection.~~

~~F. Water treatment. If tests indicate that the water is unsatisfactory and no other approvable source is available, adequate methods of water treatment shall be applied and demonstrated to be effective pursuant to 12VAC5-630-370 E 3 prior to the issuance of an inspection statement. The district or local health department shall be consulted when treatment is necessary.~~

12VAC5-630-380. Well location.

A. The private well shall be sited for the protection of public health and the aquifer, with appropriate consideration given to distance from potential contamination sources; vulnerability to known or suspected natural risks (e.g., flooding); potential for interference with utilities; accessibility for drilling machinery and support equipment; and safety of the public and well construction personnel.

B. Sanitary survey. ~~Any obvious source~~ Obvious sources of potentially toxic or dangerous substances within 200 feet of the proposed private well shall be investigated as part of the sanitary survey ~~by the district or local health department~~. Sources of contamination may include~~, but are not limited to,~~ items listed in Table 3.1~~,~~; abandoned wells~~,~~; pesticide treated soils~~, underground~~; petroleum or chemical storage tanks, drums, totes, or other storage containers (aboveground and underground); and other sources of physical, chemical, or biological contamination. If the source of contamination could affect the well adversely, and preventive measures are not available to protect the ~~ground water~~ groundwater, the well shall be prohibited. The minimum separation distance between a private well and structures, topographic features, or sources of pollution shall comply with the minimum distances shown in Table 3.1. ~~Where the minimum separation distances for a Class IV well cannot be met, a permit may be issued under this chapter for a well meeting all of the criteria in 12VAC5-630-400 and 12VAC5-630-410 and the separation distance requirements for either a Class IIIA or IIIB well, without deviation, and such Class IV well shall not be required to meet the water quality requirements of 12VAC5-630-370.~~

~~TABLE 3.1 DISTANCES (IN FEET) BETWEEN A WELL AND A STRUCTURE OR TOPOGRAPHIC FEATURE~~

~~Structure or Topographic Feature~~	~~Class IIIC or IV~~	~~Class IIIA or B~~
~~Building foundation~~	~~10~~	~~10~~
~~Building foundation (termite treated)~~	~~50[1]~~	~~50[1]~~
~~House sewer line~~	~~50[2]~~	~~50[2]~~
~~Sewer main, including force mains~~	~~50[3]~~	~~50[3]~~
~~Sewerage system~~	~~50~~	~~50~~
~~Pretreatment system (e.g. septic tank, aerobic unit, etc.)~~	~~50~~	~~50~~
~~Sewage disposal system or other contaminant source (e.g., drainfield, underground storage tank, barnyard, hog lot, etc.)~~	~~100~~	~~50~~
~~Cemetery~~	~~100~~	~~50~~
~~Sewage Dump Station~~	~~100~~	~~50[1]~~

~~[1]See 12VAC5-630-380~~

~~[2]Private wells shall not be constructed within 50 feet of a house sewer line except as provided below. Where special construction and pipe materials are used in a house sewer line to provide adequate protection, and the well is cased and grouted to the water bearing formation, all classes of private wells may be placed as close as 10 feet to the house sewer line. Special construction for house sewer lines constitutes cast iron pipe with water tight caulked joints or mechanical joints using neoprene gaskets, or solvent welded Schedule 40 or better polyvinyl chloride (PVC) pipe. It is the responsibility of the applicant to provide documentation from the contractor that such construction and pipe materials have been installed. In no case shall a private well be placed within 10 feet of a house sewer line.~~

~~[3]Private wells shall not be constructed within 50 feet of a sewer main except as provided below. Where special construction and pipe materials are used in a sewer main to provide adequate protection, and the well is cased and grouted to the water bearing formation, Class III wells may be placed as close as 35 feet to a sewer main and Class IV wells as close as 10 feet. Special construction for sewer mains constitutes ductile iron pipe with water tight joints, solvent welded Schedule 40 or better polyvinyl chloride (PVC) pipe (SDR-35 plastic PVC with neoprene gaskets). It is the responsibility of the applicant to provide documentation from the local building official or sanitary district that such construction and pipe materials have been installed. In no case shall a Class III well be place within 35 feet of a sewer main. Likewise, in no case shall a Class IV well be placed within 10 feet of a sewer main.~~

TABLE 3.1 DISTANCES (IN FEET) BETWEEN A WELL AND A STRUCTURE OR TOPOGRAPHIC FEATURE					
Structure or Topographic Feature	Minimum Separation Distance				Exceptions
	Class IIIA/B	Class IIIC	Class IVA/B	Class IVC	
1. Building foundation	15	15	15	15	10 feet if structure is treated with borate based termite treatment
2. House sewer line a. Constructed of cast iron pipe with water-tight caulked joints; mechanical joints using neoprene gaskets; or solvent welded Schedule 40 or better PVC pipe – provided the well is cased and grouted to water bearing formation	10	10	10	10	None
b. Other or unknown construction; or if well is not cased and grouted to water bearing formation	50	50	50	50	None
3. Sewer main, including force main a. Constructed of ductile iron pipe with water-tight joints; solvent welded Schedule 40 or better PVC (SDR-35 plastic PVC with neoprene gaskets) – provided the well is cased and grouted to water bearing formation	35	35	35	35	None
b. Other or unknown construction; or if well is not cased and grouted to water bearing formation	50	50	50	50	None
4. Sewerage system	50	50	50	50	None
5. Active or permitted pretreatment system (e.g., septic tank or aerobic unit)	50	50	50	50	None
6. Active or permitted drainfield (including reserve drainfield).	50	100	50	100	None
7. Other contamination source (e.g., petroleum storage tank, drum, tote or other container [aboveground or underground], barnyard, landfill, animal lot, fertilizer or pesticide storage)	50	100	50	100	Tanks containing propane or other liquified petroleum gases are not deemed sources of contamination. However, the National Fire Protection Association Liquified Petroleum Gas Code (NFPA-58) recommends a minimum of 10 feet from sources of ignition.
8. Permanently abandoned sewage disposal systems	25	25	25	25	None
9. Reclaimed water distribution pipeline	50	50	50	50	35 feet if RWDP is constructed of water pipe material in accordance with 9VAC25-740-110.
10. Biosolids application sites	100	100	100	100	None
11. Bioretention pond	50	50	50	50	

a. Unlined					
b. Lined	10	10	10	10	
12. Cemetery	50	100	50	100	None
13. Sewage dump station	50	100	50	100	None
14. Property line a. All properties except as described in subdivision 14 b of this table	5	5	5	5	None
b. With an adjacent property of three acres or larger used for an agricultural operation as defined in § 3.2-300 of the Code of Virginia.	50	50	50	50	Exemption for reduced distance applies if the adjacent property owner grants written permission for construction within 50 feet of the property line, or if it is certified that no other site on the property complies with the regulations for construction of a private well.

~~B.~~ C. Downslope siting of wells from potential sources of pollution. Special precaution shall be taken when locating a well within a 60 degree arc directly downslope ~~from any part of any~~ an existing or intended onsite sewage disposal system or other known source of pollution~~, including, but not limited to, buildings subject to termite or vermin treatment, or used to store polluting substances or storage tanks or storage areas for petroleum products or other deleterious substances~~ identified in subsection B of this section, including Table 3.1. The minimum separation distance shall be~~:~~ (i) increased by 25 feet for every 5.0% of slope~~;~~ or (ii) an increase shall be made to the minimum depth of grout and casing in the amount of five feet for every 5.0% of slope.

~~C.~~ D. Sites in ~~swampy areas, low areas, or~~ areas subject to flooding. No private well covered by this chapter shall be located in areas subject to the collection of pollutants such as swampy areas, low areas, or areas subject to flooding. Wells located in flood plains shall be adequately constructed so as to preclude the entrance of surface water during flood conditions. At a minimum, such construction will include extending the well terminus 18 inches above the annual flood level and grading to provide positive drainage in all directions. Other requirements may be made as determined on a ~~case-by-case~~ case-by-case basis by the division.

~~D.~~ E. Property lines. ~~There is no minimum separation distance between a private well and a property line established by this chapter.~~ The owner is responsible for establishing a separation distance from property lines such that the construction and location of the well will be on the owner's property and comply with any local ordinances. No private well shall be constructed within five feet of a property line. If the proposed private well is on a property adjoining properties of three acres or larger used for an agricultural operation, no private well shall be constructed within 50 feet of the property line except as exempted by the following:

1. A notarized letter from the adjacent property owner grants permission to construct a well within 50 feet of the property line. The statement shall be recorded and indexed in the land records of the circuit court having jurisdiction over the property where the well is to be located, or

2. A certification statement from a licensed onsite soil evaluator, professional engineer, or licensed water well systems provider confirms that no other well location on the property complies with this chapter. Reasons that a well location on a property may not comply with this chapter include:

a. The property is not large enough to allow a location of a well 50 feet or more from the property line. In this case, the well should be located at the greatest distance from the property line consistent with this chapter.

b. The location of a well 50 feet or more from the property line prevents separation distance requirements identified in 12VAC5-630-380 B being achieved on the property, provided that required separation distances can be achieved if the well is located fewer than 50 feet from the property line. In this case, the well should be located at the greatest distance from the property line consistent with this chapter. Well owners shall not be obligated to undertake otherwise optional actions, such as substitution of an alternative onsite sewage system in place of a conventional system where a conventional system is suitable, solely to comply with the requirement to maintain a 50 feet separation distance from an adjoining property of three acres or larger used for an agricultural operation.

c. The location is inaccessible to well drilling equipment as a result of topography, surface water, structures, existing onsite sewage system components, overhead or buried utilities, or other obstacle.

d. Other reasons that a well located greater than 50 feet from the property line may not comply with this chapter may be considered by the division on a case-by-case basis.

~~E.~~ F. Utility lines. There is no minimum separation distance between a private well and subsurface utility lines (electric, gas, water, cable, etc.). The minimum separation distance may, however, be established by the individual utility company or local ordinance. Clearance distance from overhead electrical utilities relative to drilling equipment is subject to an Occupational Safety and Health Administration or related safety standard, and this factor shall be considered in determination of well location. No private well shall be constructed within a utility easement without documentation of permission from the utility.

~~F. Pesticide and termite treatment. No Class III private well shall be placed closer than 50 feet from a building foundation that has been chemically treated with any termiticide or other pesticide. No Class IV private well shall be placed closer than 50 feet to a building foundation that has been chemically treated with any termiticide or other pesticide except as provided below. Further, no termiticides or other pesticides shall be applied within five feet of an open water supply trench. A Class IV well may be placed as close as 10 feet to a chemically treated foundation if the following criteria are met:~~

~~1. The aquifer from which the water is withdrawn must be a confined aquifer (i.e., there must be an impermeable stratum overlying the water bearing formation).~~

~~2. The well must be cased and grouted a minimum of 20 feet or into the first confining layer between the ground surface and the water bearing formation from which water is withdrawn, whichever is greater. When the first confining layer is encountered at a depth greater than 20 feet, the well shall be cased and grouted to the first confining layer between the ground surface and the water bearing formation from which water is withdrawn.~~

~~3. The material overlaying the confined aquifer must be collapsing material.~~

G. Permanently abandoned sewage disposal systems.

1. No private well shall be constructed within 25 feet of a permanently abandoned sewage disposal system. The following criteria is to determine if a sewage disposal system is permanently abandoned.

a. The drainfield is no longer connected to a structure or other sewage source.

b. The drainfield has been inactive for at least 24 consecutive months.

c. The septic tank and distribution box have been pumped, limed, crushed, and either filled with an inert material or removed from the site.

2. Documentation of disconnection may include:

a. A statement from the owner of the drainfield.

b. A notification of onsite sewage system abandonment recorded and indexed in the grantor index of the land records of the circuit court having jurisdiction over the site where the sewage system is located.

c. A contractor invoice or other record documenting system disconnection, including disposition of septic tank and distribution box.

d. Record from a public sewer operator indicating date of connection.

3. Abandoned sewage disposal systems that do not meet the requirements of this subsection shall be treated as active systems with respect to determining the minimum separation distance to sources of contamination listed in Table 3.1.

H. Reclaimed water distribution pipeline. No private well shall be placed closer than 50 feet from a reclaimed water distribution pipeline. This separation distance can be reduced to 35 feet provided that the reclaimed water distribution pipeline is constructed from a water pipe material in accordance with American Water Works Association (AWWA) specifications and pressure tested in place without leakage prior to backfilling. The hydrostatic test shall be conducted in accordance with the AWWA standard (ANSI/AWWA C-600-05) for the pipe material, with a minimum test pressure of 30 psi. A Class IV well located closer than 35 feet from a reclaimed water distribution pipeline shall not be converted to a Class III well.

I. Biosolids application site. No private well shall be placed closer than 100 feet from land on which biosolids are applied.

J. Bioretention pond. No private well shall be placed closer than 50 feet from an unlined bioretention pond or 10 feet from a lined bioretention pond. A Class IV well shall not be converted to a Class III well if the Class III well separation distance is not met.

K. Exception for closed-loop ground-source heat pump wells. Closed-loop ground-source heat pump wells, depending upon construction, may not have to comply with the minimum separation distances for Class IV wells listed in Table 3.1. If the well is grouted 20 feet, the minimum separation distances must comply with those listed for Class IV wells. If the well is grouted a minimum of 50 feet, the separation distances shall be those listed for Class IIIA or IIIB wells. If the well is grouted the entire depth of the well, the well does not have to comply with the minimum separation distances contained in Table 3.1.

12VAC5-630-390. Site protection.

A. No objects, articles, or materials ~~of any kind which~~ that are not essential to the operation of the well shall be placed or stored in a well, well house, on the well head or well pump or water treatment system, or within close proximity to them.

B. Fencing of an area around the well, or the placement of other barriers or restrictions, may be required as a condition of

the permit under certain circumstances, such as to prohibit livestock access to the well head or to prohibit vehicles from damaging or polluting the area around the well head.

C. The area around the well shall be graded to divert surface water away from the well.

12VAC5-630-400. Materials.

A. General. ~~All materials~~ Materials used in private wells shall be lead free, approved by the National Sanitation Foundation (NSF) for water well use, have long-term resistance to corrosion and sufficient strength to withstand hydraulic, lateral, and bearing loads.

B. Drilling Fluids. Materials used for well bore stabilization and well development shall meet NSF/ANSI/CAN Standard 60-2020 environmental specifications.

C. Casing. Materials used for casing shall be watertight and shall consist of wrought iron, concrete tile, clay tile, steel, stainless steel, fiberglass, or plastic, all designed for water well use ~~or other suitable materials as determined by the division. The division shall maintain a list of approved casing materials~~. Materials used for casing shall conform to NSF/ANSI/CAN 61-2021 (Drinking Water System Components – Health Effects) and NSF/ANSI/CAN 372-2020 (Drinking Water System Components – Lead Content).

1. Driven casings shall consist of ductile iron, steel or stainless steel and shall be equipped with a suitable drive boot.

2. Casings used for ~~Class IIIA or IIIB~~ drilled wells shall be steel, stainless steel ~~or~~, plastic, or fiberglass.

3. Casings used for bored Class IIIC and IVC wells shall be concrete.

~~C.~~ D. Screens. Where utilized, screens shall be ~~constructed~~ factory manufactured of stainless steel, plastic or other suitable materials ~~as determined by the division~~. Screens shall be constructed of materials ~~which~~ that will not be damaged by ~~any~~ chemical or corrosive action of the ~~ground water~~ groundwater or future cleaning operations. Additionally, screens shall be constructed of materials ~~which~~ that will not degrade ~~ground water~~ groundwater quality. Allowable screen types include wire wrap, louvered, bridge slot, and factory slotted and shall conform to NSF/ANSI/CAN 61-2021 (Drinking Water System Components – Health Effects) and NSF/ANSI/CAN 372-2020 (Drinking Water System Components – Lead Content).

~~D. Joints. Joints shall be watertight and mechanically sound. Welded joints shall have smooth interior surfaces and shall be welded in accordance with acceptable welding practice.~~ E. Grout. The grouting material used shall meet the appropriate specification listed in this subsection.

1. Neat cement grout shall consist of cement and water with not more than six gallons of water per bag (94 pounds) of cement.

2. Bentonite clay may be used in conjunction with neat Portland cement to form a grouting mixture. The bentonite used must be specifically recommended by the manufacturer as being suitable for use as a well grout material and cannot exceed 6.0% by weight of the mixture.

3. Bentonite clay used for grouting shall be sodium bentonite with a minimum of 20% clay solids by weight of water. The bentonite clay shall be specifically recommended by the manufacturer for use as a grouting material.

An exception exists (i) when exceptional conditions require the use of a less fluid grout, to bridge voids, a mixture of cement, sand and water in the proportion of not more than two parts by weight of sand to one part of cement with not more than six gallons of clean water per bag of cement may be used if approved by the district or local health department, or (ii) for bored wells only, a concrete (1-part sand,1-part cement, 2-parts pea gravel mix with all aggregates passing a ½-inch sieve) grout with not more than six gallons of clean water per bag of cement may be used provided a minimum three-inch annular space is available.

4. Other grouting materials may be approved by the division on a case-by-case basis. Review and approval shall be based on whether the proposed material can consistently be expected to meet the intent of grouting expressed in 12VAC5-630-410 F 2. The proposed material must be an industry acceptable material used for the purpose of grouting water wells. Controlled low strength material (flowable fill) or other product incorporating fly ash, other coal combustion byproducts, or other wastes shall not be approved for use as grout.

~~E. Gravel.~~ F. Gravel and sand utilized for ~~gravel~~ filter packed wells shall be uniformly graded, cleaned, washed, disinfected ~~and of a suitable size~~, well rounded, acid resistant, and have a high silica content.

G. Water used during well construction shall be obtained from a suitable source or the well being constructed. A suitable source means a pure water source, or, when a pure water source is not locally available, water taken from another source then disinfected using compounds meeting NSF/ANSI/CAN Standard 60-2020 environmental specifications.

H. Compounds used in the disinfection of completed wells shall meet NSF/ANSI/CAN Standard 60-2020 environmental specifications.

12VAC5-630-410. Construction; general.

A. Private wells shall be constructed using the criteria described in this section. The water well system provider shall provide advance notification regarding the initiation of well construction to the district or local health department to allow department personnel the opportunity to observe well construction. The water well systems provider may construct the well as conditions warrant and shall be under no obligation

to delay construction activities pending arrival of district or local health department personnel.

B. Well bore.

1. The method of advancement of the well bore in which the private well is constructed shall be determined by the water well systems provider relative to local geologic and aquifer conditions.

2. When the construction permit designates a well site, the well bore shall be placed at the well site. When the construction permit designates a well area, the well bore may be placed anywhere within the well area. If a well bore advanced within a well area must be discontinued for any reason, the well bore shall be abandoned in accordance with 12VAC5-630-450 and a new well bore may be undertaken within the well area.

3. Other land disturbance associated with well construction, such as grading and mud pit construction, is not limited to the well area.

4. With the exception of driven wells, the well bore shall be large enough to accommodate the well casing and screen with sufficient annular space on all sides of the casing in the interval to be grouted to freely accommodate a tremie pipe or sounding tube.

5. Drilling fluids used to stabilize the well bore shall be maintained within limits that will allow their complete removal from the water produced from the well, and shall not damage the capacity, efficiency, and quality of the well.

6. Representative samples of formation materials shall be collected during well bore advancement with sufficient frequency to allow for preparation of the driller's log (GW-2) of the type of rock, sediment, or soil encountered.

C. Casing.

1. The casing shall maintain the well bore by preventing its walls from collapsing, provide a channel for the conveyance of water, and protect the quality of the water withdrawn from the well. The thickness of the casing shall be sufficient to resist the force imposed during installation and which can be anticipated after installation.

~~1.~~ 2. Class IIIA and IVA wells shall be cased to a depth of at least 100 feet.

~~2.~~ 3. Class IIIB and IVB wells shall be cased to a depth of at least 50 feet.

~~3.~~ 4. Except as provided in subdivisions a through e below, ~~all~~ Class IIIC and ~~IV~~ IVC wells shall be cased to a minimum depth of 20 feet or terminated not less than one foot in bedrock when bedrock is encountered at a depth less than 20 feet.

a. When in collapsing material, the casing shall terminate in the aquifer but in no instance be less than 20 feet.

b. Where an aquifer is encountered at less than 20 feet, Class ~~IV~~ IVC wells may be cased to within one foot of the water bearing strata. In the instance of Class IV wells the intent of this chapter is to protect ~~ground water~~ groundwater quality, and not to ensure a potable water supply.

~~Exception: Class IV wells placed closer than 50 feet from a building foundation treated with a chemical termiticide or other pesticide shall comply with the minimum casing depth requirements of 12VAC5-630-380 F 2.~~

c. Alternate casing depths may be accepted for bored wells when the only aquifer lies between 11 and 20 feet provided the casing is placed within one foot of the aquifer and must not be less than 10 feet in depth from the ground surface.

d. Class ~~III C~~ IIIC driven wells shall be cased to the water bearing strata; however, in no case less than 10 feet. No minimum casing requirements apply to Class ~~IV~~ IVC driven wells except that in order to protect ~~ground water~~ groundwater they shall be capable of meeting the minimum grouting requirements as described in subdivision ~~C 5 e~~ E-2 of this section.

e. Closed-loop ground-source heat pump wells do not have to be cased.

~~4. All private~~ 5. When PVC casing is terminated in bedrock, the well casing shall be sealed using a mechanical seal or packer.

6. Extension of casing above ground surface. Private well casings shall be extended at least 12 inches above ground or at least 12 inches above a concrete floor in a well house with a gravity flow drain. The following wells are exempted from this requirement; however, their location shall be permanently marked for easy location in the future:

a. Drilled shallow well suction pump systems that will not operate unless a vacuum is maintained. The casings for these wells are also the suction lines through which water is drawn.

b. Deep well ejector pump systems that utilize a casing adaptor and must maintain a vacuum to operate.

c. Closed-loop ground-source heat pump wells.

d. Heat pump return wells that are completely sealed.

~~5. All steel casings shall meet or exceed the material specifications found in 12VAC5-630-480.~~

~~6. No plastic well casing shall be installed which will exceed 80% of its RHCP (resistance to hydraulic collapse pressure). When experience has shown, in the division's opinion, that the prevailing geologic conditions are subject to collapse or shifting, or where heavy clay or unstable backfill materials occur, plastic well casings may not exceed 50% of the RHCP rating. It shall be the responsibility of the well driller to submit calculations to the division demonstrating that individual well casings do not exceed these ratings.~~

7. The casing shall be centered in the well bore the entire depth of the well in order to provide for even distribution of filter pack and grout in the annular space.

8. Joints shall be compatible with the casing material, specific to the task, and be watertight under normal operating conditions, with watertight joints above the screened interval.

9. Casing straightness and alignment:

a. Casing in all private wells shall be sufficiently straight that it will not interfere with the installation and operation of a pump suitable for the intended purpose of the well.

b. For casing intended to accommodate a line shaft turbine pump, the maximum allowable horizontal deviation of the well from the vertical shall not exceed 2/3 times the smallest inside diameter per 100 feet of that part of the well being tested to the depth of the anticipated pump installation.

~~B.~~ D. Screens.

1. The screen shall allow passage of water from the aquifer and provide sufficient tensile, collapse, and compression strength to withstand the physical loading it will be exposed to during installation, completion, development, and operational conditions. When used for the prevention of entry of foreign materials, screens shall be free of rough edges, irregularities, or other defects. A positive watertight seal between the screen and the casing shall be provided when appropriate.

~~C.~~ 2. Screen length, diameter, and slot size shall be determined based on field examination of representative samples of formation material collected during advancement of the well bore, and may be supplemented by sieve analysis of materials in the water bearing zone or geophysical logging of the well bore.

3. Joints between (i) casing and screen and (ii) screen and screen shall meet the requirements of subdivision C 8 of this section.

4. The bottom of the screen, or of the deepest screen in the case of multiple screens, shall be configured to reduce the possibility of native formation or well construction material heaving up into the screened interval. A closed bottom may not be required for screens installed in some formation materials.

5. The screen shall be centered in the well bore.

E. Filter pack.

1. When a filter pack is required, the filter pack material used shall be determined based on field examination of representative samples of the water bearing formation in the withdrawal interval, and may be supplemented by sieve analysis. The filter pack shall be placed in the annular space by a method that prevents bridging and creates uniform distribution.

2. The filter pack shall extend above the top of the screened interval to a thickness sufficient to compensate for settling that may occur during development and operation of the well.

3. Filter pack material may be used with a screen as a formation stabilizer when water is withdrawn from a poorly consolidated rock subject to disintegration and caving when the well is pumped. Formation stabilizer shall be at least as coarse as the formation native material.

F. Grouting.

1. General. ~~All private~~ Private wells shall be grouted. ~~It is preferred that no openings are made in the side of the well casing.~~

2. Purpose. The annular space between the casing and well bore is one of the principal avenues through which undesirable water and contaminants may gain access to a well. The goal of grouting a well is to preclude the entrance of undesirable water and contaminants. Therefore, the annular space shall be filled with a neat cement grout, a mixture of bentonite and neat cement or bentonite clay grout specifically approved by the manufacturer for use as a grouting material.

~~3. Specifications. The grouting material used shall meet the appropriate specification listed below:~~

~~a. Neat cement grout shall consist of cement and water with not more than six gallons of water per bag (94 pounds) of cement.~~

~~b. Bentonite clay may be used in conjunction with neat Portland cement to form a grouting mixture. The bentonite used must be specifically recommended by the manufacturer as being suitable for use as a well grout material and cannot exceed 6.0% by weight of the mixture.~~

~~c. Bentonite clay used for grouting shall be sodium bentonite with a minimum of 20% clay solids by weight of water. The bentonite clay shall be specifically recommended by the manufacturer for use as a grouting material.~~

~~Exception: (i) When exceptional conditions require the use of a less fluid grout, to bridge voids, a mixture of cement, sand and water in the proportion of not more than two parts by weight of sand to one part of cement with not more than six gallons of clean water per bag of cement may be used if approved by the district or local health department, or (ii) for bored wells only, a concrete (1-1-2 mix with all aggregates passing a 1/2 inch sieve) grout with not more than six gallons of clean water per bag of cement may be used provided a minimum three inch annular space is available and its use approved by the district or local health department.~~

~~In cases where an open borehole has been drilled below the depth to which the casing is to be grouted, the lower part of the hole must be backfilled, or a packer must be set in the hole, to retain the slurry at the desired depth. Backfilling the hole with gravel and capping with sand is an acceptable practice. Material ordinarily sold as plaster or mortar sand is usually satisfactory; more than half the sand should be of grain sizes between 0.012 inches and 0.024 inches.~~

3. Based on the well casing material and native geology, grout material shall be selected to minimize potential for spidering, cracking, or separation of grout from the well casing.

4. ~~Other materials. Other grouting materials may be approved by the division on a case by case basis. Review and approval shall be based on whether the proposed material can consistently be expected to meet the intent of grouting expressed in 12VAC5-630-410-C-2. The proposed material must be an industry acceptable material used for the purpose of grouting water wells.~~ When an open well bore has been drilled below the depth to which the casing is to be grouted, the lower part of the hole must be backfilled, or a packer must be set in the hole to retain the slurry at the desired depth. Backfilling the hole with gravel and capping with sand is an acceptable practice. Material ordinarily sold as plaster or mortar sand is satisfactory; more than half the sand should be of grain sizes between 0.012 inches and 0.024 inches.

5. Depth.

a. ~~All~~ Class IIIA and Class IVA wells shall be grouted to a minimum depth of 20 feet.

b. ~~All~~ Class IIIB and Class IVB wells shall be grouted to a minimum depth of 50 feet.

c. ~~All~~ Class IIIC and Class ~~IV~~ IVC wells shall be grouted to a minimum depth of 20 feet when the casing depth is equal to or greater than 20 feet. When the casing depth is less than 20 feet, the casing shall be grouted in accordance with this subsection, from the lower terminus of the casing to the surface.

~~Exception: Class IV wells placed closer than 50 feet from a building foundation treated with a chemical termiticide or other pesticide shall comply with the minimum grouting depth requirements of 12VAC5-630-380-F-2.~~

d. Alternate grouting depths may be accepted for bored wells when the only aquifer suitable for a private well lies between 11 and 20 feet provided the grouting shall terminate at least one foot above the aquifer but must not be less than 10 feet in depth from the ground surface.

e. Driven wells shall be grouted to a minimum depth of five feet by excavating an oversize hole at least four inches in diameter larger than the casing and ~~pouring~~ placing an approved grout mixture into the annular space.

6. Installation. Grout shall be installed by means of one of the following methods.

a. Placement using a grout pump or tremie pipe from the bottom of the annular space upward in one operation until the annular space is filled~~, whenever the grouting depth exceeds 20 feet~~. ~~Pouring of grout is acceptable for drilled wells whenever grouting depth does not exceed 20 feet.~~

b. Pouring of grout is acceptable for bored wells ~~whenever~~ when the grouting depth does not exceed ~~30~~ 20 feet provided there is a minimum of a 3-inch annular space. ~~Grouting shall be brought to the ground surface and flared to provide a one foot radius around the casing at least six inches thick. However, whenever pitless adapters are used, the grout shall terminate at the base of the pitless adapter. When an outer casing is necessary to construct a new well, where possible, the outer casing shall be pulled simultaneously with the grouting operation.~~

c. Bentonite chips or pellets are acceptable for bored wells when the grouting depth does not exceed 20 feet provided the annular space is at least four inches greater than the outside diameter of the casing or coupling and the casing. Bentonite chips or pellets shall be placed via a tremie pipe having an interior diameter at least four times the size of the pellet or chip.

d. Placement of bentonite chips by free fall shall only occur within five feet of the ground surface.

7. ~~Annular space. The clear annular space around the outside of the casing and the well bore shall be at least 1.5 inches on all sides except for bored wells which shall have at least a 3-inch annular space~~ Surface completion of grout. Grout shall be brought to the ground surface and flared to provide a one-foot radius around the casing at least six inches thick. However, whenever pitless adapters are used, the grout shall terminate at the base of the pitless adapter. When an outer casing is necessary to construct a new well, where possible, the outer casing shall be pulled simultaneously with the grouting operation.

~~D.~~ G. Additional casing and grouting. When a well is to be constructed within 100 feet of a subsurface sewage disposal system, which has been or is proposed to be installed at a depth greater than five feet below the ground surface, the casing and grouting of the water well shall be increased to maintain at least a 15-foot vertical separation between the trench bottom and the lower terminus of the casing and grouting.

~~E.~~ H. Well head.

1. General. No open wells or well heads or unprotected openings into the interior of the well shall be permitted. Prior to the ~~driller~~ water well systems provider leaving the well construction site, the owner shall have the ~~driller~~ water well systems provider protect the well bore ~~hole~~ by installing a cover adequate to prevent accidental contamination.

2. Mechanical well seals. Mechanical well seals (either sanitary well seals or pitless adapters) shall be used on ~~all~~ Class III and Class IV wells and shall be water and air tight except as provided in 12VAC5-630-410 ~~F~~ I 4.

3. Other. Wells greater than eight inches in diameter shall be provided with a watertight overlapping (shoebox) type cover, constructed of reinforced concrete or steel.

~~F.~~ I. Appurtenances passing through casing.

1. General. ~~All openings~~ Openings through well casings shall be provided with a positive water stop.

2. Pitless well adapters. ~~Pitless well adapters shall be subject to approval by the division. All pitless adapters shall be installed according to the manufacturers recommendations.~~ When used, pitless units and pitless adaptors shall be attached to the casing in a manner that will make the connection watertight. If an access port is installed, it shall be watertight.

3. Sanitary well seals. ~~Sanitary well seals shall be subject to approval by the division. All~~ When used, sanitary well seals, shall be installed according to the ~~manufacturers~~ manufacturer's recommendations. A one piece top plate shall be used on a well that terminates outdoors.

4. Venting. Venting~~, where necessary as determined by the district health department,~~ shall be provided in such a manner as to allow for the passage of air, but not water, insects, or foreign materials~~,~~ into the well.

J. Well development.

1. "Well development" means the act of repairing damage to the geologic formation from drilling procedures and increasing the porosity and permeability of the materials surrounding the intake portion of the well. It is accomplished by application of mechanical energy, chemicals, or both to (i) remove drilling fluids and formation damage caused by the well bore drilling and well completion processes; (ii) remove formation fines near the well bore to increase hydraulic conductivity and create a filter medium; (iii) establish optimal hydraulic contact between the well and the geologic formation (aquifer) supplying water; (iv) provide for an acceptable level of sand and turbidity; and (v) provide for an appropriate level of drawdown at the production pumping rate.

2. Private wells shall be developed. Disinfection required by 12VAC5-630-430 and water quality testing required by 12VAC5-630-431 shall not be conducted on a well prior to well development.

K. Well maintenance and repair.

1. Equipment and water or other materials used during hydraulic fracturing of bedrock wells shall comply with 12VAC5-630-400.

2. Private wells shall be disinfected per 12VAC5-630-430 following maintenance, redevelopment, or other activity requiring access to the interior of the casing of a completed well.

12VAC5-630-420. Observation, monitoring, and remediation wells.

A. Except as provided in subsections B and C of this section, observation ~~and,~~ monitoring, and remediation wells are exempted from this chapter. The exemption shall not apply to test and exploration wells constructed for the purpose of evaluating groundwater quality or available quantity related to a proposed beneficial use such as water supply for a subdivision, office park, or proposed commercial or industrial application.

B. Observation ~~or,~~ monitoring, and remediation wells shall be constructed in accordance with the requirements for private wells if they are to remain in service after the completion of the ~~ground water~~ groundwater study.

C. Observation ~~or,~~ monitoring, and remediation wells shall be ~~properly~~ permanently abandoned in accordance with 12VAC5-630-450 within 90 days of cessation of use. Unless specifically allowed under terms of a permit issued by DEQ, temporary abandonment of observation, monitoring, and remediation wells shall not occur.

12VAC5-630-430. Disinfection.

~~All Class III private~~ A. Private wells shall be disinfected before placing the ~~well(s)~~ well in service.

B. Methodology. Disinfection shall be accomplished by ~~maintaining~~ one of the following methods:

1. Maintaining a 100 mg/l solution of chlorine in the well for 24 hours utilizing the dosage rates set forth in 12VAC5-630-470.

2. Applying a quantity of water/chlorine solution to ensure a minimum of 100 mg/L of available chlorine throughout the well and immediate formation materials. Disinfection contact time shall be established on the basis of contact units, which are calculated as mg/L chlorine multiplied by hours of exposure. Contact time shall equate to a minimum of 1,000 contact units (50 mg/L chlorine x 20 hours = 1,000 contact units; 200 mg/L chlorine x 5 hours = 1,000 contact units; etc.).

12VAC5-630-431. Water quality.

A. Class IV wells exempt. The water quality requirements contained in this section apply to Class III private wells. Class IV private wells (wells not constructed as a source of water for human consumption) are not subject to water quality requirements.

B. Sample tap. A sample tap shall be provided at or near the water entry point into the system so that samples may be taken

directly from the source; this requirement may be met by utilizing the first tap on a line near where the plumbing enters the house (may be a hose bib), provided the tap precedes any water treatment devices.

C. Disinfection. The entire water system including the well shall be disinfected prior to use pursuant to 12VAC5-630-430.

D. Sampling. After operating the well to remove any remaining disinfectant, a sample of the water from the well shall be collected for bacteriological examination. The sample may be collected by the owner, water well systems provider, or other person in accordance with procedures established by the department and provided the sample is submitted to a private laboratory accredited by the Department of General Services, Division of Consolidated Laboratory Services, for analysis.

E. Test interpretation. A Class III private well shall be considered satisfactory if the water sample tests negative for coliform organisms as described in subdivision 1 or 2 of this subsection. Sources with positive counts shall be tested as described in subdivision 3 of this subsection to determine if the water supply is amenable to continuous disinfection. Samples that exhibit confluent growth shall be considered inconclusive and another sample shall be collected.

1. When a private well has no unsatisfactory water sample within the previous 12 months, one water sample which tests negative for coliform bacteria shall be considered satisfactory for coliform organisms.

2. When a private well has had one or more positive water samples within the past 12 months for coliform bacteria, at least two consecutive samples must be collected and found negative for coliform organisms before the supply may be considered satisfactory for coliform organisms. The samples must be collected at least 24 hours apart and the well may not be disinfected between samples.

3. When a private well does not test satisfactory for coliform organisms continuous disinfection may be recommended to the homeowner if the water supply is found to be suitable for continuous disinfection. A minimum of 10 independent samples shall be collected and tested for total coliform using an MPN methodology. To be independent, samples shall be collected no less frequently than one sample per day. The geometric mean of the samples shall be calculated and if the result is less than 100 organisms per 100 ml, the supply shall be considered satisfactory for continuous disinfection.

F. Water treatment. If tests indicate that the water samples test positive for coliform organisms and do not meet the standards described in this section and no other approved source is available, adequate methods of water treatment shall be applied. The treatment device shall be demonstrated to be effective pursuant to subdivision E 3 of this section prior to the issuance of an inspection statement. The district or local health department shall be consulted when treatment is necessary.

G. Conversion of Class IV well to Class III potable well. In order to convert an existing Class IV to a Class III well, the owner shall provide the following information to the local health department.

1. A complete application indicating the intent to convert the well classification.

2. A copy of the existing uniform water well completion report documenting that the well meets Class IIIA, Class IIIB, or Class IIIC construction standards in accordance with this chapter.

3. Confirmation that the well meets separation distance criteria for Class III wells listed on Table 3.1 of 12VAC5-630-380.

4. A negative bacteria water sample in accordance with subsections D, E, and F of this section.

12VAC5-630-440. Information to be reported.

A copy of a Uniform Water Well Completion Report ~~(see 12VAC5-630-490)~~ shall be provided to the district or local health department within 30 days of the completion ~~of the well or completion of alterations thereto~~, alteration, or abandonment of a private well.

12VAC5-630-450. Well abandonment.

A. ~~Well abandonment is governed jointly by the Department of Environmental Quality and the Department of Health pursuant to § 62.1-44.92(6) of the Ground Water Act of 1973 (Repealed). In addition, the~~ The abandonment of any a private well governed by this chapter, or any a private well abandoned as a condition of a permit issued under this chapter, shall be administered by the Department of Health in conformance with this section. The owner or owner's agent shall provide advance notification regarding the initiation of well abandonment to the district or local health department to allow department personnel the opportunity to observe well abandonment. The owner or owner's agent shall be under no obligation to delay abandonment activities pending arrival of department personnel.

B. Prohibited materials. The following materials, even if classifiable as clean fill or beneficial use byproducts in other applications, shall not be used as clean fill or grout in any well abandonment procedure.

1. Contaminated media.

2. Non-manufactured gravel, brick, broken concrete, crushed glass, porcelain, or road pavement, except as these materials are present as incidental constituents of undisturbed soil or natural earth materials.

3. Controlled low strength material (flowable fill) or other product incorporating fly ash, other coal combustion byproduct, or other waste.

C. Temporary abandonment. A temporarily abandoned well shall be sealed with a water-tight cap or well head seal. Such a well shall be maintained so that it will not be a source or channel for contamination to ~~ground water~~ groundwater during temporary abandonment.

~~C.~~ D. Permanent abandonment. The object of proper permanent abandonment is to prevent contamination from reaching ~~ground water~~ groundwater resources via a component of the well, including casing, annular space, and well cap. Permanently abandoned wells, with the exception of bored wells abandoned per the methods identified in subdivisions 5 a and 5 b (3) of this subsection shall no longer be classified as wells. A permanently abandoned well shall be abandoned in the following manner:

1. ~~All casing~~ Casing material may be salvaged.

2. Before the well is ~~plugged~~ abandoned, it shall be checked from land surface to the entire depth of the well to ascertain freedom from obstructions that may interfere with ~~plugging (sealing)~~ abandonment operations.

3. The well shall be thoroughly chlorinated using the dosage rates in 12VAC5-630-430 prior to ~~plugging (sealing)~~ abandonment.

4. Grout used in well abandonment shall conform to 12VAC5-630-400 E.

5. Bored wells, rock or brick-lined, and uncased wells shall be abandoned using one of the following methods:

a. Clean fill method. Bored, rock or brick-lined, and uncased wells abandoned by this method shall remain designated as wells with respect to the siting of onsite sewage treatment system components per the requirements of 12VAC5-610 and 12VAC5-613. The well shall be backfilled with clean fill to the water level. A two-foot-thick bentonite plug shall be placed immediately above the water level. Clean fill shall be placed on top of the bentonite plug and brought up to at least five feet from the ground surface. The top five feet of the well casing, if present, shall be removed from the bore hole. If an open annular space is present around the well casing, the annular space shall be filled with grout to the maximum depth possible, but not less than or equal to 20 feet. A one-foot-thick cement or bentonite grout plug that completely fills the bore void space shall be placed a minimum of five feet from the ground surface. The remaining space shall be filled with clean fill which is mounded a minimum of one foot above the surrounding ground surface. ~~Bored wells or uncased wells abandoned in this manner shall be treated as wells with respect to determining the minimum separation distance to sources of contamination listed in Table 3.1.~~ When the well is fewer than 25 feet deep, this procedure shall be followed to the greatest extent possible, including removing at a minimum the top five feet of casing below ground and grouting the open annular space as described in this subdivision. The location of these wells shall be permanently marked for future ~~location~~ reference.

~~5. Wells~~ b. Grout abandonment method. Bored, rock or brick-lined, and uncased wells abandoned by this method shall no longer be designated as wells, with the exception of subdivision 5 b (3) of this subsection. At a minimum, the top five feet of well casing below ground, if present, shall be removed from the well bore.

(1) When a continuous annular space is present around the well casing, the annular space shall be filled with grout, placed via a tremie pipe, to the maximum depth possible, but not less than 20 feet.

(2) When an annular space is present but not continuous, materials shall be completely removed from the annular space to the maximum depth possible, but not less than 20 feet, and the annular space shall be filled with grout placed via a tremie pipe.

(3) When an annular space is present but not continuous, and cannot be cleared sufficiently for the annular space to be filled with grout to a depth not less than 20 feet, then accessible annular space will be filled with grout placed via a tremie pipe. Wells in which the annular space cannot be filled with grout to depth of at least 20 feet shall be treated as a well with respect to the siting of onsite sewage treatment components per the requirements of 12VAC5-610 and 12VAC5-613.

(4) If existing well documentation (GW-2) indicates that the annular space is filled with grout to a minimum depth of 20 feet, the condition of the grout shall be confirmed by visual observation of the top of the grout following the removal of the top five feet of well casing below ground. If the grout appears intact, no further confirmation of grout condition shall be required and abandonment shall proceed. If the grout condition appears compromised based on visual examination, then the requirements of subdivision 5 b (2) or 5 b (3) of this subsection shall apply.

(5) Once the annular space is addressed the well shall be pumped dry and completely filled with grout poured from the surface. If the well is not pumped dry, grout shall be placed by introduction through a tremie pipe. The placement of grout in the well bore shall completely fill the bore void space to within a minimum of five feet from the ground surface. The well shall be capped with clean fill which is mounded a minimum of one foot above the surrounding ground surface. When the well is fewer than 25 feet deep, this procedure shall be followed to the greatest extent possible, including removing at a minimum the top five feet of casing below ground and cleaning or grouting the open annular space as described in this subdivision.

6. Drilled wells, including observation, monitoring, and remediation wells constructed in collapsing material shall be

completely filled with grout ~~or clay slurry by introduction through~~ placed via a tremie pipe ~~initially extending to the bottom of the well. Such pipe shall be raised, but remain submerged in grout, as the well is filled~~.

~~6. Wells~~ The well shall be capped with clean fill mounded to a minimum of one foot above the surrounding ground surface and graded to provide positive drainage away from the well.

7. Drilled wells, including observation, monitoring, and remediation wells, constructed in consolidated rock formations or which penetrate zones of consolidated rock shall be completely filled with grout placed via a tremie pipe. At the discretion of the water well service provider, the well may be filled with sand or gravel opposite the zones of consolidated rock. The top of the sand or gravel fill shall be at least five feet below the top of the consolidated rock and at least 20 feet below the land surface. The remainder of the well shall be filled with grout ~~or clay slurry~~ placed via a tremie pipe. The well shall be capped with clean fill mounded to a minimum of one foot above the surrounding ground surface and graded to provide positive drainage away from the well.

~~7.~~ 8. Other abandonment procedures may be approved by the division on a case by case basis.

~~8. Test and exploration wells shall be abandoned in such a manner to prevent the well from being a channel for the vertical movement of water or a source of contamination to ground water.~~

9. When bored wells are ~~bored~~ advanced and a water source is not found, and the casing has not been placed in the bore hole, the well bore ~~hole may~~ shall be abandoned by backfilling with the ~~bore spoils~~ cuttings or clean fill or both to at least five feet below the ground surface. A two-feet-thick ~~bentonite grout~~ plug of grout shall be placed at a minimum of five feet from the ground surface. The remainder of the bore hole shall be filled with the ~~bore spoils~~ cuttings or clean fill or both.

12VAC5-630-460. Water system yields for residential use wells.

A. ~~All drinking~~ Drinking water systems that utilize one or more Class III wells shall be capable of supplying water in adequate quantity for the intended usage. ~~All such systems, with~~ Systems with a capacity ~~less than~~ under three gallons per minute~~,~~ shall have ~~a capacity~~ ability to produce and store 150 gallons per bedroom per day and be capable of delivering a sustained flow of five gallons per minute per connection for 10 minutes for ordinary residential use. Systems with a capacity of three gallons per minute or more do not require additional storage.

B. The certified water well systems provider shall certify the storage capacity and the yield of the well on the Uniform Water Well Completion Report.

12VAC5-630-480. ~~Well casing specifications.~~ (Repealed.)

~~Steel Casings~~				
~~Nom. Size (inches)~~	~~Weight (lbs./ft.)~~	~~Thickness (inches)~~	~~External Diameter~~	~~Internal Diameter~~
~~4~~	~~10.79~~	~~.188~~	~~4.5~~	~~4.026~~
~~6~~	~~13.00~~	~~.188~~	~~6.625~~	~~6.25~~
~~8~~	~~24.70~~	~~.277~~	~~8.625~~	~~8.071~~
~~10~~	~~31.20~~	~~.279~~	~~10.75~~	~~10.192~~

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 (12VAC5-630)

Application for: Sewage System - Water Supply, AOSE Form D (rev. 7/2007)~~.~~

Application for Express Class IV Well Construction Permit~~.~~

Record of Inspection - Private Water Supply System.

~~Uniform Water Well Completion Report.~~

Uniform Water Well Completion Form, GW-2 (eff. 8/2016)

Registration Statement for Express Geothermal Well Permit (eff. 6/2012)

DOCUMENTS INCORPORATED BY REFERENCE (12VAC5-630)

NSF International, P.O. Box 130140, 789 N. Dixboro Road, Ann Arbor, MI 48105 (http://www.nsf.org/):

NSF/ANSI/CAN Standard 60-2020 Drinking Water Treatment Chemicals - Health Effects, 2020

NSF/ANSI/CAN Standard 61-2021 Drinking Water System Components - Health Effects, 2021

NSF/ANSI/CAN Standard 372-2020 Drinking Water System Components - Lead Content, 2020

NSF/ANSI/CAN Standard 600-2021 Health Effects Evaluation and Criteria for Chemicals in Drinking Water, 2021

NSF/ANSI/CAN Standard 600-2021 Addendum, Health Effects Evaluation and Criteria for Chemicals in Drinking Water, 2021

VA.R. Doc. No. R19-5654; Filed December 22, 2021, 8:00 p.m.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Fast-Track Regulation

Title of Regulation: **12VAC30-80. Methods and Standards for Establishing Payment Rate; Other Types of Care (adding 12VAC30-80-26).**

Statutory Authority: § 32.1-325 of the Code of Virginia; 42 USC § 1396 et seq.

Public Hearing Information: The agency does not intend to hold a public hearing at the proposed stage.

Public Comment Deadline: February 16, 2022.

Effective Date: March 3, 2022.

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.

Basis: Section 32.1-325 of the Code of Virginia authorizes the Board of Medical Assistance Services to administer and amend the State Plan for Medical Assistance and to promulgate regulations. Section 32.1-324 of the Code of Virginia authorizes the Director of the Department of Medical Assistance Services (DMAS) to administer and amend the State Plan for Medical Assistance and to promulgate regulations according to the board's requirements. The Medicaid authority, as established by § 1902(a) of the Social Security Act (42 USC § 1396a), provides governing authority for payments for services.

Purpose: This regulation is essential to protect the health, safety, and welfare of citizens in that it will help ensure access to medical care for members of the Mattaponi Tribe and for other Medicaid members.

Rationale for Using Fast-Track Rulemaking Process: This regulation is expected to be noncontroversial because it will increase access to Medicaid services and because the federal government will reimburse DMAS for 100% of the cost of services provided to Medicaid members.

Substance: Under § 1905(b) of the Social Security Act, the federal government is required to match state expenditures at the Federal Medical Assistance Percentage rate, which is 100% for state expenditures on behalf of American Indian or Alaskan Native Medicaid beneficiaries for covered services received through an Indian Health Service facility whether operated by the Indian Health Service or by a tribe or tribal organization (as defined in the Indian Health Care Improvement Act). The new section establishes reimbursement rates and payment methodologies for Indian Health Service facilities in Virginia.

Issues: The primary advantages of this regulation for the public and the Commonwealth are that the regulation allows greater access to medical care, and that services provided to Medicaid members at this new clinic will be reimbursed by the federal government. There are no disadvantages to the agency, the Commonwealth, or the public.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Department of Medical Assistance Services (DMAS) proposes to add a new section to 12VAC30-80 Methods and Standards for Establishing Payment Rate; Other Types of Care titled Reimbursement for Indian Health Service Tribal 638 Health Facilities. The new section would establish reimbursement rates and payment methodologies for Indian Health Service (IHS) facilities in Virginia. The proposed regulatory changes were prompted by the establishment of an IHS facility by the Upper Mattaponi Tribe in King William County earlier in 2021.

Background. The Upper Mattaponi Tribe, along with five other Indian tribes in Virginia, gained federal recognition through the passage of the Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2017 on January 12, 2018.[1] Federally recognized tribes have the authority to contract with IHS to establish and administer health facilities, which are also referred to as Tribal 638 Health Facilities.[2] Thus, following federal recognition, the Upper Mattaponi Tribe established a Tribal Health Clinic (THC) in King William County to meet the demand for primary care services in that locality, primarily (but not exclusively) among tribe members who reside there, including those enrolled in Virginia Medicaid.[3] In doing so, they are the first Indian Tribe in Virginia to establish an IHS facility; other federally recognized tribes are likely to establish similar health facilities in the future

Federal law requires DMAS to recognize and reimburse IHS facilities as Medicaid providers and provides 100% federal coverage for Medicaid payments made to these facilities.[4] Because IHS facilities differ in this way from private Medicaid providers, DMAS was required to file a state plan amendment (SPA) to establish appropriate reimbursement methodologies prior to making any payments to the Upper Mattaponi Tribe's THC.[5] As per the SPA and the proposed amendments, any IHS facility in Virginia would be reimbursed for providing services to Medicaid enrollees at the All-Inclusive Rates (AIR or the "OMB rate") set by the federal government. The AIR is published in the Federal Register annually, and is primarily used for Medicare and Medicaid reimbursements to IHS facilities throughout the United States.[6]

In addition, the Upper Mattaponi Tribe's THC has been enrolled with the Centers for Medicare and Medicaid Services as a Federally Qualified Health Center (FQHC). FQHCs are safety net providers that provide services typically given in an outpatient clinic.[7] FQHC status allows these facilities to receive payments from DMAS using an alternative payment methodology (APM). Although the proposed new section does not specify any details about the APM, except that payment amounts will be as per the AIR, the SPA states that Virginia

Medicaid will use a Prospective Payment System (PPS) for the THC.[8] Details about the Medicaid PPS methodology can be found in the SPA as well as in section 25 of the same regulation, Reimbursement for federally qualified health centers (FQHCs) and rural health clinics (RHCs), which would immediately precede the proposed new section.[9]

Lastly, the proposed new section anticipates that other federally recognized tribes in the state are likely to follow the precedent set by the Upper Mattaponi Tribe and establish new IHS facilities. Under the proposed amendments, new IHS facilities established by any of Virginia's federally recognized tribes could be seamlessly enrolled as Medicaid providers in the future. New IHS facilities would be reimbursed at the AIR regardless of whether they enroll as an FQHC. As per the new section, facilities that enroll as FQHCs could potentially be paid under a different APM if they so choose, and DMAS would file an SPA if necessary in order to provide that payment methodology.

Estimated Benefits and Costs. The proposed amendments would directly benefit the Upper Mattaponi Tribe's THC by allowing it to provide services to Medicaid patients and receive payment from DMAS. The proposed amendments would also benefit tribe members and other county residents with Medicaid coverage by reducing the financial and travel costs of accessing primary healthcare. The proposed amendments would also benefit any other IHS facilities that are established in the future by allowing those facilities to become enrolled as Medicaid providers.

The proposed amendments do not expand Medicaid eligibility or increase coverage; thus, there are no new costs to the Medicaid program. Increased access to primary healthcare would likely lead to increased utilization; this may increase costs for payers in the short term, but could save them money in the long term to the extent that the specific services being utilized include preventative care

The proposed amendments would also yield modest savings for DMAS since Medicaid enrollees who use the THC would now be covered under a higher FMAP. In the absence of an IHS facility, tribe members with Medicaid would have obtained services from private providers, for which DMAS would be reimbursed at the standard FMAP. However, because IHS facilities receive a 100 percent FMAP, DMAS may save money even if healthcare utilization increases among this pool of enrollees. However, such savings are likely to be modest since a relatively small proportion of Medicaid enrollees would be affected by this change.

Businesses and Other Entities Affected. As mentioned previously, the proposed amendments primarily affect the THC established by the Upper Mattaponi Tribe in King William County and any future IHS facilities established in the state.

Small Businesses[10] Affected. The proposed amendment would not affect any small businesses.

Localities[11] Affected.[12] The proposed amendment does not introduce new costs for local governments. The proposed amendments specifically benefits residents of King William County who are Medicaid recipients, by increasing their access to primary healthcare. Similarly, the proposed amendments would also benefit Medicaid recipients in localities where any new IHS facilities are established in the future.

Projected Impact on Employment. The proposed amendments may be associated with a modest increase in employment at the THC in King William County and future IHS facilities, to the extent that Medicaid recipients comprise a significant share of their patient volume and Medicaid reimbursements constitute a significant source of revenue.

Effects on the Use and Value of Private Property. By creating a conduit for the Upper Mattaponi Tribe's THC and future IHS facilities to receive Medicaid reimbursement revenues, the proposed amendments increase the value of these facilities. Real estate development costs are not affected.

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[1]See https://www.wtvr.com/2018/01/12/bill-passes-to-give-6-va-native-american-tribes-federal-recognition/.

[2]The number 638 comes from Public Law 93-638, the Indian Self Determination and Education Assistance Act. See https://www.ihs.gov/odsct/title1/.

[3]See https://www.dailypress.com/tidewater-review/va-tr-kw-upper-mattaponi-clinic-0521-20210521-w2qh5sqrr5g2dccgmkb7g75egi-story.html.

[4]Under section 1905(b) of the Social Security Act, the federal government is required to match state expenditures at the Federal Medical Assistance Percentage (FMAP) rate, which is 100% for state expenditures on behalf of American Indian/Alaskan Native Medicaid beneficiaries for covered services "received through" an Indian Health Service facility whether operated by the Indian Health Service or by a Tribe or Tribal organization (as defined in section 4 of the Indian Health Care Improvement Act). Note that the standard FMAP for Virginia Medicaid enrollees has been 56.2% since FY 2020.

[5]DMAS' SPA submission can be found at https://www.dmas.virginia.gov/media/3305/spa-21-007-tribal-health-clinic-final-03-26-2021.pdf. The approved SPA, effective February 24, 2021, can be found at https://www.medicaid.gov/medicaid/spa/downloads/VA-21-0007.pdf.

[6]See https://www.ihs.gov/businessoffice/reimbursement-rates/.

[7]See https://www.hhs.gov/guidance/sites/default/files/hhs-guidance-documents/FQHC-Text-Only-Factsheet.pdf for information on FQHCs.

[8]See https://www.nachc.org/wp-content/uploads/2016/02/IB69-PPS-Complete.pdf for more information on payment methodologies for FQHCs, including the evolution of APMs in general and PPS in particular.

[9]See https://law.lis.virginia.gov/admincode/title12/agency30/chapter80/section25/.

[10]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."

[11]"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.

[12]§ 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

Agency's Response to Economic Impact Analysis: The agency has reviewed the economic impact analysis prepared by the

Department of Planning and Budget and raises no issues with this analysis.

Summary:

The Upper Mattaponi Tribe has established a tribal health clinic (THC) to meet the primary care health needs of tribal members, including those enrolled in Virginia Medicaid. Federal law requires the Department of Medical Assistance Services to recognize and reimburse THCs as Medicaid providers, and the amendments conform regulation to the requirement. The THC will be enrolled as a federally qualified health center and will be reimbursed for services to Medicaid members at a rate set annually by the federal government. The Centers for Medicare and Medicaid Services will cover 100% of the department's payments to the Upper Mattaponi THC for services to Medicaid members.

12VAC30-80-26. Reimbursement for Indian Health Service tribal 638 facilities.

A. Reimbursement for tribal health clinics.

1. Services provided by or through facilities of the Indian Health Services (IHS), including at the option of the tribe, facilities operated by a tribe or tribal organization, and funded by Title I or Title V of the Indian Self Determination and Education Assistance Act of 1975 (25 USC § 5301 et seq.), also known as tribal 638 facilities, are paid at the applicable IHS U.S. Office of Management & Budget (OMB) rate published annually in the Federal Register of Regulations by IHS.

2. The most current published IHS OMB outpatient per visit rate, also known as the outpatient all-inclusive rate, is paid for up to five outpatient visits per beneficiary per calendar day for professional services. An outpatient visit is defined as a face-to-face or telemedicine contact between any health care professional at or through the IHS facility authorized to provide services under the State Plan and a beneficiary for the provision of Title XIX defined services, as documented in the beneficiary's medical record.

3. Included in the outpatient per visit rate are Medicaid-covered pharmaceuticals or drugs, dental services, rehabilitative services, behavioral health services, ancillary services, and emergency room services provided on-site, and medical supplies incidental to the services provided to the beneficiary.

B. Virginia Medicaid reimburses tribal 638 facilities in accordance with the most recently published annual update of reimbursement rates for Indian Health Services, which is published in the Federal Register of Regulations and on the Indian Health Services website at https://www.ihs.gov on the page for reimbursement rates. Encounters or visits are limited to health care professionals as approved under the Virginia Medicaid State Plan. A tribal health program selecting to enroll as a federally qualified health center (FQHC) and agreeing to an alternate payment methodology (APM) will be paid using the APM.

C. Alternative payment methodology for tribal facilities recognized as FQHCs

1. Outpatient health programs or facilities operated by a tribe or tribal organization that choose to be recognized as FQHCs in accordance with § 1905 (I)(2)(B) of the Social Security Act and the Indian Self-Determination and Education Assistance Act of 1975 (25 USC § 5301 et seq.) will be paid using an APM for services, that is the published, all-inclusive rate (AIR). The APM/AIR rate is paid for up to five face-to-face encounters or visits per recipient per day.

2. The individual FQHC must agree to receive the APM. If a tribal FQHC does not agree to accept the APM, the Department of Medical Assistance Services shall seek accommodation with the FQHC, which may include submitting a State Plan amendment to authorize an alternative means of reimbursement for the FQHC.

VA.R. Doc. No. R22-6722; Filed December 22, 2021, 4:49 p.m.

Fast-Track Regulation

Title of Regulation: **12VAC30-120. Waivered Services (repealing 12VAC30-120-1600 through 12VAC30-120-1680).**

Statutory Authority: §§ 32.1-324 and 32.1-325 of the Code of Virginia.

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: February 16, 2022.

Effective Date: March 4, 2022.

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.

Basis: Section 32.1-325 of the Code of Virginia authorizes the Board of Medical Assistance Services to administer and amend the State Plan for Medical Assistance and to promulgate regulations. Section 32.1-324 of the Code of Virginia authorizes the Director of the Department of Medical Assistance Services (DMAS) to administer and amend the State Plan for Medical Assistance and to promulgate regulations according to the board's requirements. The Medicaid authority, as established by § 1902(a) of the Social Security Act (42 USC § 1396a), provides governing authority for payments for services.

Purpose: The Alzheimer's Assisted Living Waiver terminated June 30, 2017, so this regulation can now be repealed. This regulatory change protects the health, safety, and welfare of Medicaid recipients by ensuring that DMAS regulations and current DMAS practices are aligned.

Rationale for Using Fast-Track Rulemaking Process: The repeal of this regulation will be noncontroversial because the Alzheimer's Assisted Living Waiver ended on June 30, 2017, and the regulation has had no effect since then.

Substance: The amendments repeal 12VAC30-120-1600 through 12VAC30-120-1680, which covers the now defunct Alzheimer's Assisted Living Waiver.

Issues: These changes create no disadvantages to the public, the agency, the Commonwealth, or the regulated community. The primary advantage of this action to both the public and the agency is the removal of an outdated, unnecessary regulation from the Virginia Administrative Code.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The director of the Department of Medical Assistance Services (DMAS) is proposing to repeal the currently obsolete regulation associated with the Alzheimer's Assisted Living Waiver (AAL waiver).

Background. The AAL waiver was originally developed in 2006 to provide care and support to aging Virginia residents who had been diagnosed with Alzheimer's or other related memory disorders. According to DMAS, the AAL waiver ended on June 30, 2017, and the regulation has had no effect since then. DMAS adds that the AAL waiver became obsolete once the federal home and community-based services (HCBS) program took effect. The HCBS program established new reimbursement criteria with the goal of enabling Medicaid members to receive services in community settings rather than in skilled nursing facilities. Thus, the agency is now proposing to repeal this regulation in its entirety.

Estimated Benefits and Costs. Since the AAL waiver ended on June 30, 2017, and the regulation has had no effect since then, the proposed repeal of this regulation is not anticipated to create any significant economic effect other than eliminating obsolete regulatory text.

Businesses and Other Entities Affected. The proposed repeal of this regulation would not directly affect any business or entity. No adverse economic impact[1] on any entity is indicated.

Small Businesses[2] Affected. The proposed repeal does not adversely affect small businesses.

Localities[3] Affected.[4] The proposed repeal does not introduce costs for local governments.

Projected Impact on Employment. The proposed repeal does not affect total employment.

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

[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 agency has reviewed the economic impact analysis prepared by the Department of Planning and Budget and raises no issues with this analysis.

Summary:

The amendments repeal the regulation associated with the Alzheimer's Assisted Living Waiver, which was developed to provide care and support to help aging Virginia residents who have been diagnosed with Alzheimer's disease or other related memory disorders and was ended effective June 30, 2017. Centers for Medicare and Medicaid Services home-and-community based services Final Rule (79 FR 2958 through 79 FR 3039) established new reimbursement criteria with the goal of enabling Medicaid members to receive services in settings that are integrated into the community rather than in skilled nursing facilities.

12VAC30-120-1600. ~~Definitions.~~ (Repealed.)

~~The following words or terms when used in this regulation shall have the following meanings unless the content clearly indicates otherwise:~~

~~"Activities of daily living" or "ADLs" means bathing, dressing, toileting, transferring, and eating/feeding. An individual's degree of independence in performing these activities is a part of determining the appropriate level of care and service needs.~~

~~"Administrator" means the person who oversees the day-to-day operation of the facility, including compliance with all regulations for licensed assisted living facilities.~~

~~"Admissions summary" means the Virginia Uniform Assessment Instrument and other relevant social, psychological, and medical information gathered by the assisted living facility staff for use in the development and updates of the individual service plan.~~

~~"Alzheimer's" means a diagnosis of Alzheimer's as defined by the Diagnostic and Statistical Manual of Mental Disorders, 4th Edition (DSM-IV-TR) or Fifth Edition (DSM-5), published by the American Psychiatric Association.~~

~~"Alzheimer's Assisted Living Waiver" or "AAL Waiver" means the CMS approved waiver that covers a range of community support services offered to individuals who have a diagnosis of Alzheimer's or a related dementia who meet nursing facility level of care.~~

"Americans with Disabilities Act" or "ADA" means the United States Code pursuant to 42 USC § 12101 et seq., as amended.

"Appeal" means the process used to challenge actions regarding services, benefits, and reimbursement provided by Medicaid pursuant to 12VAC30-110 and 12VAC30-20-500 through 12VAC30-20-560.

"Assisted living facility" means a congregate residential setting as defined in § 63.2-100 of the Code of Virginia.

"Auxiliary Grant Program" means a state and locally funded assistance program to supplement the income of an individual who receives Supplemental Security Income (SSI) or an adult who would be eligible for SSI except for excess income and who lives in a licensed assisted living facility with an approved rate.

"Barrier crime" means those crimes as defined in § 32.1-162.9:1 of the Code of Virginia.

"CMS" means the Centers for Medicare and Medicaid Services, which is the unit of the U.S. Department of Health and Human Services that administers the Medicare and Medicaid programs.

"Designated preauthorization or service contractor" means DMAS or the entity that has been contracted by DMAS to perform preauthorization of services or service authorizations.

"Direct marketing" means either (i) conducting directly or indirectly door-to-door, telephonic or other "cold call" marketing of services at residences and provider sites; (ii) mailing directly; (iii) paying "finders' fees"; (iv) offering financial incentives, rewards, gifts or special opportunities to eligible individuals or family/caregivers as inducements to use the providers' services; (v) continuous, periodic marketing activities to the same prospective individual or family/caregiver for example, monthly, quarterly, or annual giveaways as inducements to use the providers' services; or (vi) engaging in marketing activities that offer potential customers rebates or discounts in conjunction with the use of the providers' services or other benefits as a means of influencing the individual's or family/caregiver's use of the providers' services.

"DMAS" means the Department of Medical Assistance Services.

"DMAS staff" means persons employed by the Department of Medical Assistance Services.

"DSS" means the Virginia Department of Social Services.

"Enrolled provider" means an entity that is either licensed or certified by the appropriate state agency that also meets the standards and requirements set forth by DMAS and has a current, signed provider participation agreement with DMAS.

"Home and community-based waiver services" or "waiver services" means the range of community support services approved by the CMS pursuant to § 1915(c) of the Social Security Act to be offered to persons who are elderly or disabled who would otherwise require the level of care provided in a nursing facility. DMAS or the designated preauthorization/service authorizations contractor shall only give preauthorization/service authorization for medically necessary Medicaid-reimbursed home and community care.

"Individual" means the person receiving the services established in these regulations and who (i) meets the eligibility criteria for residing in a safe, secure environment as described in 22VAC40-72-10; (ii) meets the eligibility criteria for the AAL Waiver; and (iii) resides in a safe, secure environment of an assisted living facility.

"Individual service plan" means the written individual plan developed by the provider related solely to the specific services required by the individual to ensure optimal health and safety while living in the assisted living facility.

"Legally authorized representative" means a person legally responsible for representing or standing in the place of an individual for the conduct of the individual's affairs. This may include a guardian, conservator, attorney in fact under durable power of attorney, trustee, or other person expressly named by a court of competent jurisdiction or the individual as his agent in a legal document that specifies the scope of the representative's authority to act. A legally authorized representative may only represent or stand in the place of the individual for the function or functions for which he has legal authority to act.

"Licensed health care professional" or "LHCP" means any health care professional currently licensed by the relevant health regulatory board of the Department of Health Professions of the Commonwealth who is practicing within the scope of his license.

"Preadmission screening" means the process to: (i) evaluate the functional, nursing, and social supports of individuals referred for preadmission screening; (ii) assist individuals in determining what specific services the individuals need; (iii) evaluate whether a service or a combination of existing community services are available to meet the individuals' needs; and (iv) refer individuals to the appropriate provider for Medicaid-funded nursing facility or home and community-based care for those individuals who meet nursing facility level of care.

"Preadmission screening team" means the entity contracted with DMAS that is responsible for performing preadmission screening pursuant to § 32.1-330 of the Code of Virginia.

"Related dementia" means a diagnosis of Dementia of the Alzheimer's Type as defined by the Diagnostic and Statistical Manual of Mental Disorders, 4th Edition (DSM-IV-TR) or

~~Fifth Edition (DSM-5), published by the American Psychiatric Association.~~

~~"Safe, secure environment" means a self-contained special care unit as defined in 22VAC40-72-10.~~

~~"Serious cognitive impairment" means a condition in which an individual cannot recognize danger or protect his own safety, as defined in 22VAC40-72-10, and who is also residing in a safe, secure environment as defined in 22VAC40-72-10.~~

~~"State Plan for Medical Assistance" or "Plan" means the Commonwealth's legal document approved by the Centers for Medicare and Medicaid Services identifying the covered groups, covered services and their limitations, and provider reimbursement methodologies as provided for under Title XIX of the Social Security Act.~~

~~"Virginia Uniform Assessment Instrument" or "UAI" means the standardized multidimensional questionnaire that is completed by the preadmission screening team, in a face-to-face meeting with the individual and legally authorized representative, as may be appropriate, which assesses an individual's physical health, mental health, and social and functional abilities to determine if the individual meets the level of care for certain publicly funded long-term care programs such as nursing facility services.~~

12VAC30-120-1605. ~~Waiver description and legal authority.~~ (Repealed.)

~~This Alzheimer's waiver operates under the authority of § 1915 (c) of the Social Security Act and 42 CFR 430.25(c)(2), which permit the waiver of certain State Plan requirements. These federal statutory and regulatory provisions permit the establishment of Medicaid waivers to afford the states with greater flexibility to devise different approaches to the provision of long-term care services. This particular waiver provides eligible individuals who have a diagnosis of Alzheimer's or related dementias with supportive services to enable such individuals to remain in their communities.~~

12VAC30-120-1610. ~~Individual eligibility requirements.~~ (Repealed.)

~~A. Waiver service population. The AAL Waiver shall be available through a § 1915(c) of the Social Security Act waiver to eligible aged and disabled Auxiliary Grant individuals who live in licensed assisted living facilities.~~

~~B. Eligibility criteria. To qualify for AAL Waiver services, individuals shall meet all of the following criteria:~~

~~1. The waiver individual shall be either:~~

~~a. Elderly as defined by § 1614 of the Social Security Act; or~~

~~b. Disabled as defined by § 1614 of the Social Security Act.~~

~~2. The waiver individual shall meet the criteria for admission to a nursing facility as determined by a preadmission screening team using the full UAI.~~

~~3. The waiver individual shall (i) have a diagnosis of either Alzheimer's or a related dementia as diagnosed by a licensed clinical psychologist or a licensed physician, or (ii) be a resident with a serious cognitive impairment, who resides in a safe, secure environment as defined in 22VAC40-72-10.~~

~~4. The waiver individual shall be receiving an Auxiliary Grant, and living in or seeking admission to a safe, secure unit of a DMAS-enrolled assisted living facility.~~

~~C. The waiver individual may not have a diagnosis of intellectual disability, as defined by the American Association on Intellectual and Developmental Disabilities, or a serious mental illness as defined in 42 CFR 483.102(b).~~

~~D. Assessment. Medicaid will not pay for any AAL Waiver services delivered prior to the date of the preadmission screening by the preadmission screening team and the physician signature on the Medicaid Funded Long Term Care Services Authorization Form (DMAS-96). Medicaid will not pay for any AAL Waiver services delivered prior to the individual's effective date of Medicaid eligibility and qualification for an Auxiliary Grant.~~

~~E. Enrollment. For the enrollment of all CMS approved waiver slots, individuals will be reviewed on a first-come, first-served basis in accordance with available waiver funding. If there is no waiver slot available for an individual, the individual shall be placed on the waiting list. Individuals shall meet all waiver eligibility criteria in order to be placed on the waiting list.~~

~~F. Preauthorization. Before a provider can bill DMAS for AAL Waiver services, preauthorization shall be obtained from DMAS. Providers shall submit all required information to the designated preauthorization contractor within 10 business days of initiating care. If the provider submits all required information to the designated preauthorization contractor within 10 business days of initiating care, services may be authorized beginning from the date the provider initiated services but not preceding the date of the physician's signature on the Medicaid Funded Long Term Care Services Authorization Form (DMAS-96). If the provider does not submit all required information to either the designated preauthorization contractor or DMAS within 10 business days of initiating care, the services may be authorized beginning with the date all required information was received by the designated preauthorization contractor, but in no event preceding the date of the preadmission screening team physician's signature on the DMAS-96.~~

~~G. Review of the waiver individual's level of care. DMAS conducts this review based on the documentation submitted by the provider. The level of care assessments are performed to~~

ensure that individuals receiving services in the waiver continue to meet the criteria for the waiver.

H. Termination of services. In the case of termination of AAL Waiver services by DMAS, waiver individuals shall be notified of their appeal rights pursuant to 12VAC30-110, Eligibility and Appeals. DMAS may terminate AAL Waiver services for any of the following reasons:

1. The AAL Waiver is no longer required to prevent or delay institutional placement;

2. The waiver individual is no longer eligible for Medicaid;

3. The waiver individual is no longer eligible to receive an Auxiliary Grant;

4. The waiver individual no longer meets AAL Waiver criteria;

5. The waiver individual has been absent from, or has not received services from, the assisted living facility for more than 30 consecutive days;

6. The waiver individual's environment does not provide for his health, safety, and welfare; or

7. The assisted living facility no longer meets safe and secure licensing standards set by DSS or standards set by DMAS for service providers.

12VAC30-120-1620. ~~Covered services.~~ (Repealed.)

A. Assisted living services include personal care services, homemaker, chore, attendant care, and companion services. This service includes 24-hour on-site response staff to meet scheduled or unpredictable needs in a way that promotes maximum dignity and independence, and to provide supervision, safety and security.

B. For purposes of these regulations, assisted living services shall also include:

1. Medication administration. Medications shall be administered only by a provider's employee who is currently licensed or registered to administer medications (for example: physician, physician assistant, pharmacist, nurse practitioner, RN, LPN, licensed health care professional (LHCP), or registered medication aide), by meeting the regulatory requirements as set forth by DSS and the appropriate licensing board of the Department of Health Professions in the Commonwealth;

2.. Individual summaries. The LHCP must complete an admissions summary of each individual upon admission to the facility and when a significant change in health status or behavior occurs in one of the following areas: weight loss, elopements, behavioral symptoms, or adverse reactions to prescribed medication. A LHCP shall identify individual care problem areas and formulate interventions, to the extent permitted by his license, to address those problems and to evaluate, to the extent permitted by his license, if the planned interventions were successful;

3. Skilled nursing services. Skilled nursing services are nursing services that are used to complete individual summaries and administer medications, and provide training, consultation, and oversight of direct care staff. Skilled nursing services must be provided by a LHCP who is licensed to practice in the state and provided in accordance and within the scope of practice specified by state law; and

4. Therapeutic social and recreational programming. An activity program must be designed to meet the specific needs of each waiver individual and to provide daily activities appropriate to individuals with Alzheimer's or related dementia.

a. This program shall be individualized and properly implemented, followed, and reviewed as changes are needed.

b. Waiver individuals who have wandering behaviors shall have an activity program to address these behaviors.

c. Consistent with 22VAC40-72-1100, there shall be structured group activities each week, not to include activities of daily living. There shall be at least one hour of one-on-one activity per week, not to include activities of daily living. Such one-on-one activities may be rendered by such licensed or volunteer staff as determined appropriate by the provider.

d. Group activities must be provided by staff assigned responsibility for the activities.

12VAC30-120-1630. ~~General requirements for enrolled providers.~~ (Repealed.)

A. Requests for participation will be screened by DMAS to determine whether the provider applicant meets the requirements for participation. Requests for participation must be accompanied by verification of the facility's current licensure from DSS.

B. For DMAS to approve provider agreements with AAL Waiver providers, providers must meet staffing, financial solvency, and disclosure of ownership requirements.

1. Enrolled providers must assure freedom of choice to individuals, or their legally authorized representative, in seeking services from any institution, pharmacy, practitioner, or other provider qualified to perform the service or services required and participating in the Medicaid Program at the time the service or services are performed;

2. Enrolled providers must assure the individual's freedom to refuse medical care, treatment, and services;

3. Enrolled providers must accept referrals for services only when staff is available to initiate and perform such services on an ongoing basis;

4. Enrolled providers must provide services and supplies to individuals in full compliance with Title VI of the Civil Rights Act of 1964, as amended (42 USC § 2000 et seq.), which prohibits discrimination on the grounds of race, color, religion, or national origin; the Virginians with Disabilities Act (§ 51.5 1 et seq. of the Code of Virginia); § 504 of the Rehabilitation Act of 1973 (29 USC § 794), which prohibits discrimination on the basis of a disability; and the Americans with Disabilities Act of 1990 (42 USC § 12101 et seq.), which provides comprehensive civil rights protections to individuals with disabilities;

5. Enrolled providers must provide services and supplies to individuals of the same quality as are provided to the general public;

6. Enrolled providers must submit charges to DMAS for the provision of services and supplies to individuals in amounts not to exceed the provider's usual and customary charges to the general public and accept as payment in full the amount established by DMAS beginning with the individual's authorization date for the waiver services;

7. Enrolled providers must use only DMAS designated forms for service documentation. The provider must not alter the DMAS forms in any manner unless approval from DMAS is obtained prior to using the altered forms. If there is no designated DMAS form for service documentation, the provider must include all elements required by DMAS in the provider's service documentation;

8. Enrolled providers must use DMAS designated billing forms for submission of charges;

9. Enrolled providers must perform no direct marketing activities to Medicaid individuals;

10. Enrolled providers must maintain and retain business and professional records sufficient to document fully and accurately the nature, scope, and details of the services provided;

a. In general, such records shall be retained for at least six years from the last date of service or as provided by applicable state laws, whichever period is longer. However, if an audit is initiated within the required retention period, the records shall be retained until the audit is completed and every exception resolved.

b. Policies regarding retention of records shall apply even if the provider discontinues operation. DMAS shall be notified in writing of the storage location and procedures for obtaining records for review should the need arise. The storage location, as well as the agent or trustee, shall be within the Commonwealth;

11. Enrolled providers must furnish information on request and in the form requested, to DMAS, the Office of the Attorney General of Virginia or his authorized representatives, federal personnel, and the state Medicaid Fraud Control Unit. The Commonwealth's right of access to provider agencies and records shall survive any termination of the provider agreement;

12. Enrolled providers must disclose, as requested by DMAS, all financial, beneficial, ownership, equity, surety, or other interests in any and all firms, corporations, partnerships, associations, business enterprises, joint ventures, agencies, institutions, or other legal entities providing any form of health care services to individuals receiving Medicaid;

13. Pursuant to 42 CFR § 431.300 et seq., 12VAC30-20-90, and any other applicable federal or state law, all providers shall hold confidential and use for authorized DMAS purposes only all medical assistance information regarding individuals served. A provider shall disclose information in his possession only when the information is used in conjunction with a claim for health benefits, or the data is necessary for the functioning of DMAS in conjunction with the cited laws;

14. Enrolled providers must notify DMAS in writing at least 15 days before ownership or management of the facility changes;

15. Pursuant to § 63.2-1606 of the Code of Virginia, if a participating enrolled provider knows or suspects that an individual using AAL Waiver services is being abused, neglected, or exploited, the party having knowledge or suspicion of the abuse, neglect, or exploitation must report this immediately from first knowledge to the local DSS or adult protective services hotline as applicable;

16. In addition to compliance with the general conditions and requirements, all providers enrolled by DMAS shall adhere to the conditions of participation outlined in the individual provider participation agreements and in the applicable DMAS provider manual. DMAS shall conduct ongoing monitoring of compliance with provider participation standards and DMAS policies. A provider's noncompliance with DMAS policies and procedures may result in a retraction of Medicaid payment or termination of the provider agreement, or both;

17. Enrolled providers are responsible for complying with § 63.2-1720 of the Code of Virginia regarding criminal record checks. All employees must have a satisfactory work record, as evidenced by references from prior job experience, including no evidence of abuse, neglect, or exploitation of persons who are incapacitated or older adults or children. The criminal record check shall be available for review by DMAS staff who are authorized by the agency to review these files. DMAS will not reimburse the provider for any services provided by an employee who has committed a barrier crime as defined herein; and

18. Enrolled providers must immediately notify DMAS, in writing, of any change in the information that the provider previously submitted to DMAS.

C. The Medicaid provider agreement shall terminate pursuant to § 32.1-325 of the Code of Virginia upon conviction of the provider of a felony. A provider convicted of a felony in Virginia or in any other of the 50 states, the District of Columbia, or the U.S. territories, must, within 30 days of the conviction, notify the Virginia Medicaid Program and relinquish the provider agreement.

D. Provider's responsibility for the Medicaid LTC Communication Form (DMAS-225). It shall be the responsibility of the service provider to notify DSS and DMAS, in writing, when any of the following circumstances occur:

1. AAL Waiver services are implemented;

2. An individual dies;

3. An individual is discharged from the facility; or

4. Any other circumstances (including hospitalization) that cause AAL Waiver services to cease or be interrupted for more than 30 days.

E. Termination of waiver services.

1. In a nonemergency situation, i.e., when the health and safety of the individual or provider personnel is not endangered, the participating provider shall give the individual or family/caregiver, or both, at least 30 days' written notification plus three days for mailing of the intent to discontinue services. The notification letter shall provide the reasons for and the effective date the provider is discontinuing services.

2. In an emergency situation when the health and safety of the individual or provider personnel is endangered, the participating provider must notify DMAS immediately prior to discontinuing services. The written notification period shall not be required. If appropriate, local DSS Adult Protective Services must also be notified immediately.

12VAC30-120-1640. ~~Participation standards for provision of services.~~ (Repealed.)

A. Facilities must have a signed provider agreement approved by DMAS to provide AAL Waiver services.

B. The facility must provide a safe, secure environment for waiver individuals. There may be one or more self-contained special care units in a facility or the whole facility may be a special care unit. Personalized care must be furnished to individuals who reside in their own living units, with semi-private rooms limited to two individuals and bathrooms consistent with 22VAC40-72-890.

C. Support in a facility must be furnished in a way that fosters the independence of each individual to age in place. Routines of care provision and service delivery must be individual-driven to the maximum extent possible and each individual must be treated with dignity and respect.

D. The medical care of individuals must be under the direction and supervision of a licensed physician. This can be the individual's private physician. The facility must ensure that residents have appointments with their physicians at least annually, and additionally as needed as determined by the physician.

E. Administrators.

1. Administrators of participating assisted living facilities must meet the regulatory requirements as set forth by the Virginia Department of Social Services (22VAC40-72-191) and the Board of Long Term Care Administrators (18VAC95-30).

2. The administrator shall demonstrate knowledge, skills and abilities in the administration and management of an assisted living facility program including:

a. Knowledge and understanding of older adults who have impairments or individuals with disabilities;

b. Supervisory and interpersonal skills;

c. Ability to plan and implement the program; and

d. Knowledge of financial management sufficient to ensure program development and continuity.

3. The administrator shall demonstrate knowledge of supervisory and motivational techniques sufficient to:

a. Accomplish day-to-day work;

b. Train, support and develop staff; and

c. Plan responsibilities for staff to ensure that services are provided to individuals.

4. The administrator shall complete 20 hours of continuing education annually to maintain and develop skills. This training shall be in addition to first aid and CPR, and orientation training to be received upon commencement of employment.

F. Licensed health care professional (LHCP) requirements.

1. Each facility shall have at least one LHCP awake, on duty, and on site in the facility for at least eight hours a day, five days each week. In addition, the facility shall provide for emergency call coverage at all hours of the day and night.

2. The LHCP is responsible for staff training, individual summaries, individual service plans, and medication oversight.

3. Individuals' summaries.

a.. Admissions summary. An LHCP must complete an admissions summary of each individual upon admission. The admissions summary includes the UAI and other relevant social, psychological, and medical information.

The admissions summary must also include the physician's assessment information as contained in 22VAC40-72-40 and 22VAC40-72-440. The admissions summary must be updated yearly and when a significant change in an individual's health status or behavior occurs. The information gathered during the preparation of the admissions summary is used to create the individual's service plan as contained in 22VAC40-72-40 and 22VAC40-72-440.

b. Individual service plan. Based on the specific individual's admission summary and the UAI, the LHCP, in coordination with other caregivers including the individual's authorized representative, as may be appropriate, shall:

(1) Develop the individual's service plan and formulate interventions to address the specific problems identified;

(2) Evaluate both the facility's implementation and the individual's response to the plan of care; and

(3) Review and update the individual service plan at least quarterly and more often when necessary to meet the needs of the individual.

c. Monthly summary. The LHCP must complete a monthly summary. Significant changes documented on the monthly summary must be addressed in an updated individual service plan. The comprehensive admissions summary information shall also be updated as needed. At a minimum, the monthly summary must contain information about the following elements:

(1) Weight loss;

(2) Falls;

(3) Elopements;

(4) Behavioral issues;

(5) Adverse reactions to prescribed medications;

(6) Dehydration;

(7) Pressure ulcers;

(8) Fecal impaction;

(9) Cognitive changes;

(10) Change in diagnoses; and

(11) Change in levels of dependence in ADLs.

4. The facility's LHCP may also serve as the administrator. In all instances where the facility's LHCP is assigned duties as an administrator, the facility shall assure that the LHCP devotes sufficient time and effort to all clinical duties to secure health, safety, and welfare of individuals.

G. Structured activities program. There shall be a designated employee responsible for managing or coordinating the structured activities program. This employee shall be on site in the special care unit at least 20 hours a week, shall maintain personal interaction with the residents and familiarity with their needs and interests, and shall meet at least one of the following qualifications:

1. Be a qualified therapeutic recreation specialist or activities professional;

2. Be eligible for certification as a therapeutic recreation specialist or an activities professional by a recognized accrediting body;

3. Have at least one year full-time work experience within the last five years in an activities program in an adult care setting;

4. Be a qualified occupational therapist or an occupational therapy assistant; or

5. Prior to or within six months of employment, have successfully completed 40 hours of VDSS approved training.

H. Direct care staff. In order to provide services in this waiver, the assisted living facility must use staff who comply with 22VAC40-72-250, 22VAC40-72-1110, and 22VAC40-72-1120 in staffing the specialty care unit.

I. The assisted living facility must have sufficient qualified and trained staff to meet the needs of the individuals living in the facility at all times.

J. There must be at least two awake direct care staff in the special care unit at all times and more if dictated by the needs of the individuals living in the special care unit, in accordance with 22VAC40-72-1110.

K. Training requirements for all staff.

1. All staff who have contact with individuals living in the facility, including the administrator, shall have completed 12 hours of Alzheimer's or related dementia specific training within 30 days of employment. The training must be conducted by a health care educator, adult education professional, or a licensed professional, with expertise in Alzheimer's or related dementia. The health care educator, adult education professional, or licensed professional must be acting within the scope of his profession, have had at least 12 hours of training in the support of individuals with cognitive impairments due to Alzheimer's or related dementia prior to performing the training, and have had a minimum of three years experience in the health care or dementia fields. In addition to health care educators and adult education professionals, licensed professionals eligible to conduct this training may include, but shall not necessarily be limited to: physicians, psychologists, registered nurses, licensed practical nurses, occupational therapists, physical therapists, speech language therapists, licensed clinical social workers, or licensed professional counselors.

2. All direct support staff must receive annual training in accordance with 22VAC40-72-250 and 22VAC40-72-260,

~~with at least eight hours of training in the care of individuals living with dementia and medical nursing needs. This training may be incorporated into the existing training program and must address the medical nursing needs specific to each individuals living in the facility in the special care unit. This training must also incorporate problem areas that may include weight loss, falls, elopements, behavioral issues, and adverse reactions to prescribed medications. A health care educator, adult education professional or licensed professional with expertise in dementia must conduct this training.~~

~~L. Documentation. The assisted living facility shall maintain the following documentation for review by DMAS staff for each individual living in the assisted living facility:~~

~~1. All UAIs, authorization forms, individual service plans and summaries and individuals' admissions completed for the individuals living in the facility shall be maintained for a period not less than six years from the waiver individual's start of service in that facility;~~

~~2. All written communication related to the provision of services between the facility and the assessor, licensed health care professional, DMAS, VDSS, the waiver individual, or other related parties; and~~

~~3. A log that documents each day that the waiver individual is present in the facility.~~

12VAC30-120-1650. ~~Payment for services.~~ (Repealed.)

~~A. DMAS shall pay the facility a per diem fee for each individual using the AAL Waiver who has been enrolled in and authorized to receive assisted living services. Except for 14 days of leave each calendar year as described in subsection C of this section, payment of the per diem fee is limited to the days in which the individual is physically present in the facility.~~

~~B. The services that are provided as a part of the Auxiliary Grant rate pursuant to 22VAC40-25-40 will not be included for payment from the waiver.~~

~~C. Periods of absence from the assisted living facility.~~

~~1. An assisted living facility AAL Waiver bed may be held for leave when the individual's ISP provides for such leave. Leave includes visits with relatives and friends or admission to a rehabilitation center for up to seven consecutive days for an evaluation. Leave shall not include periods of absence due to an admission to a hospital or nursing facility.~~

~~2. Leave shall be limited to 14 cumulative days in any 12-month period. Leave is individual specific and is counted from the first occurrence of overnight leave that an individual takes. From that date, an individual has 14 days of leave available during the next 365 days.~~

~~3. After the 14 days of leave have been exhausted and during periods of absence due to a hospital or nursing facility admission, the assisted living facility may choose to hold the bed for the individual, but DMAS shall not pay for the service. The individual or the individual's authorized representative may choose to pay to hold the bed by paying the assisted living facility directly using other funds. The rate shall be negotiated between the individual's authorized representative and the assisted living facility, but shall not exceed the auxiliary grant rate in effect at the time of the individual's absence.~~

~~4. During periods of absence for any reason, DMAS shall hold the waiver slot for the individual for a total of 30 consecutive days. If the individual's absence exceeds 30 days, DMAS shall terminate AAL Waiver services and assign the slot to the next individual on the waiting list.~~

12VAC30-120-1660. ~~Utilization review.~~ (Repealed.)

~~A. DMAS shall conduct utilization reviews of the services billed to DMAS and interview individuals living in the facility and the legally authorized representative to ensure that services are being provided and billed in accordance with DMAS policies and procedures.~~

~~B. On a regular basis, DMAS shall conduct quality management reviews of the services provided and interview individuals for all facilities providing services in this waiver to ensure the individuals' health and safety in this waiver. All quality management and level of care reviews will be performed on a regular basis.~~

12VAC30-120-1670. ~~Waiver waiting list.~~ (Repealed.)

~~DMAS shall maintain a waiting list for the purpose of individuals' access to this waiver once all of the currently approved waiver slots have been filled. Individuals must meet all waiver eligibility criteria in order to be placed on the waiting list. Individuals may be removed from the waiting list because: (i) they request that their names be removed; (ii) they die; or (iii) they are placed in an active slot and begin to receive services.~~

12VAC30-120-1680. ~~Appeals.~~ (Repealed.)

~~A. Providers shall have the right to appeal actions taken by DMAS. Provider appeals shall be considered pursuant to the Virginia Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) and DMAS regulations at 12VAC30-10-1000 and 12VAC30-20-500 through 12VAC30-20-560.~~

~~B. Medicaid individuals shall have the right to appeal actions taken by DMAS. Recipient appeals shall be considered pursuant to 12VAC30-110.~~

VA.R. Doc. No. R22-6916; Filed December 29, 2021, 12:33 p.m.

STATE BOARD OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

Emergency Regulation

Title of Regulation: **12VAC35-46. Regulations for Children's Residential Facilities (adding 12VAC35-46-1260, 12VAC35-46-1270).**

Statutory Authority: §§ 37.2-203 and 37.2-408 of the Code of Virginia.

Effective Dates: January 10, 2022, through July 9, 2023.

Agency Contact: Susan H. Puglisi, Regulatory Research Specialist, Office of Regulatory Affairs, Department of Behavioral Health and Developmental Services, 1220 Bank Street, 4th Floor South, Richmond, VA 23219, telephone (804) 371-8043, FAX (804) 371-4609, TDD (804) 371-8977, or email susan.puglisi@dbhds.virginia.gov.

Preamble:

Section 2.2-4011 B of the Code of Virginia states that agencies may adopt emergency regulations in situations in which Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment, and the regulation is not exempt under the provisions of § 2.2-4006 A 4 of the Code of Virginia.

Item 318 D of Chapter 552 of the 2021 Acts of Assembly, Special Session 1, requires the State Board of Behavioral Health and Developmental Services to align the Regulations for Children's Residential Facilities (12VAC35-46) with the requirements of the federal Family First Prevention Services Act (FFPSA) for children's residential service providers who accept Title IV-E funding to meet the standards as qualified residential treatment programs (QRTPs). The amendments require QRTPs to have a trauma-informed treatment model, have registered licensed nursing staff and licensed clinical staff who are available 24 hours a day and seven days a week, facilitate outreach to the family members of the child, facilitate participation of family members in the child's treatment program, provide or arrange discharge planning and family-based aftercare support for at least six months after discharge, and be licensed and accredited by an independent, not-for-profit accrediting organization approved by the U.S. Secretary of Health and Human Services.

12VAC35-46-1260. Qualified residential treatment programs.

A. A qualified residential treatment program (QRTP) shall have a trauma-informed treatment model that is designed to address the needs, including clinical needs as appropriate, of children with serious emotional or behavioral disorders or disturbances and, with respect to a child, is able to implement the treatment identified for the child.

B. In addition to the staffing requirements within Part II (12VAC35-46-170 et seq.) through Part VI (12VAC35-46-1120 et seq.) of this chapter, a QRTP shall have registered or licensed nursing staff and other licensed clinical staff who:

1. Provide care within the scope of their practice as defined by state law;

2. Are onsite according to the treatment model referred to in subsection A of this section; and

3. Are available 24 hours a day and seven days a week. The QRTP is not required to acquire nursing or other clinical staff solely through means of a direct employer to employee relationship.

C. To the extent appropriate and in accordance with the child's best interests, the QRTP shall facilitate participation of family members in the child's treatment program.

D. The QRTP shall facilitate outreach to the family members of the child, including siblings, document how the outreach is made, including contact information, and maintain contact information for any known biological family and fictive kin of the child. Documentation of outreach to family members and contact information of family members shall be placed within the child's record at the QRTP.

E. The QRTP shall document how family members are integrated into the treatment process for the child, including after discharge, and how sibling connections are maintained. Documentation of family member integration shall be placed within the child's record at the QRTP.

F. The QRTP shall provide or ensure discharge planning and family-based aftercare support for at least six months following discharge.

G. The QRTP shall be licensed in accordance with 42 USC § 471(a)(10) and accredited by any of the following independent nonprofit organizations:

1. The Commission on Accreditation of Rehabilitation Facilities (CARF);

2. The Joint Commission on Accreditation of Healthcare Organizations (JCAHO);

3. The Council on Accreditation (COA); or

4. Any other independent, nonprofit accrediting organization approved by the U.S. Secretary of Health and Human Services.

12VAC35-46-1270. Additional requirements for QRTP placements for children within the custody of Virginia Department of Social Services.

A. The qualified residential treatment program (QRTP) shall coordinate with the Virginia Department of Social Services, the child's biological family members, relative and fictive kin of the child, and, as appropriate, professionals who are a

resource to the family of the child, such as teachers, clergy, or medical or mental health providers who have treated the child.

B. All documents related to a child's need for placement shall be placed within the child's record at the qualified residential treatment program, including the assessment determination of the qualified individual, as defined within 42 USC § 675a(c)(1)(D)(i), and the written documentation of the approval or disapproval of the placement in a qualified residential treatment program by a court or administrative body.

C. This section shall not apply to direct parental placements of children into the QRTP that are made outside of the social services system.

VA.R. Doc. No. R22-6861; Filed December 29, 2021, 11:00 a.m.

TITLE 13. HOUSING

VIRGINIA HOUSING DEVELOPMENT AUTHORITY

Final Regulation

REGISTRAR'S NOTICE: The Virginia Housing Development Authority is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 A 4 of the Code of Virginia.

Titles of Regulations: **13VAC10-180. Rules and Regulations for Allocation of Low-Income Housing Tax Credits (amending 13VAC10-180-50, 13VAC10-180-60, 13VAC10-180-90).**

13VAC10-200. Rules and Regulations for the Allocation of Virginia Housing Opportunity Tax Credits (adding 13VAC10-200-10 through 13VAC10-200-70).

Statutory Authority: § 36-55.30:3 of the Code of Virginia.

Effective Date: January 1, 2022.

Agency Contact: Fred Bryant, Virginia Housing Development Authority, 601 South Belvidere Street, Richmond, VA 23220, telephone (804) 343-5837, or email fred.bryant@virginiahousing.com.

Summary:

The amendments to the Rules and Regulations for Allocation of Low-Income Housing Tax Credits (13VAC10-180):

(i) add a point category for renewable energy electric and add point categories for resident services or onsite child care and telehealth services and provide points for applicants having a principal with a required ownership interest that is a socially disadvantaged individual as defined by federal law;

(ii) provide for both a per unit and per square foot total development cost limit and provide discretion to remove cost for certain incentivized amenities from total development cost before applying cost limits;

(iii) add points for exterior walls that are constructed using fiber cement board and for applicants that enter into at least one contract for services provided by certain Small, Women-owned, and Minority-owned (SWaM) and Service Disabled Veteran-owned businesses; and increase points for individual unit Wi-Fi;

(iv) add provisions designed to protect the long-term affordability of developments, full compliance by applicants and principals with the Internal Revenue Code and the Plan, and preserve the right of first refusal by a qualified nonprofit organization at the close of the compliance period;

(v) make having an entry shelf or ledge a points item only in developments for the elderly and make free Wi-Fi in the community room mandatory;

(vi) decrease points for current experienced developer categories, add new experienced developer categories effective January 1, 2022, and provide that, commencing January 1, 2023, only the new categories will apply;

(vii) remove the penalty for new construction in rural areas;

(viii) reduce points for exterior walls constructed using brick or other similar low-maintenance material and reduce points for the 9/4 hybrid program; revise, and in one instance remove, the accessibility point categories; and remove points for Internet infrastructure;

(ix) increase penalties for deals not meeting minimum design and construction requirements;

(x) allow the plan of development to be a standalone point item; and allow staff to move deals between the nonprofit or the new construction pool, or both, to the appropriate geographic pool to best or fully allocate credits;

(xi) increase the percentage of future year's allocation that can be forward allocated; and increase the accessible supportive housing pool percentage of available credits;

(xii) clarify requirements to compete in the local housing authority pool;

(xiii) implement a curing period for minor and immaterial defects in an application;

(xiv) require disclosure of availability of Virginia Housing Development Authority (VHDA) renter education and incentivize electronic payments of fees to VHDA;

(xv) incorporate federal compliance updates;

(xvi) revise threshold point requirement; and

(xvii) make other miscellaneous administrative clarification changes.

The amendments also implement §§ 58.1-439.29 and 58.1-439.30 of the Code of Virginia, which establish the Virginia housing opportunity tax credit (HOTC),

including (i) providing a program of $15 million per year, a one-year credit period, and a five-year program duration, all resulting in an aggregate $75 million program; (ii) allowing the HOTC to be stand-alone or awarded in connection with federal low-income housing tax credits (LIHTC); (iii) addressing how successful HOTC projects will be selected, options to award per LIHTC rankings or to prioritize other significant state housing needs, and the amount of HOTC to be awarded successful applicants; and (iv) defining terms for the HOTC program, the process for issuance by Virginia Housing Development Authority of an eligibility certificate for HOTC, recapture provisions, and applicable administrative fees.

13VAC10-180-50. Application.

A. Prior to submitting an application for reservation, applicants shall submit on such form as required by the executive director, the letter for authority signature by which the authority shall notify the chief executive officers (or the equivalent) of the local jurisdictions in which the developments are to be located to provide such officers a reasonable opportunity to comment on the developments.

B. Application for a reservation of credits ~~shall~~:

1. Shall be commenced by filing with the authority an application, on such forms as the executive director may from time to time prescribe or approve, together with such documents and additional information (including, without limitation, a market study that is prepared by a housing market analyst ~~that~~ who meets the authority's requirements for an approved analyst, as set forth on the application form, instructions, or other communication available to the public, that shows adequate demand for the housing units to be produced by the applicant's proposed development) as may be requested by the authority in order to comply with the IRC and this chapter and to make the reservation and allocation of the credits in accordance with this chapter. The executive director may reject any application from consideration for a reservation or allocation of credits if in such application the applicant does not provide the proper documentation or information on the forms prescribed by the executive director. In addition to the market study contained in the application, the authority may conduct its own analysis of the demand for the housing units to be produced by each applicant's proposed development.

All sites in an application for a scattered site development may only serve one primary market area. If the executive director determines that the sites subject to a scattered site development are served by different primary market areas, separate applications for credits must be filed for each primary market area in which scattered sites are located within the deadlines established by the executive director.

~~The application should~~ 2. Should include a breakdown of sources and uses of funds sufficiently detailed to enable the authority to ascertain what costs will be incurred and what will comprise the total financing package, including the various subsidies and the anticipated syndication or placement proceeds that will be raised.

~~The~~ 3. Shall include the following cost information, if applicable, ~~needs to be included in the application~~ to determine the feasible credit amount: ~~site~~

a. Site acquisition costs, ~~site~~

b. Site preparation costs, ~~construction~~

c. Construction costs, ~~construction~~

d. Construction contingency, ~~general~~

e. General contractor's overhead and profit, ~~architect~~

f. Architect and engineer's fees, ~~permit~~

g. Permit and survey fees, ~~insurance~~

h. Insurance premiums, ~~real~~

i. Real estate taxes during construction, ~~title~~

j. Title and recording fees, ~~construction~~

k. Construction period interest, ~~financing~~

l. Financing fees, ~~organizational~~

m. Organizational costs, ~~rent-up~~

n. Rent-up and marketing costs, ~~accounting~~

o. Accounting and auditing costs, ~~working~~

p. Working capital and operating deficit reserves, ~~syndication~~

q. Syndication and legal fees, ~~development~~

r. Development fees, and ~~other~~

s. Other costs and fees.

4. All applications seeking credits for rehabilitation of existing units must provide for contractor construction costs of at least $10,000 per unit for developments financed with tax-exempt bonds and $15,000 per unit for all other developments.

C. Any application that exceeds the cost limits described ~~below~~ in this subsection shall be rejected from further consideration ~~hereunder~~ and shall not be eligible for any reservation or allocation of credits. ~~For an application submitted in calendar year 2019 only, the~~ The higher of the following two cost limit calculations: per-unit cost or per-square-foot cost may be ~~used~~ utilized by an applicant. ~~Effective January 1, 2020, only the per square foot cost limits shall apply.~~

~~1. Per unit cost limits.~~

~~a. Inner Northern Virginia. The Inner Northern Virginia region shall consist of Arlington County, Fairfax County, City of Alexandria, City of Fairfax, and City of Falls Church. The total development cost of proposed~~

~~developments in the Inner Northern Virginia region may not exceed (i) for new construction or adaptive reuse: $387,809 per unit plus up to an additional $43,090 per unit if the proposed development contains underground or structured parking for each unit or (ii) for acquisition and rehabilitation: $338,564 per unit.~~

~~b. Prince William County, Loudoun County, Fauquier County, Manassas City, and Manassas Park City. The total development cost of proposed developments in Prince William County, Loudoun County, Fauquier County, Manassas City, and Manassas Park City may not exceed (i) for new construction or adaptive reuse: $288,087 per unit plus up to an additional $43,090 per unit if the proposed development contains underground or structured parking for each unit or (ii) for acquisition and rehabilitation: $203,138 per unit.~~

~~c. Balance of the state. The total development cost of proposed developments in the balance of the state may not exceed (i) for new construction or adaptive reuse: $215,450 per unit plus up to an additional $43,090 per unit if the proposed development contains underground or structured parking for each unit or (ii) for acquisition and rehabilitation: $166,204 per unit.~~

~~Costs, subject to a per unit limit set by the executive director, attributable to equipping units with electrical and plumbing hook ups for dehumidification systems and attributable to installing approved dehumidification systems will not be included in the calculation of the per unit cost limits in the preceding subdivision 1.~~

~~The cost limits are 2015 fourth quarter base amounts. The cost limits shall be adjusted annually beginning in the fourth quarter of 2016 by the authority in accordance with Marshall & Swift cost factors for such quarter, and the adjusted will be indicated on the application form, instructions, or other communication available to the public.~~

~~2. Per square foot cost limits.~~ The authority will at least annually establish per-unit and per-square-foot cost limits based upon historical cost data of tax credit developments in the Commonwealth. Such limits will be indicated on the application form, instructions, or other communication available to the public. The cost limits will be established for new construction, rehabilitation, and adaptive reuse development types. The authority will establish geographic limits ~~utilizing Marshall & Swift cost factors~~. For the purpose of determining compliance with the cost limits, the value of a development's land and acquisition costs and such other expenses as the executive director determines are appropriate for the good of the plan will not be included in total development cost. Compliance with ~~per square foot~~ applicable cost limits will be determined both at the time of application and also at the time the authority issues the IRS Form 8609, with the higher of the two limits being applicable at the time of IRS Form 8609 issuance.

D. Each application shall include ~~plans~~:

1. Plans and specifications in such form and from such person satisfactory to the executive director as to the completion of such plans or specifications.

2. In the case of rehabilitation, ~~the application must include~~ a physical needs assessment in such form and substance and prepared by such person satisfactory to the executive director pursuant to the authority's requirements as set forth on the application form, instructions, or other communication available to the public.

~~Each application must include an~~ 3. An environmental site assessment (Phase I) in such form and substance and prepared by such person satisfactory to the executive director pursuant to the authority's requirements as set forth on the application form, instructions, or other communication available to the public.

~~Each application shall include evidence~~ 4. Evidence of ~~(i)~~ ~~sole~~

a. Sole fee simple ownership of the site of the proposed development by the applicant, ~~(ii) lease~~

b. Lease of such site by the applicant for a term exceeding the compliance period (as defined in the IRC) or for such longer period as the applicant represents in the application that the development will be held for occupancy by low-income persons or families, or ~~(iii) right~~

c. Right to acquire or lease such site pursuant to a valid and binding written option or contract between the applicant and the fee simple owner of such site for a period extending at least four months beyond any application deadline established by the executive director, provided that such option or contract shall have no conditions within the discretion or control of such owner of such site.

Any contract for the acquisition of a site with existing residential property may not require an empty building as a condition of such contract, unless relocation assistance is provided to displaced households, if any, at such level required by the authority. A contract that permits the owner to continue to market the property, even if the applicant has a right of first refusal, does not constitute the requisite site control required in ~~clause (iii) above~~ subdivision 4 c of this subsection.

No application shall be considered for a reservation or allocation of credits unless such evidence is submitted with the application and the authority determines that the applicant owns, leases, or has the right to acquire or lease the site of the proposed development as described in ~~the preceding sentence~~ this subsection.

In the case of acquisition and rehabilitation of developments funded by Rural Development of the U.S. Department of Agriculture (Rural Development), any site control document subject to approval of the partners of the seller does not need

to be approved by all partners of the seller if the general partner of the seller executing the site control document provides (i) an attorney's opinion that such general partner has the authority to enter into the site control document and such document is binding on the seller or (ii) a letter from the existing syndicator indicating a willingness to secure the necessary partner approvals upon the reservation of credits.

~~Each application shall include written~~ 5. Written evidence satisfactory to the authority (i) of proper zoning or special use permit for such site or (ii) that no zoning requirements or special use permits are applicable.

~~Each application shall include, in a form required by the executive director, a~~ 6. A certification, in a form required by the executive director, of previous participation listing all developments receiving an allocation of tax credits under § 42 of the IRC in which ~~the~~:

a. The principals have or had an ownership or participation interest, ~~the~~

b. The location of such developments, ~~the~~

c. The number of residential units and low-income housing units in such developments, and ~~such~~

d. Such other information as more fully specified by the executive director.

7. Furthermore, for any such development, the applicant must indicate whether the appropriate state housing credit agency has ever filed a Form 8823 with the IRS reporting noncompliance with the requirements of the IRC and that such noncompliance had not been corrected at the time of the filing of such Form 8823. The executive director may reject any application from consideration for a reservation or allocation of credits unless the above information is submitted with the application. If, after reviewing the ~~above~~ information provided in this subdivision or any other information available to the authority, the executive director determines that the principals do not have the experience, financial capacity and predisposition to regulatory compliance necessary to carry out the responsibilities for the acquisition, construction, ownership, operation, marketing, maintenance and management of the proposed development or the ability to fully perform all the duties and obligations relating to the proposed development under law, regulation and the reservation and allocation documents of the authority or if an applicant is in substantial noncompliance with the requirements of the IRC, the executive director may reject applications by the applicant.

8. No application will be accepted from any applicant with a principal that has or had an ownership or participation interest in a development at the time the authority reported such development to the IRS as no longer in compliance and is no longer participating in the federal low-income housing tax credit program.

~~Each application shall include, in a form required by the executive director, a~~ 9. A certification, in a form required by the executive director, that the design of the proposed development meets all applicable amenity and design requirements required by the executive director for the type of housing to be provided by the proposed development.

E. The application ~~should~~:

1. Should include pro forma financial statements setting forth the anticipated cash flows during the credit period as defined in the IRC. ~~The application shall~~

2. Shall include a certification by the applicant as to the full extent of all federal, state and local subsidies that apply (or that the applicant expects to apply) with respect to each building or development. ~~The~~

3. May be required by the executive director ~~may also require~~ to include the submission of a legal opinion or other assurances satisfactory to the executive director as to, among other things, compliance of the proposed development with the IRC and a certification, together with an opinion of an independent certified public accountant or other assurances satisfactory to the executive director, setting forth the calculation of the amount of credits requested by the application and certifying, among other things, that under the existing facts and circumstances the applicant will be eligible for the amount of credits requested.

F. Each applicant shall commit in the application to provide ~~relocation~~:

1. Relocation assistance to displaced households, if any, at such level required by the executive director. Each applicant shall commit in the application to use a property management company certified by the executive director to manage the proposed development.

2. Unless prohibited by an applicable federal subsidy program, ~~each applicant shall commit in the application to provide~~ a leasing preference to individuals ~~(i) in~~:

a. In a target population identified in a memorandum of understanding between the authority and one or more participating agencies of the Commonwealth, ~~(ii) having~~

b. Having a voucher or other binding commitment for rental assistance from the Commonwealth, and ~~(iii) referred~~

c. Referred to the development by a referring agent approved by the authority. The leasing preference shall not be applied to more than 10% of the units in the development at any given time. The applicant may not impose tenant selection criteria or leasing terms with respect to individuals receiving this preference that are more restrictive than the applicant's tenant selection criteria or leasing terms applicable to prospective tenants in the development that do not receive this preference, the eligibility criteria for the rental assistance from the

Commonwealth, or any eligibility criteria contained in a memorandum of understanding between the authority and one or more participating agencies of the Commonwealth.

3. Free Wi-Fi access in the community room of the development and such access shall be restricted to resident only usage.

4. A disclosure, to be acknowledged by tenant, of the availability of renter education from the authority.

G. Each applicant shall commit in the application ~~not~~:

1. Not to require an annual minimum income requirement that exceeds the greater of $3,600 or 2.5 times the portion of rent to be paid by tenants receiving rental assistance.

~~Each applicant shall commit in the application to~~ 2. To waive its right to request to terminate the extended low-income housing commitment through the qualified contract process, as described in the IRC.

Further, any application submitted by an applicant containing a principal that was a principal in an owner that has previously requested, on or after January 1, 2019, a qualified contract in the Commonwealth (regardless of whether the extended low-income housing commitment was terminated through such process) shall be rejected from further consideration and shall not be eligible for any reservation or allocation of credits.

H. The authority is committed to the long-term affordability of developments for the benefit of tenants and full compliance by applicants and principals with the provisions of the IRC, the extended use agreement and other program requirements. The authority similarly has an interest in preserving the right of first refusal by a qualified nonprofit organization at the close of the compliance period, as authorized in § 42(i)(7) of the IRC.

The executive director is hereby authorized to require any or all of the following with respect to applications:

1. Provisions to be included in the applicant's organizational documents limiting transfers of partnership or member interests or other actions detrimental to the continued provision of affordable housing;

2. A designated form of right of first refusal document;

3. Terms in the extended use agreement requiring notice and approval by the executive director of transfers of partnership or member interests;

4. Debarment from the program of principals having demonstrated a history of conduct detrimental to long-term compliance with extended use agreements, whether in Virginia or another state, and the provision of affordable tax credit units; and

5. Provisions to implement any amendment to the IRC or implementation of any future federal or state legislation, regulations, or administrative guidance.

The decision whether to institute, and the terms of, any such requirements shall be made by the executive director as reasonably determined to be necessary or appropriate to achieve the goals stated in this subsection and in the best interest of the plan. Any such requirements will be indicated on the application form, instructions, or other communication available to the public.

I. Any application submitted by an applicant containing a principal that was a principal in an owner that has, in the authority's determination, previously participated, on or after January 1, 2019, in a foreclosure in Virginia (or instrument in lieu of foreclosure) that was part of an arrangement a purpose of which was to terminate an extended low-income housing commitment (regardless whether the extended low-income housing commitment was terminated through such foreclosure or instrument) shall be rejected from further consideration for low-income housing tax credits and shall not be eligible for any reservation or allocation of credits.

J. If an applicant submits an application for reservation or allocation of credits that contains a material misrepresentation or fails to include information regarding developments involving the applicant that have been determined to be out of compliance with the requirements of the IRC, the executive director may reject the application or stop processing such application upon discovery of such misrepresentation or noncompliance and may prohibit such applicant from submitting applications for credits to the authority in the future.

K. In any situation in which the executive director deems it appropriate, ~~he~~ the executive director may ~~treat~~:

1. Treat two or more applications as a single application. Only one application may be submitted for each location.

~~The executive director may establish~~ 2. Establish criteria and assumptions to be used by the applicant in the calculation of amounts in the application, and any such criteria and assumptions may be indicated on the application form, instructions or other communication available to the public.

~~The executive director may prescribe~~ 3. Prescribe such deadlines for submission of applications for reservation and allocation of credits for any calendar year as he shall deem necessary or desirable to allow sufficient processing time for the authority to make such reservations and allocations. If the executive director determines that an applicant for a reservation of credits has failed to submit one or more mandatory attachments to the application by the reservation application deadline, he may allow such applicant an opportunity to submit such attachments within a certain time established by the executive director with a 10-point scoring penalty per item.

L. After receipt of the ~~applications~~ local notification information data, if necessary, the authority shall notify the chief executive officers (or the equivalent) of the local jurisdictions in which the developments are to be located and

shall provide such officers a reasonable opportunity to comment on the developments.

M. The development for which an application is submitted may be, but shall not be required to be, financed by the authority. If any such development is to be financed by the authority, the application for such financing shall be submitted to and received by the authority in accordance with its applicable rules and regulations.

N. The authority may consider and approve, in accordance herewith, both the reservation and the allocation of credits to buildings or developments that the authority may own or may intend to acquire, construct, or rehabilitate.

O. Any application seeking an additional reservation of credits for a development in excess of 10% of an existing reservation of credits for such development shall be rejected from further consideration hereunder and shall not be eligible for any reservation or allocation of credits pursuant to such application. However, such applicant may execute a consent to cancellation for such existing reservation and submit a new application for the aggregate amount of the existing reservation and any desired increase.

13VAC10-180-60. Review and selection of applications; reservation of credits.

A. The executive director may divide the amount of credits into separate pools and each separate pool may be further divided into separate tiers. The division of such pools and tiers may be based upon one or more of the following factors: geographical areas of the state; types or characteristics of housing, construction, financing, owners, occupants, or source of credits; or any other factors deemed appropriate by him to best meet the housing needs of the Commonwealth.

B. An amount, as determined by the executive director, not less than 10% of the Commonwealth's annual state housing credit ceiling for credits, shall be available for reservation and allocation to buildings or developments with respect to which the following requirements are met:

1. A "qualified nonprofit organization" (as described in § 42(h)(5)(C) of the IRC) that is authorized to do business in Virginia and is determined by the executive director, on the basis of such relevant factors as he shall consider appropriate, to be substantially based or active in the community of the development and is to materially participate (regular, continuous and substantial involvement as determined by the executive director) in the development and operation of the development throughout the "compliance period" (as defined in § 42(i)(1) of the IRC); and

2. ~~(i)~~ a. The "qualified nonprofit organization" described in the preceding subdivision 1 of this subsection is to own (directly or through a partnership), prior to the reservation of credits to the buildings or development, all of the general partnership interests of the ownership entity thereof; ~~(ii) the~~

b. The executive director of the authority shall have determined that such qualified nonprofit organization is not affiliated with or controlled by a for-profit organization; ~~(iii) the~~

c. The executive director of the authority shall have determined that the qualified nonprofit organization was not formed by one or more individuals or for-profit entities for the principal purpose of being included in any nonprofit pools (as defined below) established by the executive director, and ~~(iv) the~~

d. The executive director of the authority shall have determined that no staff member, officer or member of the board of directors of such qualified nonprofit organization will materially participate, directly or indirectly, in the proposed development as a for-profit entity.

3. In making the determinations required by ~~the preceding subdivision~~ subdivisions 1 and ~~clauses (ii), (iii)~~ 2 b, 2 c, and ~~(iv) of this subdivision~~ 2 d of this subsection, the executive director may apply such factors as ~~he~~ the executive director deems relevant, including ~~the~~:

a. The past experience and anticipated future activities of the qualified nonprofit organization, ~~the~~

b. The sources and manner of funding of the qualified nonprofit organization, ~~the~~

c. The date of formation and expected life of the qualified nonprofit organization, ~~the~~

d. The number of paid staff members and volunteers of the qualified nonprofit organization, ~~the~~

e. The nature and extent of the qualified nonprofit organization's proposed involvement in the construction or rehabilitation and the operation of the proposed development, ~~the~~

f. The relationship of the staff, directors or other principals involved in the formation or operation of the qualified nonprofit organization with any persons or entities to be involved in the proposed development on a for-profit basis, and ~~the~~

g. The proposed involvement in the construction or rehabilitation and operation of the proposed development by any persons or entities involved in the proposed development on a for-profit basis.

The executive director may include in the application of the ~~foregoing~~ factors described in this subdivision any other nonprofit organizations that, in his determination, are related (by shared directors, staff or otherwise) to the qualified nonprofit organization for which such determination is to be made.

For purposes of the ~~foregoing~~ requirements of this subsection, a qualified nonprofit organization shall be treated as satisfying

such requirements if any qualified corporation (as defined in § 42(h)(5)(D)(ii) of the IRC) in which such organization (by itself or in combination with one or more qualified nonprofit organizations) holds 100% of the stock satisfies such requirements.

C. The applications shall include such representations and warranties and such information as the executive director may require in order to determine that the ~~foregoing~~ requirements of this section have been satisfied. In no event shall more than 90% of the Commonwealth's annual state housing credit ceiling for credits be available for developments other than those satisfying the ~~preceding~~ requirements of subsection B of this section.

D. The executive director may establish such pools (nonprofit pools) of credits as ~~he~~ the executive director may deem appropriate to satisfy the ~~foregoing requirement~~ requirements of this subsection. If any such nonprofit pools are so established, the executive director may rank the applications ~~therein~~ in each pool and reserve credits to such applications before ranking applications and reserving credits in other pools, and any such applications in such nonprofit pools not receiving any reservations of credits or receiving such reservations in amounts less than the full amount permissible ~~hereunder~~ in each pool described in this subsection (because there are not enough credits then available in such nonprofit pools to make such reservations) shall be assigned to such other pool as shall be appropriate ~~hereunder~~; provided, however, that if credits are later made available (pursuant to the IRC or as a result of either a termination or reduction of a reservation of credits made from any nonprofit pools or a rescission in whole or in part of an allocation of credits made from such nonprofit pools or otherwise) for reservation and allocation by the authority during the same calendar year as that in which applications in the nonprofit pools have been so assigned to other pools ~~as described above~~, the executive director may, in such situations, designate all or any portion of such additional credits for the nonprofit pools (or for any other pools as he shall determine) and may, if additional credits have been so designated for the nonprofit pools, reassign such applications to such nonprofit pools, rank the applications ~~therein~~ for those nonprofit pools and reserve credits to such applications in accordance with the IRC and this chapter. In the event that during any round ~~(as authorized hereinbelow)~~ of application review and ranking the amount of credits reserved within such nonprofit pools is less than the total amount of credits made available ~~therein~~ in each nonprofit pool, the executive director may ~~either (i) leave~~:

1. Leave such unreserved credits in such nonprofit pools for reservation and allocation in any subsequent ~~round or (ii) redistribute~~ rounds;

2. Redistribute, to the extent permissible under the IRC, such unreserved credits to such other pools ~~as~~ for which the executive director shall designate reservations ~~therefore~~ in the full amount permissible ~~hereunder (which applications~~ under this section. Applications redistributed to other pools under this subdivision shall ~~hereinafter~~ be referred to as "excess qualified applications"); or ~~(iii) carry~~

3. Carry over such unreserved credits to the next succeeding calendar year for the inclusion in the state housing credit ceiling (as defined in § 42(h)(3)(C) of the IRC) for such year. ~~Notwithstanding anything to the contrary herein, no~~

No reservation of credits shall be made from any nonprofit pools to any application with respect to which the qualified nonprofit organization has not yet been legally formed in accordance with the requirements of the IRC. In addition, no application for credits from any nonprofit pools or any combination of pools may receive a reservation or allocation of annual credits in an amount greater than [$950,000 ~~$1,200,000~~] unless credits remain available in such nonprofit pools after all eligible applications for credits from such nonprofit pools receive a reservation of credits.

~~Notwithstanding anything to the contrary herein, applicants~~ Applicants relying on the experience of a local housing authority for developer experience points described ~~hereinbelow~~ in this subsection or using Hope VI funds from HUD in connection with the proposed development shall not be eligible to receive a reservation of credits from any nonprofit pools.

E. The authority shall review each application, and, based on the application and other information available to the authority, shall assign points to each application as follows:

1. Readiness. [~~Written~~ Effective January 1, 2023, written] evidence satisfactory to the authority of unconditional approval by local authorities of the plan of development or site plan for the proposed development or that such approval is not required. ([~~40 points; applicants receiving points under this subdivision 1 are not eligible for points under subdivision 5 a below~~ 10 points])

2. Housing needs characteristics.

a. Submission of the form prescribed by the authority with any required attachments, providing such information necessary for the authority to send a letter addressed to the current chief executive officer (or the equivalent) of the locality in which the proposed development is located, soliciting input on the proposed development from the locality within the deadlines established by the executive director. (minus 50 points for failure to make timely submission)

b. A letter in response to its notification to the chief executive officer of the locality in which the proposed development is to be located opposing the allocation of credits to the applicant for the development. In any such letter, the chief executive officer must certify that the proposed development is not consistent with current zoning or other applicable land use regulations. Any such

letter must also be accompanied by a legal opinion of the locality's attorney opining that the locality's opposition to the proposed development does not have a discriminatory intent or a discriminatory effect (as defined in 24 CFR 100.500(a)) that is not supported by a legally sufficient justification (as defined in 24 CFR 100.500(b)) in violation of the Fair Housing Act (Title VIII of the Civil Rights Act of 1968, as amended) and the HUD implementing regulations. (minus 25 points)

c. Any proposed development that is to be located in a revitalization area meeting the requirements of § 36-55.30:2 A of the Code of Virginia or within an opportunity zone designated by the Commonwealth pursuant to the Federal Tax Cuts and Jobs Act of 2017, as follows: ~~(i) in~~

(1) In a qualified census tract or federal targeted area, both as defined in the IRC, deemed under § 36-55.30:2 of the Code of Virginia to be designated as a revitalization area without adoption of a resolution (10 points); ~~(ii) in~~

(2) In any redevelopment area, conservation area, or rehabilitation area created or designated by the city or county pursuant to Chapter 1 (§ 36-1 et seq.) of Title 36 of the Code of Virginia and deemed under § 36-55.30:2 to be designated as a revitalization area without adoption of a further resolution (10 points); ~~(iii) in~~

(3) In a revitalization area designated by resolution adopted pursuant to the terms of § 36-55.30:2 (15 points); ~~(iv) in~~

(4) In a local housing rehabilitation zone created by an ordinance passed by the city, county, or town and deemed to meet the requirements of § 36-55.30:2 pursuant to § 36-55.64 G of the Code of Virginia (15 points); and ~~(v) in~~

(5) In an opportunity zone and having a binding commitment of funding acceptable to the executive director pursuant to requirements as set forth on the application form, instructions, or other communication available to the public. (15 points).

If the development is located in more than one such area, only the highest applicable points will be awarded, that is, points in this subdivision E 2 c are not cumulative.

d. Commitment by the applicant for any development without section 8 project-based assistance to give leasing preference to individuals and families (i) on public housing waiting lists maintained by the local housing authority operating in the locality in which the proposed development is to be located and notification of the availability of such units to the local housing authority by the applicant or (ii) on section 8 (as defined in 13VAC10-180-90) waiting lists maintained by the local or nearest section 8 administrator for the locality in which the proposed development is to be located and notification of the availability of such units to the local section 8 administrator by the applicant. (5 points)

e. Any (i) funding source, as evidenced by a binding commitment or letter of intent, that is used to reduce the credit request; (ii) commitment to donate land or buildings or tap fee waivers from the local government; or (iii) commitment to donate land (including a below market-rate land lease) from an entity that is not a principal in the applicant (the donor being the grantee of a right of first refusal or purchase option with no ownership interest in the applicant shall not make the donor a principal in the applicant). Loans must be below market-rate (the one-year London Interbank Offered Rate (LIBOR) rate at the time of commitment) or cash-flow only to be eligible for points. Financing from the authority and market rate permanent financing sources are not eligible. (The amount of such funding, dollar value of local support, or value of donated land (including a below market rate land lease) will be determined by the executive director and divided by the total development cost. The applicant receives two points for each percentage point up to a maximum of 40 points.) The authority will confirm receipt of such subsidized funding prior to the issuance of IRS Form 8609.

f. Any development subject to (i) HUD's Section 8 or Section 236 program or (ii) Rural Development's 515 program, at the time of application. (20 points, unless the applicant is or has any common interests with the current owner, directly or indirectly, the application will only qualify for these points if the applicant waives all rights to developer's fee on acquisition and any other fees associated with the acquisition of the development unless permitted by the executive director for good cause.)

g. Any development receiving a real estate tax abatement on the increase in the value of the development. (5 points)

h. Any development receiving new project-based subsidy from HUD or Rural Development for the greater of five units or 10% of the units of the proposed development. (10 points)

i. Any proposed elderly or family development located in a census tract that has less than a 3.0% poverty rate based upon Census Bureau data (30 points); less than a 10% poverty rate based upon Census Bureau data (25 points); or less than a 12% poverty rate based upon Census Bureau data. (20 points)

j. Any proposed development listed in the top 25 developments identified by Rural Development as high priority for rehabilitation at the time the application is submitted to the authority. (15 points)

k. Any proposed new construction development (including adaptive reuse and rehabilitation that creates additional rental space) that is located in a pool identified by the authority as a pool with ~~little or no increase in~~ an increasing rent-burdened population. (Up to ~~minus~~ 20 points, depending upon the portion of the development that is additional rental space, in all pools except the at-large pool, 0 points in the at-large pool~~; the executive~~

~~director may make exceptions in the following circumstances:~~.

~~(1) Specialized types of housing designed to meet special needs that cannot readily be addressed utilizing existing residential structures;~~

~~(2) Housing designed to serve as a replacement for housing being demolished through redevelopment; or~~

~~(3) Housing that is an integral part of a neighborhood revitalization project sponsored by a local housing authority.)~~

~~l. Any proposed new construction development (including adaptive reuse and rehabilitation that creates additional rental space) that is located in a pool identified by the authority as a pool with an increasing rent burdened population. (Up to 20 points, depending upon the portion of the development that is additional rental space, in all pools except the at-large pool, 0 points in the at-large pool.)~~

l. [~~Any~~ Effective January 1, 2023, any] proposed development [(i)] for which the applicant has entered into a memorandum of understanding approved by the Virginia Department of Behavioral Health and Developmental Services (DBHDS) with a resident service provider for the provision of resident services. Such resident services provider must have experience delivering direct, community-based services to individuals, as evidenced by a triennial license, in good standing, with no outstanding corrective action plans from DBHDS, or an agency or program accreditation or certification such as Commission on Accreditation of Rehabilitation Facilities, Council on Accreditation, or Certified Organization for Resident Engagement & Services, Council on Quality and Leadership, or CSH Quality Supportive Housing accreditation or certification. Such resident service provider may, but is not required to, be the qualified nonprofit organization qualifying applicant to compete in the nonprofit pool or having the required ownership interest and holding an option or first right of refusal that qualified applicant for points under subsection 7 d of this subsection. Experience may also be evidenced by receipt of a grant or grants by the service provider for provision of direct services to the development's residents [; or (ii) if the development provides licensed childcare on-site with a preference and discount for residents or an equivalent subsidy for tenants, determined based on household income and household size, to utilize a licensed childcare facility of tenant's choice]. (15 points)

3. Development characteristics.

a. Evidence satisfactory to the authority documenting the quality of the proposed development's amenities as determined by the following:

(1) The following points are available for any application:

(a) If a community or meeting room with a minimum of 749 square feet is provided. (5 points) Community rooms receiving points under this subdivision 3 a (1) (a) may not be used for commercial purposes. Provided that the cost of the community room is not included in eligible basis, the owner may conduct, or contract with a nonprofit provider to conduct, programs or classes for tenants and members of the community in the community room, so long as (i) tenants compose at least one-third of participants, with first preference given to tenants above the one-third minimum; (ii) no program or class may be offered more than five days per week; (iii) no individual program or class may last more than eight hours per day, and all programs and class sessions may not last more than 10 hours per day in the aggregate; (iv) cost of attendance of the program or class must be below market rate with no profit from the operation of the class or program being generated for the owner (owner may also collect an amount for reimbursement of supplies and clean-up costs); (v) the community room must be available for use by tenants when programs and classes are not offered, subject to reasonable "quiet hours" established by owner; and (vi) any owner offering programs or classes must provide an annual certification to the authority that it is in compliance with such requirements, with failure to comply with these requirements resulting in a 10-point penalty for three years from the date of such noncompliance for principals in the owner.

(b) If the exterior walls are constructed using brick or other similar low-maintenance material approved by the authority (as indicated on the application form, instructions, or other communication available to the public) covering ~~25% or greater,~~ up to ~~and including 85%,~~ 50% of the exterior walls of the development. (20 points times the percentage of exterior walls covered by brick)

If the exterior walls are constructed using fiber cement board covering up to 50% of the exterior walls. (20 points times the percentage of exterior walls covered by fiber cement board)

Points for brick and fiber cement board are independent and can both be awarded.

For purposes of making such coverage calculation, the triangular gable end area, doors, windows, knee walls, columns, retaining walls, and any features that are not a part of the façade are excluded from the denominator. Community buildings are included in the foregoing coverage calculations. ~~(Zero points if coverage is less than 25%; 10 points if coverage is at least 25%, and an additional 15 points is available on a sliding scale if coverage is greater than 25% up to and including 85% coverage. No additional points if coverage is greater than 85%.)~~

(c) If the water expense is submetered (the tenant will pay monthly or bimonthly bill). (5 points)

(d) If points are not awarded pursuant to subdivision 3 f of this section for optional certification, if each bathroom contains only WaterSense labeled toilets, faucets and showerheads. (3 points)

(e) If each unit is provided with ~~the necessary infrastructure for high-speed Internet or broadband service~~ free individual high-speed Internet access. (~~1 point~~ 10 points, 12 points if such access is Wi-Fi)

~~If free Wi-Fi access is provided in the community room and such access is restricted to resident only usage. (4 points) If each unit is provided with free individual high-speed Internet access. (6 points, 8 points if such access is Wi-Fi)~~

(f) If each full bathroom's bath fans are wired to the primary bathroom light with a delayed timer, or continuous exhaust by ERV/DOAS. (3 points) If each full bathroom's bath fans are equipped with a humidistat. (3 points)

(g) If all cooking surfaces are equipped with fire prevention features that meet the authority's requirements as indicated on the application form, instructions, or other communication available to the public. (4 points)

If all cooking surfaces are equipped with fire suppression features that meet the authority's requirements (as indicated on the application form, instructions, or other communication available to the public). (2 points)

(h) For rehabilitations, equipping all units with dedicated space, drain, and electrical hook-ups for permanently installed dehumidification systems (2 points). For rehabilitations and new construction, providing permanently installed dehumidification systems in each unit. (5 points)

(i) If each interior door is solid core. (3 points)

(j) If each unit has at least one USB charging port in the kitchen, living room, and all bedrooms. (1 point)

(k) If each kitchen has LED lighting in all fixtures that meets the authority's minimum design and construction standards (2 points)

~~(l) If each unit has a shelf or ledge outside the primary entry door in interior hallway. (2 points)~~

~~(m)~~ (l) For new construction only, if each unit has a balcony or patio with a minimum depth of five feet clear from face of building and a size of at least 30 square feet. (4 points)

(m) [~~If every unit in~~ Effective January 1, 2023, if] the development [~~is heated and cooled with a geothermal heat pump that meets the EPA's Energy Star qualified program requirements. (5 points)(n) If all the water heaters meet the EPA's Energy Star qualified program requirements; or any centralized commercial system that~~] has a [~~95% or greater efficiency performance rating, or any solar thermal system that meets at least 60% of the development's domestic hot water load. (5 points) (o) If the development has a solar~~ renewable energy] electric system [~~that will remain unshaded year round, be oriented to within 15 degrees of true south, and be angled horizontally within 15 degrees of latitude~~]. (1 point for each 2% of the development's [onsite] electrical load that can be met by the [~~solar~~ renewable energy] electric system [for the benefit of the tenants], up to 10 points)

[~~(p) If the development has flexible unit design allowing for isolation space. (8 points)~~

~~(q) If~~ (n) Effective January 1, 2023, if] the development provides tenants with free on-call, telephonic, or virtual health care services with a licensed provider. (15 points)

[~~(r) If the development provides licensed childcare on-site with a preference and discount for residents or an equivalent subsidy for tenants, determined based on household income and household size, to utilize a licensed childcare facility of tenant's choice. (15 points)~~ (o) For rehabilitations, if each unit is provided with the necessary infrastructure for high-speed Internet/broadband service. (1 point)]

(2) The following points are available to applications electing to serve elderly tenants:

(a) If all cooking ranges have front controls. (1 point)

(b) If all bathrooms have an independent or supplemental heat source. (1 point)

(c) If all entrance doors to each unit have two eye viewers, one at 42 inches and the other at standard height. (1 point)

(d) If each unit has a shelf or ledge outside the primary entry door in interior hallway. (2 points)

(3) If the structure is historic, by virtue of being listed individually in the National Register of Historic Places, or due to its location in a registered historic district and certified by the Secretary of the Interior as being of historical significance to the district, and the rehabilitation will be completed in such a manner as to be eligible for historic rehabilitation tax credits. (5 points)

b. Any development in which (i) the greater of five units or 10% of the units will be assisted by ~~HUD project based vouchers (as evidenced by the submission of a letter satisfactory to the authority from an authorized public housing authority (PHA) that the development meets all prerequisites for such assistance) or other~~ any form of documented and binding federal or state project-based rent subsidies in order to ensure occupancy by extremely low-income persons; and (ii) the greater of five units or 10% of the units will conform to HUD regulations interpreting the accessibility requirements of § 504 of the Rehabilitation Act and be actively marketed to persons with disabilities as defined in the Fair Housing Act in accordance with a plan submitted as part of the application for credits (all common space must also conform to HUD regulations interpreting the accessibility requirements of

§ 504 of the Rehabilitation Act, and all the units described in clause (ii) above must include roll-in showers and roll-under sinks and front control ranges, unless agreed to by the authority prior to the applicant's submission of its application). (~~60~~ 50 points)

~~c. Any development in which the greater of five units or 10% of the units (i) have rents within HUD's Housing Choice Voucher (HCV) payment standard, (ii) conform to HUD regulations interpreting the accessibility requirements of § 504 of the Rehabilitation Act, and (iii) are actively marketed to persons with disabilities as defined in the Fair Housing Act in accordance with a plan submitted as part of the application for credits (all common space must also conform to HUD regulations interpreting the accessibility requirements of § 504 of the Rehabilitation Act). (30 points)~~

~~d. Any development in which 5.0%~~ c. Any development in which 10% of the units (i) conform to HUD regulations interpreting the accessibility requirements of § 504 of the Rehabilitation Act and (ii) are actively marketed to persons with disabilities as defined in the Fair Housing Act in accordance with a plan submitted as part of the application for credits. (~~15~~ 20 points)

~~e.~~ d. Any development located within one-half mile of an existing commuter rail, light rail or subway station or one-quarter mile of one or more existing public bus stops. (10 points, unless the development is located within the geographical area established by the executive director for a pool of credits for Northern Virginia or Tidewater Metropolitan Statistical Area (MSA), in which case, the development will receive 20 points if the development is ranked against other developments in such Northern Virginia or Tidewater MSA pool, 10 points if the development is ranked against other developments in any other pool of credits established by the executive director)

~~f.~~ e. Each development must meet the following baseline energy performance standard applicable to the development's construction category. For new construction, the development must meet all requirements for EPA Energy Star certification. For rehabilitation, the proposed renovation of the development must result in at least a 30% post-rehabilitation decrease on the Home Energy Rating System Index (HERS Index) or score an 80 or lower on the HERS Index. For adaptive reuse, the proposed development must score a 95 or lower on the HERS Index. For mixed construction types, the applicable standard will apply to the development's various construction categories. The development's score on the HERS Index must be verified by a third-party, independent, nonaffiliated, certified Residential Energy Services Network (RESNET) home energy rater.

Any development for which the applicant agrees to obtain (i) EarthCraft Gold or higher certification; (ii) U.S. Green Building Council LEED green-building certification; (iii) National Green Building Standard Certification of Silver or higher; or (iv) meet Enterprise Green Communities Criteria prior to the issuance of an IRS Form 8609 with the proposed development's architect certifying in the application that the development's design will meet the criteria for such certification, provided that the proposed development's RESNET rater is registered with a provider on the authority's approved RESNET provider list. (10 points, points in this paragraph are not cumulative)

Additionally, points on future applications will be awarded to an applicant having a principal that is also a principal in a tax credit development in the Commonwealth meeting (i) the Zero Energy Ready Home Requirements as promulgated by the U.S. Department of Energy (DOE) and as evidenced by a DOE certificate; or (ii) the Passive House Institute's Passive House standards as evidenced by a certificate from an accredited Passive House certifier. (10 points, points in this paragraph are cumulative)

The executive director may, if needed, designate a proposed development as requiring an increase in credit in order to be financially feasible and such development shall be treated as if in a difficult development area as provided in the IRC for any applicant receiving an additional 10 points under this subdivision, provided however, any resulting increase in such development's eligible basis shall be limited to 10% of the development's eligible basis. Provided, however, the authority may remove such increase in the development's eligible basis if the authority determines that the development is financially feasible without such increase in basis.

~~g.~~ f. If units are constructed to include the authority's universal design features, provided that the proposed development's architect is on the authority's list of universal design certified architects. (15 points, if all the units in an elderly development meet this requirement; 15 points multiplied by the percentage of units meeting this requirement for nonelderly developments)

~~h.~~ g. Any development in which the applicant proposes to produce less than 100 low-income housing units. (20 points for producing 50 low-income housing units or less, minus 0.4 points for each additional low-income housing unit produced down to 0 points for any development that produces 100 or more low-income housing units.)

~~i.~~ h. Any applicant for a development that, pursuant to a common plan of development, is part of a larger development located on the same or contiguous sites, financed in part by tax-exempt bonds. Combination developments seeking both 9.0% and 4.0% credits must clearly be presented as two separately financed deals including separate equity pricing that would support each respective deal in the event the other were no longer present. While deals are required to be on the same or a contiguous site they must be clearly identifiable as

separate. The units financed by tax exempt bonds may not be interspersed throughout the development. Additionally, if co-located within the same building footprint, the property must identify separate entrances. All applicants seeking points in this category must arrange a meeting with authority staff at the authority's offices prior to the deadline for submission of the application in order to review both the 9.0% and the tax-exempt bond financed portion of the project. Any applicant failing to meet with authority staff in advance of applying will not be allowed to compete in the current competitive round as a combination development. (~~25~~ 10 points for tax-exempt bond financing of at least 30% of aggregate units, ~~35~~ 20 points for tax-exempt bond financing of at least 40% of aggregate units, and ~~45~~ 30 points for tax-exempt bond financing of at least 50% of aggregate units; such points being noncumulative; such points will be awarded in both the application and any application submitted for credits associated with the tax-exempt bonds)

4. Tenant population characteristics. Commitment by the applicant to give a leasing preference to individuals and families with children in developments that will have no more than 20% of its units with one bedroom or less. (15 points; plus 0.75 points for each percent of the low-income units in the development with three or more bedrooms up to an additional 15 points for a total of no more than 30 points)

5. Sponsor characteristics. [For application submitted in calendar year 2022 only, the sponsor may receive experienced sponsor points under either subdivision 5 a or 5 c of this subsection, but not both. Effective January 1, 2023, subdivision 5 a of this subsection shall no longer be applicable.

a. Evidence that the controlling general partner or managing member of the controlling general partner or managing member for the proposed development have developed:

(1) As controlling general partner or managing member, (i) at least three tax credit developments that contain at least three times the number of housing units in the proposed development or (ii) at least six tax credit developments. (25 points); or

(2) At least three deals as a principal and have at least $500,000 in liquid assets. "Liquid assets" means cash, cash equivalents, and investments held in the name of the entity or person, including cash in bank accounts, money market funds, U.S. Treasury bills, and equities traded on the New York Stock Exchange or NASDAQ. Certain cash and investments will not be considered liquid assets, including (i) stock held in the applicant's own company or any closely held entity, (ii) investments in retirement accounts, (iii) cash or investments pledged as collateral for any liability, and (iv) cash in property accounts, including reserves. The authority will assess the financial capacity of the applicant based on its financial statements. The authority will accept financial statements audited, reviewed, or compiled by an independent certified public accountant. Only a balance sheet dated on or after December 31 of the year prior to the application deadline is required. The authority will accept a compilation report with or without full note disclosures. Supplementary schedules for all significant assets and liabilities may be required. Financial statements prepared in accordance with accounting principles generally accepted in the United States (U.S. GAAP) are preferred. Statements prepared in the income tax basis or cash basis must disclose that basis in the report. The authority reserves the right to verify information in the financial statements. (25 points); or

(3) As controlling general partner or managing member, at least one tax credit development that contains at least the number of housing units in the proposed development. (10 points)]

[~~a.~~ b.] ~~Evidence that the controlling general partner or managing member of~~ A maximum of 25 cumulative points in subdivision 5 [~~b~~ c] of this subsection will be awarded to applicants with an experienced sponsor (experienced sponsor). Experienced sponsors are those principals who meet the requirements of subdivision 5 [~~b~~ c] of this subsection and who have an ownership interest of at least 25% in the controlling general partner or managing member for the proposed development ~~have developed~~, subject to the following conditions:

~~(1) As controlling general partner or managing member, (i) at least three tax credit developments that contain at least three times the number of housing units in the proposed development or (ii) at least six tax credit developments. (50 points);~~

~~(2) At least three deals as a principal and have at least $500,000 in liquid assets. "Liquid assets" means cash, cash equivalents, and investments held in the name of the entities or persons, including cash in bank accounts, money market funds, U.S. Treasury bills, and equities traded on the New York Stock Exchange or NASDAQ. Certain cash and investments will not be considered liquid assets, including: (i) stock held in the applicant's own company or any closely held entity, (ii) investments in retirement accounts, (iii) cash or investments pledged as collateral for any liability, and (iv) cash in property accounts, including reserves. The authority will assess the financial capacity of the applicant based on its financial statements. The authority will accept financial statements audited, reviewed, or compiled by an independent certified public accountant. Only a balance sheet dated on or after December 31 of the year prior to the application deadline is required. The authority will accept a compilation report with or without full note disclosures. Supplementary schedules for all significant assets and liabilities may be required. Financial statements prepared~~

~~in accordance with accounting principles generally accepted in the United States (U.S. GAAP) are preferred. Statements prepared in the income tax basis or cash basis must disclose that basis in the report. The authority reserves the right to verify information in the financial statements. (50 points); or~~

~~(3) As controlling general partner or managing member, at least one tax credit development that contains at least the number of housing units in the proposed development. (10 points)~~

~~Applicants receiving points under subdivisions a (1) and a (2) of this subdivision 5 shall have the 50 points reduced if the controlling general partner or managing member of the controlling general partner or managing member in the applicant acted as a principal in a development receiving an allocation of credits from the authority where:~~

~~(a) Such principal met the requirements to be eligible for points under 5 (a) (1) or (2) and~~

~~(b) Such principal made more than two requests for final inspection (minus 5 points for two years).~~

~~Applicants receiving points under subdivisions a (1) and a (2) of this subdivision 5 are not eligible for points under subdivision 1 above.~~

~~b.~~ (1) Experienced sponsors may be (i) individuals; (ii) duly formed limited liability companies, limited partnerships, and corporations, whether for-profit or nonprofit, and which are in good standing in their respective state of formation and registered to do business in Virginia; (iii) local housing authorities; (iv) business trusts; and (v) trusts;

(2) Individual persons seeking points as an experienced sponsor shall not receive credit for prior participation in developments where such participation was in their capacity as either trustee or beneficiary of a trust or business trust; and

(3) Individuals and entities seeking points as an experienced sponsor may not combine ownership or prior experience with any other individual or entity to meet the requirements of this subdivision 5.

[~~b.~~ c.] Points for experienced sponsor involvement shall be awarded as follows:

(1) Tier 1: Five points shall be awarded to those experienced sponsors that have placed at least one federal low-income housing tax credit (LIHTC) development in service in Virginia within the past five years, as evidenced by an IRS Form 8609 having been issued for such development. The LIHTC development must be active with no reported compliance issues remaining uncured, as determined by the executive director.

(2) Tier 2: 15 points shall be awarded to those experienced sponsors that have placed at least three LIHTC developments in service (in addition to any deal for which points are awarded in Tier 1) in any state within the past six years, as evidenced by corresponding IRS Form 8609s. Experienced sponsors must certify with the application that each of said three developments is active with no reported compliance issues remaining uncured. The executive director may confirm the applicant's certification with each state in which the three developments are located.

(3) Tier 3: Any applicant competing in the local housing authority pool may receive an additional five points for partnering with an experienced sponsor, other than a local housing authority. Applicants seeking said points must provide in their application evidence that the experienced sponsor is a principal in the Applicant (while ownership is required, no minimum ownership percentage of the experience sponsor partner is specified for points in Tier 3) and must provide a description of the assistance rendered and to be rendered by the experienced sponsor partner. [~~Developments that move from the local housing authority pool to their geographic pool will not be eligible for said five points in the geographic pool.~~

~~c.~~ d.] Applicants may receive negative points toward their application as follows:

(1) Any applicant that includes a principal that was a principal in a development [~~that was awarded a credit refresh after January 1, 2022. (minus 2 points for three years after the year in which the credit refresh was awarded)~~

~~(2) Any applicant that includes a principal that was a principal in a development~~] at the time the authority inspected such development and discovered a life-threatening hazard under HUD's Uniform Physical Condition Standards and such hazard was not corrected in the timeframe established by the authority. (minus 50 points for a period of three years after the violation has been corrected)

~~c.~~ [~~(3)~~ (2)] Any applicant that includes a principal that was a principal in a development that either (i) at the time the authority reported such development to the IRS for noncompliance had not corrected such noncompliance by the time a Form 8823 was filed by the authority or (ii) remained out-of-compliance with the terms of its extended use commitment after notice and expiration of any cure period set by the authority. (minus 15 points for a period of three calendar years after the year the authority filed Form 8823 or expiration of such cure period, unless the executive director determines that such principal's attempts to correct such noncompliance was prohibited by a court, local government or governmental agency, in which case, no negative points will be assessed to the applicant, or 0 points, if the appropriate ~~individuals~~ individual connected to the principal attend compliance training as recommended by the authority)

~~d.~~ [~~(4)~~ (3)] Any applicant that includes a principal that is or was a principal in a development that (i) did not build a

development as represented in the application for credit (minus two times the number of points assigned to the items not built or minus ~~20~~ 50 points per requirement for failing to provide a minimum building requirement, for a period of three years after the last Form 8609 is issued for the development, in addition to any other penalties the authority may elect to seek under its agreements with the applicant), or (ii) has a reservation of credits terminated by the authority. (minus 10 points a period of three years after the credits are returned to the authority)

~~e.~~ [~~(5)~~ (4)] Any applicant that includes a management company in its application that is rated unsatisfactory by the executive director or if the ownership of any applicant includes a principal that is or was a principal in a development that hired a management company to manage a tax credit development after such management company received a rating of unsatisfactory from the executive director during the compliance period and extended use period of such development. (minus 25 points)

~~f.~~ [~~(6)~~ (5)] Any applicant that includes a principal that was a principal in a development for which the actual cost of construction (as certified in the Independent Auditor's Report with attached Certification of Sources and Uses that is submitted in connection with the Owner's Application for IRS Form 8609) exceeded the applicable cost limit by 5.0% or more (minus 50 points for a period of three calendar years after December 31 of the year the cost certification is complete; provided, however, if the Board of Commissioners determines that such overage was outside of the applicant's control based upon documented extenuating circumstances, no negative points will be assessed.)

[~~d.~~ (6) Any applicant that includes a controlling general partner or managing member of the controlling general partner or managing member in the applicant that acted as a principal in a development receiving an allocation of credits from the authority where (i) such principal met the requirements to be eligible for points under subdivision 5 a or 5 c of this subsection and (ii) such principal made more than two requests for final inspection. (minus 5 points for two years)

e.] In addition to the points for experienced sponsor involvement available in [~~subdivision 5 b~~ subdivisions 5 a and 5 c] of this subsection, points shall be awarded to applicants for contracting for services as follows:

[~~(1)~~] Five points shall be awarded to applicants that enter into at least one contract for services provided by a business certified as Women-Owned, Minority-Owned or Service Disabled Veteran-owned through the Commonwealth of Virginia's Small, Women-owned, and Minority-owned Business (SWaM) certification program. The following services and roles qualify for points under this subdivision 5 [~~d (1):~~ e:] (i) consulting services to complete the LIHTC application; (ii) ongoing development services through the placed in service date; (iii) general contractor; (iv) architect; (v) property manager; (vi) accounting services; or (vii) legal services. An applicant seeking points in this subdivision 5 [~~d (1)~~ e] must provide in its application a certification, in a form to be developed by the executive director, certifying that a contract for services has been executed between the applicant and the service provider and describing the scope of the services provided or to be provided. The application must also include a copy of the service provider's certification from the Commonwealth of Virginia's Small, Women-owned, and Minority-owned Business certification program.

[~~(2) Future points shall be awarded to an experienced sponsor that serves as a consultant or service provider to a local housing authority to receive an award of credits or place a LIHTC development in service in Virginia, as evidenced by the issuance of an IRS Form 8609 (up to a cumulative maximum of six points). Two points shall be awarded on one future application for assisting a local housing authority with its successful application for credits, as evidenced by a reservation agreement of IRC § 42(m) letter. Four points shall be awarded on one future application for providing ongoing assistance to the local housing authority through the placed in service date and receipt of IRS Form 8609. To qualify for future points under this subdivision 5 d (2), an experienced sponsor must provide in its application a certification, in a form to be developed by the executive director, from the local housing authority describing the assistance rendered by the experienced sponsor and verifying that said assistance was a material component to the development receiving a reservation of credits or placing in service or both.~~

~~e.~~ f.] Applicants with at least one principal having an ownership interest of at least 25% in the controlling general partner or managing member for the proposed development that is a socially disadvantaged individual (5 points). Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities. The social disadvantage must stem from circumstances beyond their control. There is a rebuttable presumption that the following individuals are socially disadvantaged: Black Americans, Hispanic Americans, Native Americans, and Asian Americans and Pacific Islanders. This provision shall be interpreted in accordance with 13 CFR 124.103.

6. Efficient use of resources.

a. The percentage by which the total of the amount of credits per low-income housing unit (the "per unit credit amount") of the proposed development is less than the standard per unit credit amounts established by the executive director for a given unit type, based upon the

number of such unit types in the proposed development. (200 points multiplied by the percentage by which the total amount of the per unit credit amount of the proposed development is less than the applicable standard per unit credit amount established by the executive director, negative points will be assessed using the percentage by which the total amount of the per unit credit amount of the proposed development exceeds the applicable standard per unit credit amount established by the executive director.)

b. The percentage by which the cost per low-income housing unit (per unit cost), adjusted by the authority for location, of the proposed development is less than the standard per unit cost amounts established by the executive director for a given unit type, based upon the number of such unit types in the proposed development. (100 points multiplied by the percentage by which the total amount of the per unit cost of the proposed development is less than the applicable standard per unit cost amount established by the executive director; negative points will be assessed using the percentage by which the total amount of the per unit cost amount of the proposed development exceeds the applicable standard per unit cost amount established by the executive director.)

The executive director may use a standard per square foot credit amount and a standard per square foot cost amount in establishing the per unit credit amount and the per unit cost amount in this subdivision 6 ~~above~~. For the purpose of calculating the points to be assigned pursuant to such this subdivision 6 ~~above~~, all credit amounts shall include any credits previously allocated to the development.

7. Bonus points.

a. Commitment by the applicant to impose income limits on the low-income housing units throughout the extended use period (as defined in the IRC) below those required by the IRC in order for the development to be a qualified low-income development. Applicants receiving points under this subdivision 7 a may not receive points under subdivision 7 b ~~below~~ of this subsection. (Up to 50 points, the product of (i) 100 multiplied by (ii) the percentage of housing units in the proposed development both rent restricted to and occupied by households at or below 50% of the area median gross income; plus one point for each percentage point of such housing units in the proposed development that are further restricted to rents at or below 30% of 40% of the area median gross income up to an additional 10 points.) If the applicant commits to providing housing units in the proposed development both rent-restricted to and occupied by households at or below 30% of the area median gross income and that are not subsidized by project-based rental assistance. (plus 1 point for each percentage point of such housing units in the proposed development, up to an additional 10 points)

b. Commitment by the applicant to impose rent limits on the low-income housing units throughout the extended use period (as defined in the IRC) below those required by the IRC in order for the development to be a qualified low-income development. Applicants receiving points under this subdivision 7 b may not receive points under subdivision 7 a of this subsection. (Up to 25 points, the product of (i) 50 multiplied by (ii) the percentage of housing units in the proposed development rent restricted to households at or below 50% of the area median gross income; plus one point for each percentage point of such housing units in the proposed development that are further restricted to rents at or below 30% of 40% of the area median gross income up to an additional 10 points. Points for proposed developments in low-income jurisdictions shall be two times the points calculated in the preceding sentence, up to 50 points.)

c. Commitment by the applicant to maintain the low-income housing units in the development as a qualified low-income housing development beyond the 30-year extended use period (as defined in the IRC). Applicants receiving points under this subdivision 7 c may not receive bonus points under subdivision 7 d of this subsection. (40 points for a 10-year commitment beyond the 30-year extended use period or 50 points for a 20-year commitment beyond the 30-year extended use period.)

d. Participation by a local housing authority or qualified nonprofit organization (substantially based or active in the community with at least a 10% ownership interest in the general partnership interest of the partnership) and a commitment by the applicant to sell the proposed development pursuant to an executed, recordable option or right of first refusal to such local housing authority or qualified nonprofit organization or to a wholly owned subsidiary of such organization or authority, at the end of the 15-year compliance period, as defined by IRC, for a price not to exceed the outstanding debt and exit taxes of the for-profit entity. The applicant must record such option or right of first refusal immediately after the low-income housing commitment described in 13VAC10-180-70. Applicants receiving points under this subdivision 7 d may not receive bonus points under subdivision 7 c of this subsection. (60 points; plus five points if the local housing authority or qualified nonprofit organization submits a homeownership plan satisfactory to the authority in which the local housing authority or qualified nonprofit organization commits to sell the units in the development to tenants.)

e. Any development participating in the Rental Assistance Demonstration (RAD) program, or other conversion to project-based vouchers or project-based rental assistance approved by the authority, competing in the local housing authority pool will receive an additional 10 points. Applicants must show proof of a commitment to enter into

housing assistance payment (CHAP) or a RAD conversion commitment (RCC).

f. Any applicant that commits in the application to submit any payments due the authority, including reservation fees and monitoring fees, by electronic payment. (5 points)

In calculating the points for subdivisions 7 a and 7 b ~~above~~ of this subsection, any units in the proposed development required by the locality to exceed 60% of the area median gross income will not be considered when calculating the percentage of low-income units of the proposed development with incomes below those required by the IRC in order for the development to be a qualified low-income development, provided that the locality submits evidence satisfactory to the authority of such requirement.

After points have been assigned to each application in the manner described ~~above~~ in this subsection, the executive director shall compute the total number of points assigned to each such application. Any application that is assigned a total number of points less than a threshold amount of [~~425~~ 400] points ([~~325~~ 300] points for developments financed with tax-exempt bonds in such amount so as not to require under the IRC an allocation of credits hereunder) shall be rejected from further consideration hereunder and shall not be eligible for any reservation or allocation of credits.

F. During its review of the submitted applications in all pools, the authority may conduct ~~its~~:

1. Its own analysis of the demand for the housing units to be produced by each applicant's proposed development. Notwithstanding any conclusion in the market study submitted with an application, if the authority determines that, based upon information from its own loan portfolio or its own market study, inadequate demand exists for the housing units to be produced by an applicant's proposed development, the authority may exclude and disregard the application for such proposed development.

~~During its review of the submitted applications in all pools, the authority may conduct a~~ 2. A site visit to the applicant's proposed development. Notwithstanding any conclusion in any environmental site assessment submitted with an application, if the authority determines that the applicant's proposed development presents health or safety concerns for potential tenants of the development, the authority may exclude and disregard the application for such proposed development.

G. The executive director ~~may~~:

1. May exclude and disregard any application that ~~he~~ the executive director determines is not submitted in good faith or that he determines would not be financially feasible.

2. May determine that an application is substantially incomplete and ineligible for further review.

3. May also choose to allow for the immediate correction of minor and immaterial defects [affecting mandatory items (but not points items)] in an application. Should the executive director choose to allow correction, applicants will be given 48 hours from the time of notification to cure defects with their application. If the executive director allows an applicant to cure minor defects, that does not constitute approval or acceptance of the application and is not an assurance that the application, upon further review, will be deemed acceptable.

Examples of items that may be considered as "curable" include:

a. If the applicant has failed to include a required document, the applicant may supply the document, provided, however, that the document existed on the application deadline date and, if the document is a legal agreement or instrument, the document was legally effective on the application deadline date;

b. If statements or items in the application are contradictory or mutually inconsistent, the applicant may present information resolving the contradiction or inconsistency, provided, however, that the information accurately reflects the state of affairs on the application deadline date;

c. The applicant may provide any required signature that has been omitted, except for applications that the executive director deems to be substantially incomplete; and

d. The applicant may cure any scrivener's error [~~(provided, that an alleged failure to select or an alleged erroneous selection of a points item shall not be considered a scrivener's error)~~], missing or defective notarization, defective signature block, or defective legal name of an individual or entity.

4. Shall notify the applicant of any curable defects it discovers by telephone, and, simultaneously, in writing electronically (email). The applicant's corrective submission shall not be considered unless it is received by the executive director no later than 48 hours (excluding weekends and legal holidays) from the notification. If an applicant fails to respond to the notification of curable defects within the 48-hour cure period, or if an applicant's response is nonresponsive to the question asked, a negative conclusion shall be drawn. Failure to respond to an item in a cure notification will result in the denial of points in that category or the application may be deemed to not meet threshold. After the application deadline, telephone calls or other oral or written communications on behalf of a tax credit applicant (for example, from a project's development team, elected representatives, etc.) other than information submitted pursuant to this subdivision shall not be accepted or considered before preliminary reservation awards have been announced.

5. Upon assignment of points to all of the applications, ~~the executive director~~ shall rank the applications based on the number of points so assigned. If any pools shall have been established, each application shall be assigned to a pool and, if any, to the appropriate tier within such pool and shall be ranked within such pool or tier, if any. The amount of credits made available to each pool will be determined by the executive director. Available credits will include unreserved per capita dollar amount credits from the current calendar year under § 42(h)(3)(C)(i) of the IRC, any unreserved per capita credits from previous calendar years, and credits returned to the authority prior to the final ranking of the applications and may include up to ~~40~~ 50% of the next calendar year's per capita credits as shall be determined by the executive director. Those applications assigned more points shall be ranked higher than those applications assigned fewer points. However, if any set-asides established by the executive director cannot be satisfied after ranking the applications based on the number of points, the executive director may rank as many applications as necessary to meet the requirements of such set-aside (selecting the highest ranked application, or applications, meeting the requirements of the set-aside) over applications with more points.

~~In~~ H. The authority shall in the event of a tie in the number of points assigned to two or more applications within the same pool, or, if none, within the Commonwealth, and in the event that the amount of credits available for reservation to such applications is determined by the executive director to be insufficient for the financial feasibility of all of the developments described ~~therein~~ in that pool, ~~the authority shall,~~ to the extent necessary to fully utilize the amount of credits available for reservation within such pool or, if none, within the Commonwealth, select one or more of the applications with the highest combination of points from subdivision E 7 of this section, ~~and each~~. Each application so selected shall receive (in order based upon the number of such points, beginning with the application with the highest number of such points) a reservation of credits. If two or more of the tied applications receive the same number of points from subdivision E 7 of this section and if the amount of credits available for reservation to such tied applications is determined by the executive director to be insufficient for the financial feasibility of all the developments described ~~therein~~ in the tied for points applications, the executive director shall select one or more of such applications by lot, and each application so selected by lot shall receive (in order of such selection by lot) a reservation of credits.

I. The executive director:

1. For each application ~~which~~ that may receive a reservation of credits, ~~the executive director~~ shall determine the amount, as of the date of the deadline for submission of applications for reservation of credits, to be necessary for the financial feasibility of the development and its viability as a qualified low-income development throughout the credit period under the IRC.

In making this determination, the executive director shall consider ~~the~~:

a. The sources and uses of the funds, ~~the~~

b. The available federal, state, and local subsidies committed to the development, ~~the~~

c. The total financing planned for the development as well as the investment proceeds or receipts expected by the authority to be generated with respect to the development, and ~~the~~

d. The percentage of the credit dollar amount used for development costs other than the costs of intermediaries.

~~He shall also~~ 2. Shall examine the development's costs, including developer's fees and other amounts in the application, for reasonableness, and if he determines that such costs or other amounts are unreasonably high, he shall reduce them to amounts that he determines to be reasonable.

~~The executive director shall~~ 3. Shall review the applicant's projected rental income, operating expenses and debt service for the credit period.

~~The executive director may~~ 4. May establish such criteria and assumptions as he shall deem reasonable for the purpose of making such determination, including ~~criteria~~:

a. Criteria as to the reasonableness of fees and profits and assumptions as to the amount of net syndication proceeds to be received (based upon such percentage of the credit dollar amount used for development costs, other than the costs of intermediaries, as the executive director shall determine to be reasonable for the proposed development)~~,~~ ~~increases~~;

b. Increases in the market value of the development, and increases in operating expenses, rental income; and~~, in~~

c. In the case of applications without firm financing commitments ~~(as defined hereinabove)~~ at fixed interest rates, debt service on the proposed mortgage loan.

~~The executive director may~~ 5. May, if he deems it appropriate, consider the development to be a part of a larger development. In such a case, the executive director may consider, examine, review and establish any or all of the ~~foregoing~~ items described in this subsection as to the larger development in making such determination for the development.

J. Maximum developer's fee calculations will be indicated on the application form, instructions, or other communication available to the public. Notwithstanding such calculations of developer's fee, (i) no more than $3 million developer's fee may be included in the development's eligible basis, (ii) no developer's fee may exceed $5 million, and (iii) no developer's fee may exceed 15% of the development's total development cost, as determined by the authority.

~~At such time or times during each calendar year as the executive director shall designate, the executive director shall~~

K. The executive director:

1. Shall reserve credits to applications in descending order of ranking within each pool and tier, if applicable, until either substantially all credits therein are reserved or all qualified applications therein have received reservations at such time during each calendar year as the executive director shall designate. ~~(For the purpose of the preceding sentence, if~~ If there is not more than a de minimis amount, as determined by the executive director, of credits remaining in a pool after reservations have been made, "substantially all" of the credits in such pool shall be deemed to have been reserved.~~) The executive director may~~

2. May rank the applications within pools at different times for different pools and may reserve credits, based on such rankings, one or more times with respect to each pool.

~~The executive director may also~~ 3. May establish more than one round of review and ranking of applications and reservation of credits based on such rankings~~, and he shall~~.

4. Shall designate the amount of credits to be made available for reservation within each pool during each such round. The amount reserved to each such application shall be equal to the lesser of (i) the amount requested in the application or (ii) an amount determined by the executive director, as of the date of application, to be necessary for the financial feasibility of the development and its viability as a qualified low-income development throughout the credit period under the IRC; provided, however, that in no event shall the amount of credits so reserved exceed the maximum amount permissible under the IRC.

~~If~~ 5. May move the proposed development and the credits available to another pool if the amount of credits available in any pool is determined by the executive director to be insufficient for the financial feasibility of the proposed development to which such available credits are to be reserved~~, the executive director may move the proposed development and the credits available to another pool~~.

6. If any credits remain in any pool after moving proposed developments and credits to another pool, ~~the executive director~~ may for developments that meet the requirements of § 42(h)(1)(E) of the IRC only, reserve the remaining credits to any proposed ~~developments~~ development scoring at or above the minimum point threshold established by this chapter without regard to the ranking of such application with additional credits from the Commonwealth's annual state housing credit ceiling for the following year in such an amount necessary for the financial feasibility of the proposed ~~developments~~ development. However, the reservation of credits from the Commonwealth's annual state housing credit ceiling for the following year shall be in the reasonable discretion of the executive director if he determines it to be in the best interest of the plan. In the event a reservation or an allocation of credits from the current year or a prior year is reduced, terminated, or canceled, the executive director may substitute such credits for any credits reserved from the following year's annual state housing credit ceiling.

7. In the event that during any round of application review and ranking the amount of credits reserved within any pools is less than the total amount of credits made available therein during such round, ~~the executive director~~ may ~~(i) leave~~:

a. Leave such unreserved credits in such pools for reservation and allocation in any subsequent rounds, ~~(ii) redistribute~~

b. Redistribute such unreserved credits to such other pools as the executive director may designate, ~~(iii) supplement~~

c. Supplement such unreserved credits in such pools with additional credits from the Commonwealth's annual state housing credit ceiling for the following year for reservation and allocation if in the reasonable discretion of the executive director, it serves the best interest of the plan, ~~or (iv) carry~~

d. Carry over such unreserved credits to the next succeeding calendar year for inclusion in the state housing credit ceiling (as defined in § 42(h)(3)(C) of the IRC) for such year, or

e. Move a development from the nonprofit or new construction pool to its or their appropriate geographic pool to more fully or fully utilize the total amount of credits made available therein during such round.

~~Notwithstanding anything contained herein, the~~ L. 1. The total amount of credits that may be awarded in any credit year after credit year 2001 to any applicant or to any related applicants for one or more developments shall not exceed [15% ~~20%~~] of Virginia's per capita dollar amount of credits for such credit year (credit cap).

2. However, if the amount of credits to be reserved in any such credit year to all applications assigned a total number of points at or above the threshold amount set forth ~~above~~ in this section shall be less than Virginia's dollar amount of credits available for such credit year, then the authority's board of commissioners may waive the credit cap to the extent it deems necessary to reserve credits in an amount at least equal to such dollar amount of credits.

3. Applicants shall be deemed to be related if any principal in a proposed development or any person or entity related to the applicant or principal will be a principal in any other proposed development or developments. For purposes of this ~~paragraph~~ subsection, a principal shall also include any person or entity who, in the determination of the executive director, has exercised or will exercise, directly or indirectly, substantial control over the applicant or has performed or will perform (or has assisted or will assist the applicant in

the performance of), directly or indirectly, substantial responsibilities or functions customarily performed by applicants with respect to applications or developments.

4. For the purpose of determining whether any person or entity is related to the applicant or principal, persons or entities shall be deemed to be related if the executive director determines that any substantial relationship existed, either directly between them or indirectly through a series of one or more substantial relationships (e.g., if party A has a substantial relationship with party B and if party B has a substantial relationship with party C, then A has a substantial relationship with both party B and party C), at any time within three years of the filing of the application for the credits.

5. In determining in any credit year whether an applicant has a substantial relationship with another applicant with respect to any application for which credits were awarded in any prior credit year, the executive director shall determine whether the applicants were related as of the date of the filing of such prior credit year's application or within three years prior thereto and shall not consider any relationships or any changes in relationships subsequent to such date.

6. Substantial relationships shall include, the following relationships (in each of the following relationships, the persons or entities involved in the relationship are deemed to be related to each other): ~~(i) the~~

a. The persons are in the same immediate family (including a spouse, children, parents, grandparents, grandchildren, brothers, sisters, uncles, aunts, nieces, and nephews) and are living in the same household; ~~(ii) the~~

b. The entities have one or more common general partners or members (including related persons and entities), or the entities have one or more common owners that (by themselves or together with any other related persons and entities) have, in the aggregate, 5.0% or more ownership interest in each entity; ~~(iii) the~~

c. The entities are under the common control (e.g., the same ~~persons~~ person and any related persons serve as a majority of the voting members of the boards of such entities or as chief executive officers of such entities) of one or more persons or entities (including related persons and entities); ~~(iv) the~~

d. The person is a general partner, member or employee in the entity or is an owner (by himself or together with any other related persons and entities) of 5.0% or more ownership interest in the entity; ~~(v) the~~

e. The entity is a general partner or member in the other entity or is an owner (by itself or together with any other related persons and entities) of 5.0% or more ownership interest in the other entity; or ~~(vi) the~~

f. The person or entity is otherwise controlled, in whole or in part, by the other person or entity.

7. In determining compliance with the credit cap with respect to any application, the executive director may exclude any person or entity related to the applicant or to any principal in such applicant if the executive director determines that ~~(i) such~~:

a. Such person or entity will not participate, directly or indirectly, in matters relating to the applicant or the ownership of the development to be assisted by the credits for which the application is submitted, ~~(ii) such~~

b. Such person or entity has no agreement or understanding relating to such application or the tax credits requested therein, and ~~(iii) such~~

c. Such person or entity will not receive a financial benefit from the tax credits requested in the application.

8. A limited partner or other similar investor shall not be determined to be a principal and shall be excluded from the determination of related persons or entities unless the executive director shall determine that such limited partner or investor will, directly or indirectly, exercise control over the applicant or participate in matters relating to the ownership of the development substantially beyond the degree of control or participation that is usual and customary for limited partners or other similar investors with respect to developments assisted by the credits.

9. If the award of multiple applications of any applicant or related applicants in any credit year shall cause the credit cap to be exceeded, such applicant shall, upon notice from the authority, jointly designate those applications for which credits are not to be reserved so that such limitation shall not be exceeded. Such notice shall specify the date by which such designation shall be made. In the absence of any such designation by the date specified in such notice, the executive director shall make such designation as he shall determine to best serve the interests of the program.

10. Each applicant and each principal therein shall make such certifications, shall disclose such facts and shall submit such documents to the authority as the executive director may require to determine compliance with the credit cap. If an applicant or any principal therein makes any misrepresentation to the authority concerning such applicant's or principal's relationship with any other person or entity, the executive director may reject any or all of such applicant's pending applications for reservation or allocation of credits, may terminate any or all reservations of credits to the applicant, and may prohibit such applicant, the principals therein and any persons and entities then or thereafter having a substantial relationship (in the determination of the executive director as described above) with the applicant or any principal therein from submitting applications for credits for such period of time as the executive director shall determine.

~~Within a reasonable time after credits are reserved to any applicants' applications, the executive director shall~~

M. The executive director:

1. Shall notify each applicant for such reservations of credits within a reasonable time after credits are reserved to any applicants' applications either ~~of~~:

a. Of the amount of credits reserved to such applicant's application ~~(~~by issuing to such applicant a written binding commitment to allocate such reserved credits subject to such terms and conditions as may be imposed by the executive director therein, by the IRC and by this chapter~~);~~ or~~, as applicable, that~~

b. That the applicant's application has been rejected or excluded or has otherwise not been reserved credits in accordance herewith.

The written binding commitment shall prohibit any transfer, direct or indirect, of partnership interests (except those involving the admission of limited partners) prior to the placed-in-service date of the proposed development unless the transfer is consented to by the executive director. The written binding commitment shall further limit the developers' fees to the amounts established during the review of the applications for reservation of credits and such amounts shall not be increased unless consented to by the executive director.

~~If credits are reserved to any applicants for developments that have also received an allocation of credits from prior years, the executive director may~~ 2. May reserve additional credits from the current year equal to the amount of credits allocated to such developments from prior years if credits are reserved to any applicants for developments that have also received an allocation of credits from prior years, provided such previously allocated credits are returned to the authority. Any previously allocated credits returned to the authority under such circumstances shall be placed into the credit pools from which the current year's credits are reserved to such applicants.

~~The executive director shall~~ 3. Shall make a written explanation available to the general public for any allocation of housing credit dollar amount that is not made in accordance with established priorities and selection criteria of the authority.

a. The authority's board shall review and consider the analysis and recommendation of the executive director for the reservation of credits to an applicant, and, if it concurs with such recommendation, it shall by resolution ratify the reservation by the executive director of the credits to the applicant, subject to such terms and conditions as it shall deem necessary or appropriate to assure compliance with the aforementioned binding commitment issued or to be issued to the applicant, the IRC and this chapter.

b. If the board determines not to ratify a reservation of credits or to establish any such terms and conditions, the executive director shall so notify the applicant.

~~The executive director may~~ 4. May require the applicant to make a good faith deposit or to execute such contractual agreements providing for monetary or other remedies as it may require, or both, to assure that the applicant will comply with all requirements under the IRC, this chapter and the binding commitment (including any requirement to conform to all of the representations, commitments and information contained in the application for which points were assigned pursuant to this section).

Upon satisfaction of all such ~~aforementioned~~ requirements (including any post-allocation requirements), such deposit shall be refunded to the applicant or such contractual agreements shall terminate, or both, as applicable.

N. If, as of the date the application is approved by the executive director, the applicant is entitled to an allocation of the credits under the IRC, this chapter and the terms of any binding commitment that the authority would have otherwise issued to such applicant, the executive director may at that time allocate the credits to such qualified low-income buildings or development without first providing a reservation of such credits. This provision in no way limits the authority of the executive director to require a good faith deposit or contractual agreement, or both, as described in the preceding paragraph, nor to relieve the applicant from any other requirements hereunder for eligibility for an allocation of credits. Any such allocation shall be subject to ratification by the board in the same manner as provided above with respect to reservations.

O. The executive director may ~~require~~:

1. Require that applicants to whom credits have been reserved shall submit from time to time or at such specified times as he shall require, written confirmation and documentation as to the status of the proposed development and its compliance with the application, the binding commitment and any contractual agreements between the applicant and the authority.

2. If on the basis of such written confirmation and documentation as the executive director shall have received in response to such a request, or on the basis of such other available information, or both, the executive director determines any or all of the buildings in the development that were to become qualified low-income buildings will not do so within the time period required by the IRC or will not otherwise qualify for such credits under the IRC, this chapter or the binding commitment~~, then the executive director may (i) terminate~~:

a. Terminate the reservation of such credits and draw on any good faith deposit, or ~~(ii) substitute~~

b. Substitute the reservation of credits from the current credit year with a reservation of credits from a future credit year if the delay is caused by a lawsuit beyond the applicant's control that prevents the applicant from proceeding with the development.

If, in lieu of or in addition to the foregoing determination, the executive director determines that any contractual agreements between the applicant and the authority have been breached by the applicant, whether before or after allocation of the credits, he may seek to enforce any and all remedies to which the authority may then be entitled under such contractual agreements.

~~The executive director may establish~~ 3. Establish such deadlines for determining the ability of the applicant to qualify for an allocation of credits as he shall deem necessary or desirable to allow the authority sufficient time, in the event of a reduction or termination of the applicant's reservation, to reserve such credits to other eligible applications and to allocate such credits pursuant thereto.

P. Any material changes to the development, as proposed in the application, occurring subsequent to the submission of the application for the credits therefor shall be subject to the prior written approval of the executive director. As a condition to any such approval, the executive director may, as necessary to comply with this chapter, the IRC, the binding commitment and any other contractual agreement between the authority and the applicant, reduce the amount of credits applied for or reserved or impose additional terms and conditions with respect thereto. If such changes are made without the prior written approval of the executive director, he may terminate or reduce the reservation of such credits, impose additional terms and conditions with respect thereto, seek to enforce any contractual remedies to which the authority may then be entitled, draw on any good faith deposit, or any combination of the foregoing.

In the event that any reservation of credits is terminated or reduced by the executive director under this section, he may reserve, allocate or carry over, as applicable, such credits in such manner as he shall determine consistent with the requirements of the IRC and this chapter.

~~Notwithstanding the provisions of this section, the~~ Q. The executive director may make a reservation of credits ~~in~~:

1. In an accessible supportive housing pool (ASH pool) to any applicant that proposes a nonelderly development that (i) will be assisted by a documented and binding form of rental assistance in order to ensure occupancy by extremely low-income persons; (ii) conforms to HUD regulations interpreting the accessibility requirements of § 504 of the Rehabilitation Act; (iii) will be actively marketed to people with disabilities in accordance with a plan submitted as part of the application for credits and approved by the executive director for at least 15% of the units in the development; (iv) has a principal with a demonstrated capacity for supportive housing evidenced by a certification from a certifying body acceptable to the executive director or other preapproved source; and (v) for which the applicant has completed the authority's supportive housing certification form. Any such reservations made in any calendar year may be up to ~~6.0%~~ 10% of the Commonwealth's annual state housing credit ceiling for the applicable credit year. However, such reservation will be for credits from the Commonwealth's annual state housing credit ceiling from the following calendar year. If the ASH pool application deadline is simultaneous with the deadline for the other pools, the unsuccessful applicants in the ASH pool will also compete in the applicable geographic pool.

~~Notwithstanding the provisions of this section, the executive director may make reservations of credits to~~ 2. To developments having unique and innovative development concepts, such as innovative construction methods or materials; unique or innovative tenant services, tenant selection criteria, or eviction policies; or otherwise innovatively contributing to the authority's identified mission and goals. The applications for such credits must meet all the requirements of the IRC and threshold score. The authority shall also establish a review committee comprised of external real estate professionals, academic leaders, and other individuals knowledgeable of real estate development, design, construction, accessibility, energy efficiency, or management to assist the authority in determining and ranking the innovative nature of the development. Such reservations will be for credits from the next year's per capita credits and may not exceed 12.5% of the credits expected to be available for that following calendar year. Such reservations shall not be considered in the executive director's determination that no more than ~~40%~~ 50% of the next calendar year's per capita credits have been pre-reserved.

13VAC10-180-90. Monitoring for IRS compliance.

A. Federal law requires the authority to monitor developments receiving credits for compliance with the requirements of § 42 of the IRC and notify the IRS of any noncompliance of which it becomes aware. Compliance with the requirements of § 42 of the IRC is the responsibility of the owner of the building for which the credit is allowable. The monitoring requirements set forth ~~hereinbelow~~ in this section are to qualify the authority's allocation plan of credits. The authority's obligation to monitor for compliance with the requirements of § 42 of the IRC does not make the authority liable for an owner's noncompliance, nor does the authority's failure to discover any noncompliance by an owner excuse such noncompliance.

B. The owner of a low-income housing development must keep records for each qualified low-income building in the development that show for each year in the compliance period:

1. The total number of residential rental units in the building (including the number of bedrooms and the size in square feet of each residential rental unit).

2. The percentage of residential rental units in the building that are low-income units.

3. The rent charged on each residential rental unit in the building (including any utility allowances).

4. The number of occupants in each low-income unit, but only if rent is determined by the number of occupants in each unit under § 42(g)(2) of the IRC (as in effect before the amendments made by the federal Revenue Reconciliation Act of 1989).

5. The low-income unit vacancies in the building and information that shows when, and to whom, the next available units were rented.

6. The annual income certification of each low-income tenant per unit.

7. Documentation to support each low-income tenant's income certification (for example, a copy of the tenant's federal income tax return, Forms W-2, or verifications of income from third parties such as employers or state agencies paying unemployment compensation). Tenant income is calculated in a manner consistent with the determination of annual income under section 8 of the United States Housing Act of 1937, 42 USC § 1401 et seq. (section 8), not in accordance with the determination of gross income for federal income tax liability. In the case of a tenant receiving housing assistance payments under section 8, the documentation requirement of this subdivision 7 is satisfied if the public housing authority provides a statement to the building owner declaring that the tenant's income does not exceed the applicable income limit under § 42(g) of the IRC.

8. The eligible basis and qualified basis of the building at the end of the first year of the credit period.

9. The character and use of the nonresidential portion of the building included in the building's eligible basis under § 42(d) of the IRC (e.g., tenant facilities that are available on a comparable basis to all tenants and for which no separate fee is charged for use of the facilities, or facilities reasonably required by the development).

The owner of a low-income housing development must retain the records described in this subsection B for at least six years after the due date (with extensions) for filing the federal income tax return for that year. The records for the first year of the credit period, however, must be retained for at least six years beyond the due date (with extensions) for filing the federal income tax return for the last year of the compliance period of the building.

In addition, the owner of a low-income housing development must retain any original local health, safety, or building code violation reports or notices issued by the Commonwealth or local government (as described in subdivision C 6 of this section) for the authority's inspection. Retention of the original violation reports or notices is not required once the authority reviews the violation reports or notices and completes its inspection, unless the violation remains uncorrected.

C. The owner of a low-income housing development must certify annually to the authority, on the form prescribed by the authority, that, for the preceding 12-month period:

1. The development met the requirements of the 20-50 test under § 42(g)(1)(A) of the IRC, the 40-60 test under § 42(g)(2)(B) of the IRC, or the income averaging test of the ~~federal~~ Consolidated Appropriations Act of 2018 (as limited by the executive director), whichever minimum set-aside test was applicable to the development.

2. There was no change in the applicable fraction (as defined in § 42(c)(1)(B) of the IRC) of any building in the development, or that there was a change, and a description of the change.

3. The owner has received an annual income certification from each low-income tenant, and documentation to support that certification; or, in the case of a tenant receiving section 8 housing assistance payments, the statement from a public housing authority described in subdivision 7 of subsection B of this section (unless the owner has obtained a waiver from the IRS pursuant to § 42(g)(8)(B) of the IRC).

4. Each low-income unit in the development was rent-restricted under § 42(g)(2) of the IRC.

5. All units in the development were for use by the general public (as defined in IRS Regulation § 1.42-9) and that no finding of discrimination under the Fair Housing Act has occurred for the development. (A finding of discrimination includes an adverse final decision by the Secretary of HUD, 24 CFR 180.680, an adverse final decision by a substantially equivalent state or local fair housing agency, 42 USC § 3616(a)(1), or adverse judgment from federal court.)

6. Each building in the development was suitable for occupancy, taking into account local health, safety, and building codes (or other habitability standards), and that the Commonwealth or local government unit responsible for making local health, safety, and building code inspections did not issue a violation report for any building or low-income unit in the development. (If a violation report or notice was issued by the governmental unit, the owner must attach a statement summarizing the violation report or notice or a copy of the violation report or notice to the annual certification. In addition the owner must state whether the violation has been corrected.)

7. There was no change in the eligible basis (as defined in § 42(d) of the IRC) of any building in the development, or if there was a change, the nature of the change (e.g., a common area has become commercial space or a fee is now charged for a tenant facility formerly provided without charge).

8. All tenant facilities included in the eligible basis under § 42(d) of the IRC of any building in the development, such

as swimming pools, other recreational facilities, and parking areas, were provided on a comparable basis without charge to all tenants in the building.

9. If a low-income unit in the development became vacant during the year, that reasonable attempts were or are being made to rent that unit or the next available unit of comparable or smaller size to tenants having a qualifying income before any units in the development were or will be rented to tenants not having a qualifying income.

10. If the income of tenants of a low-income unit in the development increased above the limit allowed in § 42(g)(2)(D)(ii) of the IRC, the next available unit of comparable or smaller size in the development was or will be rented to tenants having a qualifying income.

11. An extended low income housing commitment as described in § 42(h)(6) of the IRC was in effect (for buildings subject to § 7108(c)(1) of the federal Omnibus Budget Reconciliation Act of 1989).

12. All units in the development were used on a nontransient basis (except for transitional housing for the homeless provided under § 42(i)(3)(B)(iii) of the IRC or single-room-occupancy units rented on a month-by-month basis under § 42(i)(3)(B)(iv) of the IRC).

Such certifications shall be made annually covering each year of the compliance period and must be made under the penalty of perjury.

In addition, each owner of a low-income housing development must provide to the authority, on a form prescribed by the authority, a certification containing such information necessary for the Commonwealth to determine the eligibility of tax credits for the first year of the development's compliance period.

D. The authority will review each certification set forth in subsection C of this section for compliance with the requirements of § 42 of the IRC. Also, the authority will conduct on-site inspections of all the buildings in the development by the end of the second calendar year following the year the last building in the development is placed in service and, for at least the lesser of the applicable minimum sample size required by HUD's Real Estate Assessment Center (REAC) for inspections under HUD programs or 20% of the development's low-income housing units in the project rounded up to the next whole number, inspect the low-income certification, the documentation the owner has received to support that certification, and the rent record for the tenants in those units. In addition, at least once every three years, the authority will conduct on-site inspections of all the buildings in each low-income housing development and, for at least the lesser of the applicable minimum sample size required by REAC for inspections under HUD programs or 20% of the development's low-income units in the project rounded up to the next whole number, inspect the units, the low-income certifications, the documentation the owner has received to support the certifications, and the rent record for the tenants in those units. The authority will determine which low-income housing developments will be reviewed in a particular year and which tenant's records are to be inspected.

In addition, the authority, at its option, may request an owner of a low-income housing development not selected for the review procedure set forth above in a particular year to submit to the authority for compliance review copies of the annual income certifications, the documentation such owner has received to support those certifications and the rent record for each low-income tenant of the low-income units in their development.

All low-income housing developments may be subject to review at any time during the compliance period.

E. The authority has the right to perform, and each owner of a development receiving credits shall permit the performance of, an on-site inspection of any low-income housing development through the end of the compliance period of the building. The inspection provision of this subsection E is separate from the review of low-income certifications, supporting documents and rent records under subsection D of this section.

The owner of a low-income housing development should notify the authority when the development is placed in service. The authority reserves the right to inspect the property prior to issuing IRS Form 8609 to verify that the development conforms to the representations made in the Application for Reservation and Application for Allocation.

F. The authority will provide written notice to the owner of a low-income housing development if the authority does not receive the certification described in subsection C of this section, or does not receive or is not permitted to inspect the tenant income certifications, supporting documentation, and rent records described in subsection D of this section or discovers by inspection, review, or in some other manner, that the development is not in compliance with the provisions of § 42 of the IRC.

Such written notice will set forth a correction period which shall be that period specified by the authority during which an owner must supply any missing certifications and bring the development into compliance with the provisions of § 42 of the IRC. The authority will set the correction period for a time not to exceed 90 days from the date of such notice to the owner. The authority may extend the correction period for up to six months, but only if the authority determines there is good cause for granting the extension.

The authority will file Form 8823, "Low-Income Housing Credit Agencies Report of Noncompliance," with the IRS no later than 45 days after the end of the correction period (as described above, including any permitted extensions) and no earlier than the end of the correction period, whether or not the

noncompliance or failure to certify is corrected. The authority must explain on Form 8823 the nature of the noncompliance or failure to certify and indicate whether the owner has corrected the noncompliance or failure to certify. Any change in either the applicable fraction or eligible basis under subdivisions 2 and 7 of subsection C of this section, respectively, that results in a decrease in the qualified basis of the development under § 42(c)(1)(A) of the IRC is noncompliance that must be reported to the IRS under this subsection F. If the authority reports on Form 8823 that a building is entirely out of compliance and will not be in compliance at any time in the future, the authority need not file Form 8823 in subsequent years to report that building's noncompliance.

The authority will retain records of noncompliance or failure to certify for six years beyond the authority's filing of the respective Form 8823. In all other cases, the authority must retain the certifications and records described in subsection C of this section for three years from the end of the calendar year the authority receives the certifications and records.

G. If the authority decides to enter into the agreements described below, the review requirements under subsection D of this section will not require owners to submit, and the authority is not required to review, the tenant income certifications, supporting documentation and rent records for buildings financed by Rural Development under the § 515 program, or buildings of which 50% or more of the aggregate basis (taking into account the building and the land) is financed with the proceeds of obligations the interest on which is exempt from tax under § 103 (tax-exempt bonds). In order for a monitoring procedure to except these buildings, the authority must enter into an agreement with Rural Development or tax-exempt bond issuer. Under the agreement, Rural Development or tax-exempt bond issuer must agree to provide information concerning the income and rent of the tenants in the building to the authority. The authority may assume the accuracy of the information provided by Rural Development or the tax-exempt bond issuer without verification. The authority will review the information and determine that the income limitation and rent restriction of § 42(g)(1) and (2) of the IRC are met. However, if the information provided by Rural Development or tax-exempt bond issuer is not sufficient for the authority to make this determination, the authority will request the necessary additional income or rent information from the owner of the buildings. For example, because Rural Development determines tenant eligibility based on its definition of "adjusted annual income," rather than "annual income" as defined under section 8, the authority may have to calculate the tenant's income for purposes of § 42 of the IRC and may need to request additional income information from the owner.

H. The owners of low-income housing developments must pay to the authority such fees in such amounts and at such times as the authority shall reasonably require the owners to pay in order to reimburse the authority for the costs of monitoring compliance with § 42 of the IRC.

I. The owners of low-income housing developments that have submitted IRS Forms 8821, Tax Information Authorization, naming the authority as the appointee to receive tax information on such owners shall submit from time to time renewals of such Forms 8821 as required by the authority throughout the extended use period.

J. The requirements of this section shall continue throughout the extended use period, notwithstanding the use of the term compliance period, except to the extent modified or waived by the executive director.

Chapter 200
Rules and Regulations for the Allocation of Virginia Housing Opportunity Tax Credits

13VAC10-200-10. Definitions.

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

"Applicant" means an applicant for HOTC under this chapter and also means the owner of the development to whom the HOTC are allocated.

"Authority" means the Virginia Housing Development Authority.

"Eligibility certificate" means a certificate issued by the Authority to the owner of a qualified project certifying that such project qualifies for the HOTC, has been awarded HOTC pursuant to the provisions of this chapter, and specifying the amount of HOTC that the owner of such qualified project may claim.

"Enabling legislation" means §§ 58.1-439.29 and 58.1-439.30 of the Code of Virginia, and any amendments or supplements thereto.

"HOTC" or "credits" means the Virginia housing opportunity tax credits as created in the enabling legislation, as implemented in this chapter.

"IRC" means the Internal Revenue Code of 1986, as amended, and the rules, regulations, notices, and other official pronouncements promulgated under the IRC.

"IRS" means the Internal Revenue Service.

"LIHTC" means the federal low-income housing tax credits as provided in § 42 of the IRC, as amended.

"Qualified application" means a written request for HOTC which is submitted by an applicant on a form or forms prescribed or approved by the executive director together with all documents required by the authority for submission and meets all mandatory items and any minimum scoring requirements as set forth on the application form, instructions, or other communication available to the public.

"Qualified low-income buildings" or "qualified low-income development" means the buildings or development, which meets the applicable requirements in § 42 of the IRC to qualify for an allocation of credits under § 42.

"Qualified project" means a qualified low-income building or qualified low-income development that is located in Virginia, is placed in service on or after January 1, 2021, has received an allocation of HOTC under this chapter, and is issued an eligibility certificate.

13VAC10-200-20. General.

A. The authority is designated in the enabling legislation to administer the HOTC and is authorized to promulgate these regulations, guidelines, instructions, and documents necessary to implement and administer the HOTC and approve, allocate, and certify the use of the HOTC, including the issuance of eligibility certificates.

B. The executive director is authorized to waive or modify any provision in this chapter where the executive director deems it appropriate for good cause to promote the goals and interests of the Commonwealth in the HOTC program, to the extent not inconsistent with the IRC or the enabling legislation.

13VAC10-200-30. Availability and amount of HOTC.

A. Based upon the legislative intent of § 58.1-439.30 G of the Code of Virginia, notwithstanding any provisions of the enabling legislation inconsistent with § 58.1-439.30 G, the authority will award up to $15 million of HOTC each of the five calendar years beginning in calendar 2021 through calendar year 2025. The credit period shall be one year. The aggregate HOTC program shall equal up to $75 million. Any HOTC not used by taxpayer in a taxable year may be carried forward for the succeeding five years.

B. To qualify for the HOTC, the applicant must have applied for federal 9% LIHTC, and have been (i) allocated LIHTC or (ii) allowed LIHTC (i.e., determined by the authority to be eligible for LIHTC but not allocated LIHTC). In the event of alternative clause (ii) of this subsection, the HOTC may be stand-alone (i.e., not allocated to the applicant in addition to LIHTC).

C. While only LIHTC projects placed in service on or after January 1, 2021, may be eligible for HOTC, not every development receiving LIHTC and placing in service on or after January 1, 2021, will receive HOTC. Rankings and awards of HOTC to qualified projects shall be in accordance with 13VAC10-200-40.

D. The HOTC for each qualified project may be (i) up to the amount of the federal LIHTC allocated or allowed for the qualified project or (ii) a percentage of the federal LIHTC allocated or allowed for the qualified project as determined by the authority, based upon the availability of HOTC as compared to the federal LIHTC allocated or allowed for the qualified projects or such other factors the executive director deems appropriate for good cause to promote the goals and interests of the Commonwealth in the HOTC program.

E. The authority may pre-allocate future years' HOTC, but such credits cannot be claimed until the calendar year designated by the authority. Subject to the requirement that the total amount of tax credits authorized under this chapter shall not exceed $15 million per calendar year, the authority may re-allocate any HOTC that are terminated or canceled and returned to the authority.

13VAC10-200-40. Applications, ranking of applications and award of HOTC.

A. Application for a reservation of credits shall be commenced by filing with the authority an application, on such forms as the executive director may from time to time prescribe or approve, together with such documents and additional information as may be requested by the authority in order to comply with this chapter and to make the reservation and allocation of the credits in accordance with this chapter.

B. For purposes of subsection A of this section, the authority may utilize the application submitted for LIHTC, alone or with an HOTC addendum, or may require an entirely new HOTC application be submitted.

C. The executive director may:

1. Reject any application from consideration for a reservation or allocation of credits if in such application the applicant does not provide the proper documentation or information on the forms prescribed by the executive director.

2. Prescribe such deadlines for submission of applications for reservation and allocation of credits for any calendar year as deemed necessary or desirable to allow sufficient processing time for the Authority to make such reservations and allocations.

3. Divide the amount of credits into separate pools and each separate pool may be further divided into separate tiers. The division of such pools and tiers may be based upon one or more of the following factors:

a. Geographical areas of the state;

b. Types or characteristics of housing;

c. Construction;

d. Financing;

e. Owners;

f. Occupants;

g. Source of credits; or

h. Any other factors deemed appropriate by the executive director to best meet the housing needs of the Commonwealth.

D. The development for which an application is submitted may be, but shall not be required to be, financed by the

authority. If any such development is to be financed by the authority, the application for such financing shall be submitted to and received by the authority in accordance with Rules and Regulations for Multi-Family Housing Developments (13VAC10-20).

E. The authority shall review each application, and, based on the application and other information available to the authority, shall assign points to each application as follows:

1. According to points assigned pursuant to 13VAC10-180, Rules and Regulations for Allocation of Low-Income Housing Tax Credits; or

2. Such other methodology for assigning points as determined by the executive director to promote the goals and interests of the Commonwealth in the HOTC program. Such methodology may include prioritizing one or more of the following:

a. Unfunded developments in the At-Large pools of the 9% LIHTC competition, in order to produce more LIHTC units in Virginia;

b. Unfunded developments in the Local Housing Authority pool of the 9% LIHTC competition or other developments that are a part of a local housing authority's public housing revitalization efforts;

c. 9% LIHTC developments that have not yet placed in service having equity funding gaps, in order to make such developments feasible;

d. Developments that preserve existing affordable housing;

e. Developments with rents and income limits that are more deeply targeted than required by the LIHTC program;

f. Developments in high-opportunity areas; or

g. Developments providing enhanced tenant services, as defined by the Authority.

The executive director may exclude and disregard any application that the executive director determines is not submitted in good faith or would not be financially feasible.

F. Upon assignment of points to all of the applications, the executive director shall rank the applications based on the number of points so assigned. If any pools shall have been established, each application shall be assigned to a pool and, if any, to the appropriate tier within such pool and shall be ranked within such pool or tier, if any. The amount of credits made available to each pool will be determined by the executive director. Those applications assigned more points shall be ranked higher than those applications assigned fewer points. Applications with the highest rankings shall receive allocations up to the allowable amount, determined by the executive director pursuant to 13VAC10-200-30, prior to any allocations to lower ranking applicants.

In the event of a tie in the number of points assigned to two or more projects, the executive director shall select one or more of such applications by lot for an award of credits.

G. Within a reasonable time after credits are reserved to any applicant applications, the executive director shall notify each applicant for such reservations of credits either:

1. Of the amount of credits reserved to such applicant's application by issuing to such applicant a written binding commitment to allocate such reserved credits subject to such terms and conditions as may be imposed by the executive director therein and by this chapter, or

2. That the applicant's application has been rejected or excluded or has otherwise not been reserved credits in accordance with this chapter.

H. The authority's board shall review and consider the analysis and recommendation of the executive director for the reservation of credits to an applicant, and, if it concurs with such recommendation, it shall by resolution ratify the reservation by the executive director of the credits to the applicant, subject to such terms and conditions as it shall deem necessary or appropriate to assure compliance with the binding commitment issued or to be issued to the applicant and this chapter. If the board determines not to ratify a reservation of credits or to establish any such terms and conditions, the executive director shall notify the applicant of the board's determination.

I. The authority shall provide the Department of Taxation with copies of HOTC award letters and eligibility certificates, or summary reports of the HOTC award letters and eligibility certificates no less than annually.

J. In the event the Authority terminates an applicant's award of LIHTC pursuant to 13VAC10-180-60 or the applicant enters into a cancellation agreement with the Authority for such award, the award of HOTC shall also immediately terminate or be canceled, as applicable, and the Authority will notify the Department of Taxation accordingly.

13VAC10-200-50. Eligibility certificate.

Upon the authority's approval of a final cost certification that complies with the authority's requirements and the satisfaction of all requirements set forth in the HOTC award letter issued by the authority, the executive director shall issue an eligibility certificate to a qualified project.

13VAC10-200-60. Recapture of HOTC.

A. The authority will monitor the developments receiving HOTC in the same manner it monitors LIHTC properties pursuant to the IRC and in accordance with 13VAC10-180, Rules and Regulations for Allocation of Low-Income Housing Tax Credits.

B. If under § 42 of the IRC, a portion of any federal LIHTC taken on a qualified project is required to be recaptured or is

otherwise disallowed during the [one-year HOTC] credit period, the taxpayer claiming HOTC with respect to such project shall also be required to recapture a portion of any HOTC. The percentage of HOTC subject to recapture shall be equal to the percentage of LIHTC subject to recapture or otherwise disallowed during such period. Any tax credits recaptured or disallowed shall increase the income tax liability of the qualified taxpayer who claimed the tax credits in a like amount and shall be included on the tax return of the qualified taxpayer submitted for the taxable year in which the recapture or disallowance event is identified.

C. In the event the HOTC is awarded as a stand-alone credit, the percentage of HOTC subject to recapture shall be equal to the percentage of LIHTC that would have been subject to recapture or otherwise disallowed, as determined by the executive director, during such period.

13VAC10-200-70. Fees.

The executive director may impose application, allocation, certification, and monitoring fees designed to recoup the costs of the authority in administering the HOTC. Such fees shall be payable at such time as the executive director shall require.

VA.R. Doc. No. R22-6902; Filed December 30, 2021, 10:33 a.m.

TITLE 14. INSURANCE

STATE CORPORATION COMMISSION

Final Regulation

REGISTRAR'S NOTICE: The State Corporation Commission is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency that by the Constitution is expressly granted any of the powers of a court of record.

Titles of Regulations: **14VAC5-340. Rules Governing Standards for the Content of Fire Insurance or Fire Insurance in Combination with Other Coverages (repealing 14VAC5-340-10 through 14VAC5-340-150:9).**

14VAC5-341. Rules Governing Standards for the Content of Dwelling Property Insurance Policies (adding 14VAC5-341-10 through 14VAC5-341-90).

14VAC5-342. Rules Governing Standards for the Content of Homeowners Insurance Policies (adding 14VAC5-342-10 through 14VAC5-342-130).

Statutory Authority: §§ 12.1-13, 38.2-223, and 38.2-2108 of the Code of Virginia.

Effective Date: January 1, 2022.

Agency Contact: Katie Johnson, Insurance Policy Advisor, Bureau Of Insurance, State Corporation Commission, P.O. Box 1157, Richmond, VA 23218, telephone (804) 371-9688, FAX (804) 371-9873, email katie.johnson@scc.virginia.gov.

Summary:

The amendments repeal 14VAC5-340 and replace it with two new chapters, 14VAC5-341 and 14VAC5-342. 14VAC5-340 is outdated, having been in place without revision since 1982. The proposed new regulations (i) establish minimum standards for the contents of dwelling property and homeowners insurance policies; (ii) improve readability; (iii) preserve basic coverages for consumers; (iv) clarify specific areas for certainty and consistency in interpretation, such as occasional rental, unoccupied and vacant premises, and incidental business activities; (v) address exposures that have emerged since 1982, such as virtual currency, home-sharing, drones and hovercraft, and the use of the residence for telework; and (vi) incorporate offers of coverage that are required by statute.

Changes to the proposed regulation include (i) clarifying the difference between "home-sharing" and "occasional rental"; (ii) stating that the standards in 14VAC5-341 apply solely to dwelling property insurance covering owner-occupied dwellings; (iii) clarifying that a building merely in danger of falling down or caving is not considered to be in a state of collapse; (iv) excluding direct loss from continuous or repeated seepage or leakage of water or steam from within a plumbing, heating, or air conditioning system or domestic appliance over a period of weeks, months, or years; (v) applying water and earth movement exclusions to both natural and man-made events; (vi) clarifying that a loss is excluded regardless of any other cause or event contributing concurrently or in any sequence to the loss and applying exclusions even if one or more specified causes or events contribute to the loss; (vii) requiring that insurers restore the limits of liability after a loss; and (viii) clarifying that if more than one policy applies on a primary basis to an occurrence, the insurer shall pay that proportion of the loss that the limit of liability of the policy bears to the total amount of insurance that applies to the loss.

AT RICHMOND, DECEMBER 17, 2021

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. INS-2021-00092

Ex Parte*:* In the matter of Repealing Rules Governing Standards for the Content of Fire Insurance or Fire Insurance in Combination with Other Coverages, Adopting New Rules Governing Standards for the Content of Dwelling Property Insurance Policies and Adopting New Rules Governing Standards for the Content of Homeowners Insurance Policies

ORDER REPEALING AND ADOPTING REGULATIONS

On September 10, 2021, the State Corporation Commission ("Commission") entered an Order to Take Notice to repeal Chapter 340 of Title 14 of the Virginia Administrative Code entitled "Rules Governing Standards for the Content of Fire Insurance or Fire Insurance in Combination with Other Coverages" set out at 14VAC5-340-10 through 14VAC5-340-150:9 ("Chapter 340"); to adopt a new chapter, Chapter 341 of Title 14 of the Virginia Administrative Code entitled "Rules Governing Standards for the Content of Dwelling Property Insurance Policies," which was recommended to be set out at 14VAC5-341-10 through 14VAC5-341-90 ("Chapter 341"); and to adopt a new chapter, Chapter 342 of Title 14 of the Virginia Administrative Code entitled "Rules Governing Standards for the Content of Homeowners Insurance Policies," which was recommended to be set out at 14VAC5-342-10 through 14VAC5-342-120 ("Chapter 342").

The repeal of Chapter 340 is necessary because these rules are outdated, having been in place without revision since 1982. The proposed new rules in Chapters 341 and 342 ("proposed rules") establish minimum standards for the contents of dwelling property and homeowners insurance policies. Further, the proposed rules offer improved readability; preserve basic coverages for consumers; provide clarity in specific areas for certainty and consistency in interpretation, such as occasional rental, unoccupied and vacant premises, and incidental business activities; address exposures that have emerged since 1982, such as virtual currency, home-sharing, drones and hovercraft and the use of the residence for telework; and incorporate offers of coverage that are required by statute.

The Order to Take Notice and proposed rules were posted on the Commission's website, sent to all to all carriers licensed in Virginia to write fire and homeowners insurance and to all persons known to the Bureau of Insurance ("Bureau") to have an interest in property and casualty insurance on September14, 2021, the Virginia Attorney General's Division of Consumer Counsel ("Consumer Counsel"), and published in the *Virginia Register of Regulations* on October 11, 2021. Licensees, Consumer Counsel and other interested parties were afforded the opportunity to file written comments or request a hearing on or before October 15, 2021.

Comments to the proposed rules were filed by Francis Folger on behalf of Nationwide Mutual Insurance Company, Nancy J. Egan on behalf of American Property Casualty Insurance Association, Nicola Rutland on behalf of Insurance Services Office, Inc., Andrew Kirkner on behalf of National Association of Mutual Insurance Companies, Sarah Fanning on behalf of Travelers Insurance and Matt Fuss on behalf of State Farm Mutual Insurance Company. No request for a hearing was filed with the Clerk of the Commission ("Clerk").

The Bureau considered the comments filed and responded to them in its Response to Comments ("Response"), which the Bureau filed with the Clerk on November 15, 2021. In its Response, the Bureau addressed the comments and either recommended that various sections of the proposed rules be amended or indicated why it did not believe other suggested revisions were authorized or warranted.

NOW THE COMMISSION, having considered the proposal to repeal and adopt rules, the comments filed, and the Bureau's Response, concludes that Chapter 340 of the Virginia Administrative Code should be repealed and that the proposed regulations should be adopted by the Commission, as recommended and modified and attached hereto effective January 1, 2022.

Accordingly, IT IS ORDERED THAT:

(1) Chapter 340 of Title 14 of the Virginia Administrative Code entitled "Rules Governing Standards for the Content of Fire Insurance or Fire Insurance in Combination with Other Coverages" set out at 14VAC5-340-10 through 14VAC5-340-150:9 is hereby REPEALED effective January 1, 2022.

(2) Chapter 341 of Title 14 of the Virginia Administrative Code entitled "Rules Governing Standards for the Content of Dwelling Property Insurance Policies," set out at 14VAC5-341-10 through 14VAC5-341-90, and Chapter 342 of Title 14 of the Virginia Administrative Code entitled "Rules Governing Standards for the Content of Homeowners Insurance Policies," set out at 14VAC5-342-10 through 14VAC5-342-120, as modified herein and attached hereto, are hereby ADOPTED effective January 1, 2022.

(3) The Bureau shall provide notice of the repeal and adoption of rules to all carriers licensed in Virginia to write fire and homeowners insurance as well as to all persons known to the Bureau to have an interest in property and casualty insurance.

(4) This Order and the attached 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 regulations to the Virginia Registrar of Regulations for publication in the *Virginia Register of Regulations*.

(6) The Bureau shall file with the Clerk an affidavit of compliance with the notice requirements of Ordering Paragraph (3) above.

(7) This case is dismissed, and the papers filed herein shall be placed in the Commission's file for ended causes.

A COPY hereof shall be sent by the Clerk of the Commission to: C. Meade Browder, Jr., Senior Assistant Attorney General, mbrowder@oag.state.va.us, Office of the Attorney General, Division of Consumer Counsel, 202 N. 9th Street, 8th Floor, Richmond, Virginia 23219-3424; and a copy hereof shall be delivered to the Commission's Office of General Counsel and the Bureau of Insurance in care of Deputy Commissioner Rebecca Nichols.

Chapter 341
Rules Governing Standards for the Content of Dwelling Property Insurance Policies

14VAC5-341-10. Scope and applicability.

A. This chapter sets forth the standards of content for policies of dwelling property insurance covering [solely] owner-occupied dwellings, including condominium units. This chapter applies to insurers licensed to do business in Virginia and issuing policies of dwelling property insurance pursuant to the provisions of Chapter 21 (§ 38.2-2100 et seq.) of Title 38.2 of the Code of Virginia.

B. Compliance with this chapter is required for policies delivered or issued for delivery in Virginia with effective dates on and after July 1, 2023. Insurers and rate service organizations shall submit filings for compliance with this chapter no later than December 31, 2022.

C. No insurer shall represent to a prospective purchaser or a policyholder that a dwelling property policy subject to the provisions of this chapter is a homeowners policy as defined in § 38.2-130 of the Code of Virginia.

D. This chapter does not apply to policies that:

1. Are lender-placed;

2. Insure owner-occupied farms;

3. Insure manufactured homes as defined in § 46.2-100 of the Code of Virginia, except for policies insuring manufactured homes as defined in § 46.2-653.1 of the Code of Virginia;

4. Are issued pursuant to Chapter 27 (§ 38.2-2700 et seq.) of Title 38.2 of the Code of Virginia;

5. Are issued pursuant to Chapter 48 (§ 38.2-4800 et seq.) of Title 38.2 of the Code of Virginia; or

6. Primarily insure the personal property of renters.

E. Insurers shall file with the commission all policies or endorsements for approval before use.

F. Policies and endorsements shall not be less favorable than the provisions set forth in this chapter. Insurers may provide broader and more favorable coverages, terms, and conditions than those set forth in this chapter. Insurers may use any policy language that is not less favorable to the insured and complies with provisions of this chapter.

14VAC5-341-20. Severability.

If a provision of this chapter or its application to a person or circumstance is for any reason held to be invalid by a court, the remainder of this chapter and the application of the provisions to other persons or circumstances shall not be affected.

14VAC5-341-30. Definitions.

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

"Actual cash value" means the amount equal to the replacement cost minus depreciation of damaged or stolen property at the time of the loss.

"Aircraft" means a machine or device capable of atmospheric flight, including hobby or model aircraft, drones, self-propelled missiles, and spacecraft.

"Business" means a trade, profession, or occupation whether full-time, part-time, or occasional activity, including (i) farming, (ii) the rental of the whole or a part of the residence premises by an insured, (iii) the business use of part of the residence premises, or (iv) home-sharing.

"Business" shall not include:

1. The occasional rental of the whole or a part of the residence premises for dwelling purposes;

2. The rental or holding for rental of a part of the residence premises for no more than two roomers or boarders for use as a primary residence;

3. The rental of a part of the residence premises as a private garage;

4. The rental of a part of the residence premises as an office, school, or studio; or

5. The insured's use of the residence premises for remote work under an agreement with the insured's employer.

"Commission" means the State Corporation Commission.

"Condominium unit" means a dwelling as defined in § 55.1-1900 of the Code of Virginia.

"Dwelling" means any residential structure specifically named in the policy.

"Farms" or "farming" means the use of land and buildings primarily for agricultural purposes with the objective of raising animals to produce food for sale or distribution to the public and growing crops for sale or distribution to the public.

"Fixtures" means permanently installed components of the dwelling or other structures including wells; plumbing systems; pumps; air conditioning equipment, systems, and parts; heating equipment, systems, and parts; hot water heaters; lighting systems; or built-in appliances and other components where removal would deface or damage the dwelling.

"Functional replacement cost" means the cost to repair or replace the damaged dwelling or other structures with less costly common construction materials and methods that are functionally equivalent to materials and methods used in the original construction.

"Home-sharing" means rental [~~or offering for rental~~] of [the whole or a part of] the residence premises [~~or a part of the residence premises~~] for lodging purposes [~~made available~~] through an online-enabled application, website, or digital network [~~. Home-sharing is not occasional rental as defined in this section~~ during the policy term (i) for more than seven consecutive or random days or (ii) that generates revenue of more than $2,500]. An individual occupying the residence premises through home-sharing is not a roomer, boarder, tenant, or guest.

"Hovercraft" means a self-propelled air cushioned vehicle that can travel over land and water.

"Insured" means (i) any person named as an insured in the policy, (ii) if residents of the named insured's household, the named insured's spouse if not a named insured, and relatives of either, and (iii) other persons younger than 21 years of age in the care of an insured.

"Motor vehicle" means a vehicle that is self-propelled or designed for self-propulsion and is designed or licensed for use on public roads.

"Occasional rental" means [~~(i)~~] rental of the [~~residence premises~~ whole] or a part of the residence premises for [~~up to~~ lodging purposes during a policy term (i) for] seven [or fewer consecutive or random] days [~~, whether consecutive or random, in any policy term,~~ or] (ii) [~~rental of the residence premises~~] that generates revenue of up to $2,500 [~~, or (iii) a combination of clauses (i) and (ii) of this definition~~]. Occasional rental does not include home-sharing as defined in this section.

"Pollutant" means solid, liquid, gaseous, thermal, or radioactive irritants or contaminants, including acids, alkalis, chemicals, fumes, vapors, and waste.

"Recreational motor vehicle" means a motor vehicle designed for recreational use off public roads and not subject to motor vehicle registration.

"Replacement cost" means the cost to repair or replace the damaged or stolen property with material of like kind and quality without deduction for depreciation.

"Residence employee" means an employee of an insured who provides maintenance or domestic services for the residence premises.

"Residence premises" means the dwelling, other structures, and grounds at the location named in the policy.

"Theft" means an act of stealing or attempt to steal, including loss of property from a known place under circumstances when a probability of theft exists.

"Vacant" means a dwelling (i) that has not been occupied as a residence for more than 30 consecutive days immediately before a loss and (ii) where most of the named insured's personal property has been removed such that the dwelling is not functional as a customary place of residence. A dwelling is not occupied if the dwelling is being used without the permission of an insured. A dwelling under construction or being remodeled, repaired, or renovated is not vacant.

"Vandalism" or "malicious mischief" means the willful and malicious damage to or destruction of the property excluding loss by pilferage, theft, burglary, or larceny.

14VAC5-341-40. Mandatory property coverages.

A. Insurers shall provide coverage for the dwelling on the residence premises including fixtures.

1. Insurers shall also provide coverage for materials and supplies while located on the residence premises and intended for use in construction, alteration, or repair of the dwelling or other structures.

2. For a dwelling that is a condominium unit, insurers shall provide a limit of liability of at least $5,000 for the dwelling and fixtures that are the responsibility of the condominium unit owner.

B. Insurers shall provide coverage for other structures and the fixtures of other structures on the residence premises.

1. Insurers shall provide a limit of liability of at least 10% of the dwelling limit of liability.

2. Insurers may exclude coverage for other structures that are used for business or rented or held for rental unless the structure is (i) rented to roomers, boarders, or tenants of the dwelling or (ii) rented for use solely as a private garage.

3. For condominium units, insurers shall provide coverage for other structures and fixtures of other structures that are the responsibility of the condominium unit owner.

C. Insurers shall provide coverage for (i) breakage of glass or safety glazing material that is part of a dwelling or other structure and (ii) damage to covered property by glass that is part of a dwelling or other structure. This coverage does not increase the limit of liability that applies to the damaged covered property. Insurers may exclude loss if the dwelling was vacant.

D. Insurers shall provide coverage for the expenses incurred for the removal of debris of covered property damaged by a covered cause of loss and the expense for the removal of fallen trees that damage covered property. Expenses for debris removal are included within the limit of liability applicable to the damaged property.

E. Insurers shall provide coverage for contractual fire department service charges and volunteer fire department service charges as follows:

1. Contractual fire department service charges where the fire department is called to save or protect insured property from a covered cause of loss. Insurers may limit this coverage to a residence premises not located within the limits of a city,

municipality, or fire protection district furnishing fire department services.

2. Fire department service charges made by volunteer fire departments pursuant to § 38.2-2130 of the Code of Virginia.

3. Insurers shall provide at least $250 of coverage for each type of fire department service charges.

4. Insurers may not apply a deductible to the coverages in subdivisions 1 and 2 of this subsection.

F. Insurers shall offer ordinance or law coverage, subject to the exclusions or limitations within this chapter, pursuant to § 38.2-2124 of the Code of Virginia at the dwelling limit of liability within the policy or as an endorsement. This limit of liability is in addition to the limit of liability applicable to the dwelling. Insurers may make other limits of liability available for insureds to purchase. When ordinance or law coverage is provided within the policy or as an endorsement, subdivision A 3 of 14VAC5-341-70 does not apply.

G. Insurers shall provide coverage of at least 10% of the dwelling limit of liability for the increase in necessary living expenses when the dwelling is uninhabitable due to a covered cause of loss. Insurers shall provide coverage of at least 20% of the household and personal property limit of liability for condominium units.

1. Insurers shall provide this coverage for the time reasonably required to return the dwelling to a habitable condition or for the insured's household to become settled in any permanent quarters.

2. Insurers shall provide additional living expense coverage for at least two weeks while a civil authority limits access to the residence premises as a result of damage to neighboring premises by a covered cause of loss.

3. Insurers may exclude living expenses that do not continue.

4. This coverage is not limited by the expiration date of the policy.

[5. Insurers may not apply a deductible to this coverage.]

H. Insurers shall provide coverage of at least 10% of the dwelling limit of liability for the fair rental value of [~~a~~ any] part of the dwelling or other [~~structures~~ structure]. Insurers shall provide coverage of at least 20% of the household and personal property limit of liability for condominium units.

1. Insurers shall provide this coverage for the time reasonably required to restore the dwelling or other structures to a tenantable condition following damage caused by a covered cause of loss.

2. Insurers shall provide fair rental value coverage for at least two weeks while a civil authority limits access to the residence premises as a result of damage to neighboring premises by a covered cause of loss.

3. Insurers may exclude expenses that do not continue.

4. Insurers may exclude coverage for loss or expense due to cancellation of a lease or agreement.

5. This coverage is not limited by the expiration date of the policy.

6. Insurers may not apply a deductible to this coverage.

I. Insurers shall provide coverage for damage to trees, shrubs, plants, or lawns caused by fire, lightning, explosion, riot, civil commotion, aircraft, or vehicles not owned or operated by a resident of the residence premises. When expanded or open causes of loss are provided by the policy, insurers shall also include coverage for damage to trees, shrubs, plants, or lawns caused by vandalism and malicious mischief, and actual or attempted burglary.

1. Insurers shall provide a limit of liability for this coverage of at least 5.0% of the dwelling limit of liability.

2. Insurers may limit the amount of coverage to no more than $250 for each tree, shrub, or plant on the residence premises. The limit of coverage includes debris removal coverage when the tree, plant, or shrub does not cause damage to covered property.

J. Insurers shall provide coverage for loss or damage to property while removed or being removed from the residence premises because the property is endangered by a covered cause of loss.

1. Coverage is provided for damage from any cause subject to the exclusions and limitations permitted in this chapter.

2. Insurers shall provide this coverage for at least 30 days for each removal.

3. This coverage is not limited by the expiration date of the policy.

4. This coverage does not increase the limit of liability that applies to the damaged covered property.

K. Insurers shall provide coverage for the cost of making reasonable repairs to protect covered property from further damage when the repairs are directly attributable to damage caused by a covered cause of loss. The repairs are included as part of the amount of the loss.

L. If expanded or open causes of loss are provided by the policy, insurers shall pay the cost incurred to tear out and replace the part of the dwelling or other structure necessary to gain access to the system or appliance from which the water or steam escaped if a loss to the dwelling or other structures is caused by water or steam escaping from a system or appliance. Insurers may exclude loss to the system or appliance from which the water or steam escapes.

M. Insurers shall provide coverage for direct physical loss to the dwelling, other structures, and household and personal

property involving collapse of a dwelling or other structure or any part of a dwelling or other structure:

1. Caused by one or more of the following:

a. The causes of loss in subsection C of 14VAC5-341-60;

b. Hidden decay;

c. Hidden insect or vermin damage;

d. Weight of contents, equipment, animals, or people;

e. Weight of rain that collects on a roof; or

f. Use of defective materials or methods in construction, remodeling, or renovation if the collapse occurs during the construction, remodeling, or renovation.

2. Loss to an awning, fence, patio, pavement, swimming pool, underground pipe, flue, drain, cesspool, septic tank, foundation, retaining wall, bulkhead, pier, wharf, or dock is not included under subdivisions 1 b through 1 f of this subsection unless the loss is a direct result of the collapse of a building.

3. Collapse does not include settling, cracking, shrinking, bulging, or expansion. [A building that is in danger of falling down or caving in is not in a state of collapse.]

4. This coverage does not increase the limit of liability applicable to the damaged covered property.

5. Insurers may exclude collapse when providing only basic causes of loss set forth in subsection B of 14VAC5-341-60.

14VAC5-341-50. Optional coverage for household and personal property.

A. Insurers may offer coverage for household and personal property. If offered:

1. Insurers shall provide coverage for household and personal property on the residence premises that is owned or used by an insured.

2. At the request of the named insured at the time of loss, insurers shall provide coverage for household and personal property owned by a:

a. Guest while the property is on the residence premises or

b. Residence employee while the property is on the residence premises.

B. Insurers shall provide coverage for the insured's property (i) on the residence premises during an occasional rental or (ii) on the part of the residence premises occupied by roomers, boarders, or tenants.

C. Insurers shall provide coverage for household and personal property while it is being moved to the insured's new principal residence within the United States. Insurers shall provide coverage for property while it is being moved for 30 days from the date that moving the property begins. The household and personal property limit of liability applies to property being moved to another location. If the move began during the policy term, coverage may not be limited by the expiration of the policy.

D. Insurers shall provide coverage for the following types of household and personal property at limits of at least the following:

1. $500 total per loss on cemetery property on or off the residence premises including monuments, headstones, grave markers, and urns.

2. $100 total per loss on coin collections, medals, gold, platinum, and silver, except goldware and gold-plated ware shall not be deemed to be gold and silverware and silver-plated ware shall not be deemed to be silver.

3. $500 total per loss on passports, tickets, or stamp collections.

4. $1,000 total per loss on watercraft, trailers used with watercraft, and watercraft furnishings, equipment, and outboard motors. This limit does not apply to rowboats or canoes.

5. $500 on trailers, semi-trailers, and campers not otherwise covered in this chapter.

14VAC5-341-60. Causes of loss.

A. Insurers shall provide, at a minimum, the basic causes of loss in subsection B of this section. If an insurer provides expanded causes of loss, the causes of loss may be no less favorable than the causes of loss in subsections B and C of this section. If an insurer provides open causes of loss, the causes of loss may be no less favorable than the causes of loss in subsection D of this section. The same causes of loss shall apply to the dwelling and other structures. Insurers may offer basic, expanded, or open causes of loss for household and personal property.

B. When providing basic causes of loss, insurers shall provide coverage for direct loss caused by the following:

1. Fire or lightning.

2. Windstorm or hail. Insurers may exclude loss to:

a. The interior of the dwelling or other structure or the household and personal property within caused by rain, snow, sand, or dust unless the rain, snow, sand, or dust enters through an opening caused by the force of wind or hail;

b. Windmills, wind pumps, or towers; crop silos or contents; or metal smokestacks;

c. Grain, hay, straw, or other crops, when outside;

d. Overhead structures, including supports and screening, constructed principally of cloth, metal, fiberglass, or plastic erected to provide protection from the elements;

e. Signs;

f. Satellite dishes; radio or television antennas, including lead-in wiring, masts, or towers;

g. Fences; seawalls or property line and other free-standing walls;

h. Greenhouses, hothouses, slathouses, trellises, pergolas, cabanas, or outdoor equipment pertaining to the service of the residence premises;

i. Wharves, docks, piers, boathouses, bulkheads, or other structures located over or partially over water and the household and personal property on or within;

j. Property damaged by water from sprinklered equipment or from other piping, unless the equipment or piping was damaged as a direct result of wind or hail; or

k. Watercraft while not inside a fully enclosed building. This provision does not apply to rowboats or canoes.

3. Explosion.

4. Riot or civil commotion.

5. Aircraft.

6. Vehicles.

7. Sudden or accidental damage from smoke or soot, other than smoke from agricultural smudging or industrial operations.

C. Insurers may offer the following expanded causes of loss. If provided, coverage shall be for direct loss to the covered property from the causes of loss listed in subsection B of this section and the following causes of loss:

1. Vandalism, malicious mischief, and burglary. Insurers may exclude loss if the dwelling was vacant. If a covered cause of loss ensues, insurers shall provide coverage for the ensuing loss.

2. Falling objects. Insurers may exclude loss to:

a. Property within the dwelling or other structure that is caused by a falling object unless the falling object first damages the exterior of the roof or walls of the dwelling or other structure; or

b. The falling object itself.

3. Weight of ice, snow, or sleet that damages the (i) dwelling, (ii) other structure, or (iii) household and personal property contained in a dwelling or other structure if the weight of ice, snow, or sleet first damages the dwelling or other structure. Insurers may exclude loss to:

a. Awnings and their supports; or

b. Fences, pavements, patios, swimming pools, foundations, retaining walls, bulkheads, piers, wharves, or docks.

4. Sudden and accidental tearing apart, cracking, burning, or bulging of a steam or hot water heating system, or of an appliance for heating water, but excluding loss caused by or resulting from freezing.

5. Freezing of plumbing, heating, or air conditioning systems, and domestic appliances. Insurers may exclude loss caused by or resulting from freezing while a dwelling is under construction, vacant, or unoccupied for a period in excess of four consecutive days unless the insured has (i) exercised due diligence in maintaining heat in the dwelling or other structure or (ii) drained the systems and appliances and shut off the water supply.

6. Accidental discharge, leakage, or overflow of water or steam from within a plumbing, heating, or air conditioning system, or domestic appliance. This does not include loss caused by or resulting from freezing.

7. Sudden and accidental injury from electrical currents artificially generated to electrical appliances, devices, fixtures, and wiring.

D. Insurers may offer open causes of loss. If provided, insurers shall provide coverage for direct loss to the dwelling and other structures and may exclude direct loss caused by any of the following:

1. Wear and tear; marring or scratching; deterioration; inherent vice; latent defect; mechanical breakdown; rust, mold, or wet or dry rot; pollutants, smog, smoke from agricultural smudging or industrial operations; settling, cracking, shrinkage, bulging, or expansion of pavements, patios, foundations, walls, floors, roofs, or ceilings; or birds, vermin, rodents, insects, or animals owned or kept by an insured. If a covered cause of loss ensues, insurers shall provide coverage for the ensuing loss.

2. Vandalism and malicious mischief, burglary, or glass breakage if the dwelling was vacant. If a covered cause of loss ensues, insurers shall provide coverage for the ensuing loss.

3. Continuous or repeated seepage or leakage of water or steam [from within a plumbing, heating, or air conditioning system or domestic appliance] over a period of weeks, months, or years. This exclusion does not apply to household and personal property.

4. Windstorm, hail, ice, snow, or sleet to any of the following property:

a. Overhead structures, including supports and screening, constructed principally of cloth, metal, fiberglass, or plastic, erected to provide protection from the elements;

b. Outdoor radio or television antennas including the lead-in wiring, masts, or towers;

c. Fences;

d. Seawalls or property line and other free-standing walls;

e. Greenhouses, hothouses, slathouses, trellises, pergolas, or cabanas;

f. Outdoor equipment pertaining to the service of the residence premises; or

g. Wharves, docks, piers, boathouses, bulkheads, or other structures located over or partially over water and the household and personal property on or within.

5. Theft of property that is not an integral part of the dwelling or other [~~structures~~ structure] at the time of loss or from a dwelling or other structure that is under construction.

6. Collapse, except as required by subsection M of 14VAC5-341-40.

14VAC5-341-70. Permitted exclusions.

A. For all causes of loss, [regardless of any other cause of loss or event contributing concurrently or in any sequence to the loss,] insurers may exclude loss caused directly or indirectly by any of the following:

1. Water, as follows:

a. Flood, ground surface water, waves, seiche, tidal water or tidal waves, overflow of a body of water, or spray from any of these [, whether natural or manmade];

b. Water that backs up through sewers or drains;

c. Water that overflows or is discharged from a sump pump or other type of system designed to remove subsurface water that is drained from the foundation area;

d. Water below the surface of the ground including water that exerts pressure on or flows, seeps, or leaks through (i) sidewalks; (ii) driveways; (iii) foundations; (iv) swimming pools; (v) walls; (vi) basements or floors; or (vii) doors, windows, or other openings; or

e. Material carried or moved by water referred to in subdivisions 1 a, 1 b, and 1 c of this subsection.

The exclusions for water loss in subdivisions 1 a through 1 e of this subsection do not apply to an ensuing loss caused by fire or explosion.

2. Earth movement, natural or man-made, including earthquake, volcanic eruption, landslide, mudflow, or other earth movement caused by sinking, rising, shifting, or expansion. Insurers shall provide coverage for an ensuing loss caused by fire, explosion, or breakage of glass that is a part of the dwelling or other [~~structures~~ structure].

3. Enforcement of ordinances or laws regulating the construction, repair, or demolition of dwellings or other structures. Insurers shall provide coverage when an ordinance or law requires the use of safety glass in replacement of damaged glass that is a part of the dwelling or other [~~structures~~ structure].

4. Interruption of power or other utility service furnished to the residence premises if the interruption takes place away from the residence premises. Insurers shall provide coverage for the ensuing loss if a covered cause of loss ensues on the residence premises because of the power interruption.

5. Enemy attack by armed forces including action taken by military, naval, or air forces in resisting an actual or immediately impending enemy attack, including invasion, insurrection, rebellion, revolution, civil war, usurped power, or action taken by governmental authority in hindering, combating, or defending against the event; order of civil authority except acts of destruction at the time of and for preventing the spread of fire, provided that the fire did not originate from an excluded cause of loss.

6. Nuclear reaction, nuclear radiation, or radioactive contamination as set forth in § 38.2-2102 of the Code of Virginia.

7. Freezing, thawing, or by the pressure of ice, snow, or water to fences, pavements, patios, swimming pools, foundations, retaining walls, bulkheads, piers, wharves, or docks.

8. The exclusions in subdivisions 1 through 7 of this subsection apply [even] if one or more of the following concurrently contribute to the loss:

a. Weather conditions;

b. Acts or decisions including the failure to act or decide of a person, group, organization, or governmental body;

c. Faulty, inadequate, or defective:

(1) Planning, zoning, development, surveying, or siting;

(2) Design, specifications, workmanship, repair, construction, renovation, remodeling, grading, or compaction;

(3) Materials used in repair, construction, renovation, or remodeling; or

(4) Maintenance.

B. Insurers may exclude direct loss caused by:

1. An intentional act by a person insured under the policy that was directed or committed by that person, but only with respect to that person.

2. Neglect of the insured to use all reasonable means to protect the property during and after a loss.

C. Insurers may exclude coverage for the following types of property:

1. Accounts, bills, currency including virtual or digital, deeds, evidences of debt, money, scrip, stored value cards, smart cards, securities, bullion, manuscripts [~~,~~] letters of credit, bank notes, or notes other than bank notes;

2. Aircraft and parts except insurers shall provide coverage for (i) drones without cameras and drones that are not capable of carrying people or cargo; or (ii) hobby aircraft or model aircraft that is not capable of carrying people or cargo;

3. Animals, birds, or fish;

4. Business property [, except household and personal property is not business property unless the property is in that part of the residence premises rented and occupied for home-sharing];

5. Electronic equipment that is permanently installed in a motor vehicle;

6. Tapes, wires, records, discs, or other media used with electronic equipment in a motor vehicle while the property is in or on a motor vehicle;

7. Motor vehicles, motorized bicycles, and hovercraft except (i) vehicles used to service the residence premises, (ii) utility trailers that are not licensed for road use, and (iii) electric mobility devices designed to assist an individual that has a disability;

8. Property of (i) tenants [~~and,~~] (ii) roomers and boarders not related to the insured [, and (iii) home-share occupants during the period of their home-sharing rental];

9. Property rented to others, except as provided in subsection B of 14VAC5-341-50;

10. Property that is unlawful to own or possess under state or federal law; or

11. Property that is separately described and specifically insured by this insurance or other insurance.

14VAC5-341-80. Loss settlement provisions.

A. Insurers shall include loss settlement provisions in accordance with this section.

B. When providing only basic causes of loss for the dwelling and other structures, insurers may provide loss settlement on an actual cash value basis. When providing actual cash value loss settlement, insurers shall apply actual cash value loss settlement as follows:

1. Subject to the limit of liability, insurers may pay the smaller of the following amounts:

a. Cost to repair or replace with like kind and quality; or

b. Actual cash value of the damaged property.

2. Insurers may apply actual cash value loss settlement to:

a. Household and personal property;

b. Outdoor radio and television antennas; satellite dishes;

c. Awnings; or

d. Property described under subsections A and B of 14VAC5-341-40, and permanently installed flooring (including wall-to-wall carpeting) when providing only basic causes of loss set forth in subsection B of 14VAC5-341-60.

C. If the loss settlement provision in subsection B of this section does not apply, insurers shall apply replacement cost less settlement as follows:

1. Insurers shall apply replacement cost loss settlement to the dwelling and other structures, including permanently installed flooring. Wall-to-wall carpeting is permanently installed flooring.

2. Insurers may limit replacement cost settlement to the following:

a. The limit of liability applicable to the dwelling or other structures;

b. The replacement cost of the dwelling or other structures or a part of the dwelling or other [~~structures~~ structure] on the residence premises and intended for the same occupancy and use; or

c. The amount spent in repairing or replacing the dwelling or other structures or a part of the dwelling or other [~~structures~~ structure] and intended for the same occupancy and use.

3. The insured may assert a claim for the actual cash value of the dwelling or other structures without prejudicing the insured's right to make further claim for the difference between the actual cash value and the replacement cost in accordance with § 38.2-2119 B of the Code of Virginia. The claim for the difference must be made within six months of (i) the last date on which the insured received a payment for actual cash value or (ii) date of entry of a final order of a court of competent jurisdiction declaratory of the right of the insured to full replacement cost, whichever shall last occur.

4. When the repair or replacement cost is $2,500 or less, insurers shall be liable for the full cost of repair or replacement before the repair or replacement has been completed.

5. Insurers may apply an insurance-to-value ratio for replacement cost loss settlement as follows:

a. Insurers may require an insurance-to-value ratio of no more than 80% before full replacement cost loss settlement applies.

b. If the insurance-to-value ratio is less than 80% for the damaged dwelling or other structure, an insurer may limit its liability for loss to the larger of the following:

(1) The actual cash value of that part of the dwelling or other [~~structures~~ structure]; or

(2) That proportion of the full cost of repair or replacement without deduction for depreciation of that part of the dwelling or other structure damaged or destroyed that the whole amount of insurance applicable to the dwelling or other structure for the cause of loss bears to 80% of the full replacement cost of the dwelling or other structure.

c. In calculating the 80% insurance-to-value ratio, insurers shall disregard the cost of (i) excavations; (ii) underground

flues and pipes; (iii) underground wiring and drains; and (iv) brick, stone, and concrete foundations, piers, and other supports that are below the under surface of the lowest basement floor, or where there is no basement, that are below the surface of the ground inside the foundation walls.

6. Insurers may provide replacement cost loss settlement on household and personal property as authorized by § 38.2-2119 B of the Code of Virginia.

D. Insurers may offer functional replacement cost loss settlement for the property described in subsections A and B of 14VAC5-341-40, under the conditions outlined in this subsection.

1. Functional replacement cost is only permitted at the option of the insured.

2. Insurers may not apply functional replacement cost loss settlement to property that qualifies for an amount of insurance equal to 80% or more of the full replacement cost of the dwelling or other structure.

3. Insurers shall provide the notice required by § 38.2-2119 C of the Code of Virginia.

4. Insurers may limit functional replacement cost loss settlement to the following:

a. The limit of liability applicable to the dwelling or other structures;

b. The amount necessary to repair or replace the damaged property with functionally equivalent property at a lower cost than would be required to replace the damaged property with material of like kind and quality; or

c. The amount spent in repairing or replacing the dwelling or other structure or part of the dwelling or other structure intended for the same occupancy and use.

E. Insurers shall determine loss to property that is part of a pair or set in a reasonable and fair proportion of the total value of the pair or set.

F. Insurers shall adjust losses with the named insured and shall pay the named insured unless another payee is specifically named.

G. Insurers shall restore the limits of liability after a loss [~~is paid~~].

H. Insurers may apply a property deductible unless prohibited or otherwise limited in this chapter. Insurers may apply a special property deductible for the following causes of loss (i) wind, (ii) hail, or (iii) theft. No more than one deductible may be applied to a loss. The amount of any property deductible may not exceed 10% of the dwelling limit of coverage.

I. Insurers may (i) take all or part of the damaged property at the agreed or appraised value or (ii) repair, rebuild, or replace the damaged property with other of like kind and quality within a reasonable time. Within 30 days after receiving the insured's proof of loss, the insurer shall provide notice to the insured of the insurer's decision to (i) take the property at the agreed or appraised value or (ii) repair, rebuild, or replace the damaged property.

14VAC5-341-90. Policy conditions.

A. Insurers shall include the following statutory conditions:

1. The nuclear clause set forth in § 38.2-2102 of the Code of Virginia;

2. The conditions set forth § 38.2-2104 of the Code of Virginia:

a. Assignment of the policy.

b. The time that coverage begins and ends.

3. The conditions set forth in § 38.2-2105 of the Code of Virginia:

a. Abandonment.

b. Appraisal.

c. [~~Mortgagees~~ Mortgagee] interests and obligations.

d. Pro rata liability.

e. Requirements in case loss occurs.

f. Suit.

g. When loss payable.

B. Insurers shall include the following conditions:

1. If an insurer adopts revisions of the forms or endorsements that would broaden coverage currently provided without additional premium charge, the insurer shall automatically apply the broadened coverage from the effective date of the revisions.

2. If a named insured dies, insurers shall modify the definition of insured as follows:

a. The named insured includes:

(1) The spouse, if not already a named insured and if a resident of the household at the time of the death; and

(2) The legal representative with respect to the residence premises and property of the deceased insured at the time of the death.

b. Insured also includes:

(1) Members of the deceased's household who were insured at the time of the named insured's death, but only while residents of the residence premises; and

(2) Persons having proper temporary custody of the insured property until the appointment and qualification of the legal representative.

3. Insurers may not invalidate the policy if the insured waives, in writing, before a loss any right of recovery against a party for loss occurring on the residence premises. If not waived, the insurer may require from the insured an

assignment of all right of recovery against a party for loss to the extent that the insurer made payment.

4. Terms or conditions in the policy that are less favorable than those provided for in this chapter or the applicable statutes are construed to conform to this chapter and those statutes.

5. Insurers shall include the relevant termination provisions in §§ 38.2-2113 and 38.2-2114 of the Code of Virginia in the policy. In addition, the following apply:

a. Return premium calculations resulting from an insurer-initiated termination shall be pro rata.

b. Terminations for non-payment of premium shall be calculated pro rata.

c. Return premium calculations resulting from an insured-initiated termination may be short rate except the penalty may not be more than 10% of the pro rata premium for the expired time.

d. Insurers may not refuse to renew the policy except in accordance with the provisions of §§ 38.2-2113 and 38.2-2114 of the Code of Virginia.

C. Insurers may include any of the following conditions. Insurers may:

1. Restrict the application of the policy to loss during the policy term.

2. Void the entire policy (i) if, whether before or after the loss, an insured has willfully concealed or misrepresented any material fact or circumstance concerning the insurance or the interest of the insured in the insurance or (ii) in the case of fraud or false swearing by the insured relating to the insurance.

3. Require the insured to notify the police if loss is by theft.

4. Require that coverage under the policy is excess over a service agreement, home warranty, or similar service warranty.

5. Require that a bailee for hire may not benefit under the policy.

6. Elect to waive a policy provision. Any waiver of a policy provision by the insurer must be in writing.

7. Exclude coverage, refuse to pay claims, or refuse to provide benefits under a policy if those actions would expose the insurer to a violation of applicable trade or economic sanctions, laws, or regulations, including those administered and enforced by the U.S. Treasury Department's Office of Foreign Assets Control.

Chapter 342
Rules Governing Standards for the Content of Homeowners Insurance Policies

14VAC5-342-10. Scope and applicability.

A. This chapter sets forth the standards of content for policies of homeowners insurance, including policies insuring owner-occupied condominium units. This chapter applies to insurers licensed to do business in Virginia and issuing policies of homeowners insurance and condominium unit owners insurance pursuant to Chapter 21 (§ 38.2-2100 et seq.) of Title 38.2 of the Code of Virginia.

B. Compliance with this chapter is required for policies delivered or issued for delivery in Virginia with effective dates on and after July 1, 2023. Insurers and rate service organizations shall submit filings for compliance with this chapter no later than December 31, 2022.

C. Pursuant to § 38.2-130 of the Code of Virginia, homeowners insurance policies are indivisible package policies that insure owner-occupied dwellings.

D. This chapter does not apply to policies that:

1. Are lender-placed;

2. Insure owner-occupied farms;

3 Insure manufactured homes as defined in § 46.2-100 of the Code of Virginia, except for policies insuring manufactured homes as defined in § 46.2-653.1 of the Code of Virginia;

4. Primarily insure the personal property of renters;

5. Are issued pursuant to Chapter 27 (§ 38.2-2700 et seq.) of Title 38.2 of the Code of Virginia; or

6. Are issued pursuant to Chapter 48 (§ 38.2-4800 et seq.) of Title 38.2 of the Code of Virginia.

E. Insurers shall file with the commission all policies and endorsements for approval before use.

F. Policies and endorsements shall not be less favorable than the provisions set forth in this chapter. Insurers may provide broader and more favorable coverages, terms and conditions than those set forth in this chapter. Insurers may use any policy language that is not less favorable to the insured and complies with provisions of this chapter.

14VAC5-342-20. Severability.

If a provision of this chapter or its application to a person or circumstance is for any reason held to be invalid by a court, the remainder of this chapter and the application of the provisions to other persons or circumstances shall not be affected.

14VAC5-342-30. Definitions.

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

"Actual cash value" means the amount equal to the replacement cost minus depreciation of damaged or stolen property at the time of the loss.

"Aircraft" means a machine or device capable of atmospheric flight, including hobby or model aircraft, drones, self-propelled missiles, and spacecraft.

"Bodily injury" means bodily harm, sickness, or disease, including care, loss of services, and resulting death.

"Business" means a trade, profession, or occupation whether full-time, part-time, or occasional activity, including (i) farming, (ii) the rental of the whole or a part of the residence premises by an insured, (iii) the business use of a part of the insured premises, or (iv) home-sharing.

"Business" shall not include:

1. The occasional rental of the whole or a part of the residence premises for dwelling purposes;

2. The rental or holding for rental of a part of the residence premises for no more than two roomers or boarders for use as a primary residence;

3. The rental of a part of the residence premises as a private garage;

4. The rental of a part of the residence premises as an office, school, or studio; or

5. The insured's use of the residence premises for remote work under an agreement with the insured's employer.

"Commission" means the State Corporation Commission.

"Condominium unit" means a dwelling as defined in § 55.1-1900 of the Code of Virginia.

"Covered watercraft" means a (i) sailing vessel with or without auxiliary power that is less than 26 feet in length; (ii) a vessel that is powered by an engine with less than 26 horsepower; and (iii) rowboats and canoes.

"Dwelling" means any residential structure specifically named in the policy.

"Farms" or "farming" means the use of land and buildings primarily for agricultural purposes with the objective of raising animals to produce food for sale or distribution to the public and growing crops for sale or distribution to the public.

"Fixtures" means permanently installed components of the dwelling or other structures including wells; plumbing systems; pumps; air conditioning equipment, systems, and parts; heating equipment, systems, and parts; hot water heaters; lighting systems; or built-in appliances and other components where removal would deface or damage the dwelling.

"Functional replacement cost" means the cost to repair or replace the damaged dwelling or other structures with less costly common construction materials and methods that are functionally equivalent to materials and methods used in the original construction.

"Home-sharing" means rental [~~or offering for rental~~ of the whole or a part of] the residence premises [~~or a part of the residence premises~~] for lodging purposes [~~made available~~] through an online-enabled application, website, or digital network [~~. Home-sharing is not occasional rental as defined in this section~~ during the policy term (i) for more than seven consecutive or random days or (ii) that generates revenue of more than $2,500]. An individual occupying the residence premises through home-sharing is not a roomer, boarder, tenant, or guest.

"Hovercraft" means a self-propelled air cushioned vehicle that can travel over land and water.

"Insured" means:

1. Any person named as an insured in the policy, and if residents of the named insured's household, the named insured's spouse if not a named insured, and the relatives of either;

2. Other persons younger than 21 years of age in the care of an insured; and

3. Under personal liability and medical payments coverage:

a. A person having custody or possession of an insured's pet, unless the custody or possession is in the course of the person's business or without the insured's permission;

b. A person using or having custody or possession of an insured's covered watercraft unless the use, custody, or possession is in the course of the person's business or without the insured's permission; and

c. Residence employees while engaged in the duties of their employment with respect to a motor vehicle, recreational motor vehicle, hovercraft, or covered watercraft insured under the policy.

"Insured premises" means:

1. Under property coverage, any residence premises specifically named in the policy; and

2. Under personal liability and medical payments coverages:

a. Any residence premises specifically named in the policy;

b. Any premises not owned by an insured [~~except~~ and] where an insured is temporarily residing;

c. A residence premises acquired by the named insured or named insured's spouse during the policy term;

d. Individual or family cemetery plots or burial vaults owned by the named insured;

e. Unimproved land, other than land used for farming, owned by or rented to an insured; and

f. Land, other than land used for farming, owned by or rented to an insured on which a dwelling is being built as a residence for the insured.

"Medical payments" means expenses for necessary medical, surgical, x-ray, dental services, prosthetic devices, ambulance, hospital, professional nursing, rehabilitation, pharmaceuticals, and funeral services.

"Motor vehicle" means a vehicle that is self-propelled or designed for self-propulsion and is designed or licensed for use on public roads.

"Occasional rental" means [~~in any one policy term, (i)~~] rental of the [~~residence premises~~ whole] or a part of the residence premises for [~~up to~~ lodging purposes during a policy term (i) for] seven [or fewer consecutive or random] days [~~, whether consecutive or random,~~ or] (ii) [~~rental of the residence premises~~] that generates revenue of up to $2,500 [~~, or (iii) a combination of clauses (i) and (ii) of this definition~~]. Occasional rental is not home-sharing as defined in this section.

"Occurrence" means an accident, including continuous or repeated exposure to the same generally harmful conditions that results in bodily injury or property damage during the policy term.

"Pollutant" means solid, liquid, gaseous, thermal, or radioactive irritants or contaminants, including acids, alkalis, chemicals, fumes, vapors, and waste.

"Property damage" means injury to or destruction of tangible property and loss of use of tangible property.

"Recreational motor vehicle" means a vehicle designed for recreational use off public roads and not subject to motor vehicle registration.

"Replacement cost" means the cost to repair or replace the damaged or stolen property with material of like kind and quality without deduction for depreciation.

"Residence employee" means an employee of an insured who provides maintenance or domestic services for the residence premises or who performs similar duties elsewhere except in connection with an insured's business.

"Residence premises" means (i) a dwelling, other structures, and grounds at the location named in the policy; and (ii) that part of any other building occupied by the named insured or spouse for residential purposes.

"Theft" means an act of stealing or attempt to steal, including loss of property from a known place under circumstances when a probability of theft exists.

"Vacant" means a dwelling (i) that has not been occupied as a residence for more than 30 consecutive days immediately before a loss and (ii) where most of the named insured's personal property has been removed such that the dwelling is not functional as a customary place of residence. A dwelling is not occupied if the dwelling is being used without the permission of an insured. A dwelling under construction or being remodeled, repaired, or renovated is not vacant.

"Vandalism" or "malicious mischief" means the willful and malicious damage to or destruction of the property excluding loss by pilferage, theft, burglary, or larceny.

14VAC5-342-40. Mandatory property coverages.

A. Insurers shall provide coverage to the dwelling on the residence premises including fixtures.

1. Insurers shall also provide coverage for materials and supplies while located on the residence premises and intended for use in construction, alteration, or repair of the dwelling or other structures.

2. For a dwelling that is a condominium unit, insurers shall provide a limit of liability of at least $5,000 for the dwelling and fixtures that are the responsibility of the condominium unit owner.

B. Insurers shall provide coverage for other structures and the fixtures of other structures on the residence premises.

1. Insurers shall provide a limit of liability of at least 10% of the dwelling limit of liability.

2. Insurers may exclude coverage for other structures that are used for business or rented or held for rental unless the structure is (i) rented to roomers, boarders, or tenants of the dwelling or (ii) rented for use solely as a private garage.

3. For condominium units, insurers shall provide coverage for other structures and fixtures of other structures that are the responsibility of the condominium unit owner.

C. Insurers shall provide coverage for household and personal property owned or used by an insured while it is anywhere in the world.

1. Insurers shall provide a limit of liability for household and personal property coverage that is at least 50% of the dwelling limit of liability. For condominium units, the limit of liability for household and personal property shall be determined by the insured and the insurer.

2. At the request of the named insured at the time of loss, insurers shall provide coverage for household and personal property owned by a:

a. Guest while in a residence occupied by an insured;

b. Residence employee while the property is in a residence occupied by an insured; and

c. Residence employee while the residence employee is engaged in the service of an insured and the property is in the physical custody of the residence employee.

3. Insurers shall provide coverage for the insured's property (i) on the residence premises during an occasional rental; or

(ii) on the part of the residence premises occupied by roomers, boarders, or tenants.

4. Insurers shall provide coverage for household and personal property while it is being moved to the insured's new principal residence within the United States. Insurers shall provide coverage for property while it is being moved for 30 days from the date that moving the property begins. The household and personal property limit of liability applies to property being moved to another location. If the move began during the policy term, coverage may not be limited by the expiration of the policy.

5. Insurers shall provide coverage for household and personal property while it is usually located away from the residence premises. Insurers shall provide a limit of liability for this coverage that is at least 10% of the limit of liability specified for household and personal property, but not less than $1,000.

6. Insurers shall provide coverage for the following types of household and personal property at limits of at least the following:

a. $500 total per loss on cemetery property on or off the residence premises, including monuments, headstones, grave markers, and urns.

b. $100 total per loss on coin collections, medals, gold, platinum, and silver, provided, goldware and gold-plated ware shall not be deemed to be gold and silverware and silver-plated ware shall not be deemed to be silver.

c. $500 total per loss on passports, tickets, or stamp collections.

d. $1,500 total per loss for theft of jewelry, precious and semi-precious stones, and furs, and articles containing fur that represent its principal value; if open causes of loss are provided, insurers may also apply this limit to misplacing or losing this property.

e. $500 total per loss for theft of guns and related accessories; if open causes of loss are provided, insurers may also apply this limit to misplacing or losing this property.

f. $1,000 total per loss on watercraft, trailers used with watercraft, and watercraft furnishings, equipment, and motors. This limit does not apply to rowboats or canoes.

g. $500 on trailers, semi-trailers, and campers not otherwise covered in this chapter.

D. Insurers shall provide coverage for the expenses incurred for the removal of debris of covered property damaged by a covered cause of loss and the expense for the removal of fallen trees that damage covered property.

1. Expenses for debris removal are included within the limit of liability applicable to the damaged property, except as provided in subdivision 2 of this subsection.

2. When the amount payable for the damage to the property plus the expense of debris removal exceeds the limit of liability for the damaged property, insurers shall provide an additional 5.0% of the limit of liability applicable to the damaged covered property for debris removal expenses.

3. Insurers may not apply depreciation to debris removal expenses.

E. Insurers shall provide coverage for contractual fire department service charges and volunteer fire department service charges as follows:

1. Contractual fire department service charges where a fire department is called to save or protect insured property from a covered cause of loss. Insurers may limit this coverage to a residence premises not located within the limits of a city, municipality, or fire protection district furnishing fire department services.

2. Fire department service charges made by volunteer fire departments pursuant to § 38.2-2130 of the Code of Virginia.

3. Insurers shall provide at least $250 of coverage for each type of fire department service charges.

4. Insurers may not apply a deductible or depreciation to the coverages in subdivisions 1 and 2 of this subsection.

F. Insurers shall offer ordinance or law coverage, subject to the exclusions or limitations within this chapter, pursuant to § 38.2-2124 of the Code of Virginia at the dwelling limit of liability within the policy or as an endorsement. This limit of liability is in addition to the limit of liability applicable to the dwelling. Insurers may make other limits of liability available for insureds to purchase. Insurers may not apply depreciation to this coverage. When ordinance or law coverage is provided within the policy or as an endorsement, subdivision C 1 c of 14VAC5-342-60 does not apply.

G. Insurers shall offer coverage for water that backs up through [~~sewer~~ sewers] or drains, subject to the exclusions or limitations within this chapter, pursuant to § 38.2-2120 of the Code of Virginia at the dwelling limit of liability within the policy or as an endorsement. This limit of liability is in addition to the limit of liability applicable to the dwelling. Insurers may make other limits of liability available for insureds to purchase. Insurers may not apply depreciation to this coverage. When coverage for water that backs up through sewers or drains is provided within the policy or as an endorsement, subdivision C 1 a (2) of 14VAC5-342-60 does not apply.

H. Insurers shall provide coverage of at least 20% of the dwelling limit of liability for the increase in necessary living expenses when the dwelling is uninhabitable due to a covered cause of loss. Insurers shall provide coverage of at least 20% of the household and personal property limit of liability for condominium units.

1. Insurers shall provide this coverage for the time reasonably required to return the dwelling to a habitable condition or for the insured's household to become settled in any permanent quarters.

2. Insurers shall provide additional living expense coverage for at least two weeks while a civil authority limits access to the residence premises as a result of damage to neighboring premises by a covered cause of loss.

3. Insurers may exclude living expenses that do not continue.

4. This coverage is not limited by the expiration date of the policy.

5. Insurers may not apply a deductible to this coverage.

I. Insurers shall provide coverage of at least 20% of the dwelling limit of liability for the fair rental value of [~~a~~ any] part of the dwelling or other [~~structures~~ structure]. Insurers shall provide at least 20% of the household and personal property limit of liability for condominium units.

1. Insurers shall provide this coverage for the time reasonably required to restore the dwelling or other structures to a tenantable condition following damage caused by a covered cause of loss.

2. Insurers shall provide fair rental value coverage for at least two weeks while a civil authority limits access to the residence premises as a result of damage to neighboring premises by a covered cause of loss.

3. Insurers may exclude expenses that do not continue.

4. Insurers may exclude coverage for loss or expense due to cancellation of a lease or agreement.

5. This coverage is not limited by the expiration date of the policy.

6. Insurers may not apply a deductible to this coverage.

J. Insurers shall provide coverage for damage to trees, shrubs, plants, or lawns caused by fire, lightning, explosion, riot, civil commotion, vandalism, malicious mischief, theft, aircraft, or vehicles not owned or operated by a resident of the [residence] premises.

1. Insurers shall provide a limit of liability for this coverage of at least 5.0% of the dwelling limit of liability.

2. Insurers may limit the amount of coverage to no more than $500 for each tree, shrub, or plant on the premises. The limit of coverage includes debris removal coverage when the tree, plant, or shrub does not cause damage to covered property.

K. Insurers shall provide coverage for loss or damage to property while removed or being removed from the residence premises because the property is endangered by a covered cause of loss.

1. Coverage is provided for damage from any cause subject to the exclusions and limitations permitted in this chapter.

2. Insurers shall provide this coverage for at least 30 days for each removal.

3. This coverage is not limited by the expiration date of the policy.

4. This coverage does not increase the limit of liability that applies to the damaged covered property.

L. Insurers shall provide coverage for the cost of making reasonable repairs to protect covered property from further damage when the repairs are directly attributable to damage caused by a covered cause of loss. The repairs are included as part of the amount of the loss.

M. Insurers shall pay the cost incurred to tear out and replace the part of the dwelling or other structure necessary to gain access to the system or appliance from which the water or steam escaped if a loss to the dwelling or other structures is caused by water or steam escaping from a system or appliance. Insurers may exclude loss to the system or appliance from which the water or steam escapes. Insurers may not apply depreciation to this coverage.

N. Insurers shall provide coverage for direct physical loss to the dwelling, other structures, and household and personal property involving collapse of a dwelling or other structure or any part of a dwelling or other structure:

1. Caused by one or more of the following:

a. The causes of loss in subsection C of 14VAC5-342-50;

b. Hidden decay;

c. Hidden insect or vermin damage;

d. Weight of contents, equipment, animals, or people;

e. Weight of rain that collects on a roof; or

f. Use of defective materials or methods in construction, remodeling, or renovation if the collapse occurs during the construction, remodeling, or renovation.

2. Loss to an awning, fence, patio, pavement, swimming pool, underground pipe, flue, drain, cesspool, septic tank, foundation, retaining wall, bulkhead, pier, wharf, or dock is not included under subdivisions 1 b through 1 f of this subsection unless the loss is a direct result of the collapse of a building.

3. Collapse does not include settling, cracking, shrinking, bulging, or expansion. [A building that is in danger of falling down or caving in is not in a state of collapse.]

4. This coverage does not increase the limit of liability applicable to the damaged covered property.

14VAC5-342-50. Causes of loss.

A. 1. Insurers shall provide open causes of loss for the dwelling and other structures.

2. Insurers shall provide coverage for direct loss to the dwelling and other structures on the residence premises subject to the exclusions and limitations permitted in this chapter.

B. 1. Insurers shall provide either open causes of loss or named causes of loss for household and personal property.

2. Insurers shall provide coverage for direct loss to household and personal property subject to the exclusions and limitations permitted in this chapter.

C. When named causes of loss for household and personal are provided, insurers shall provide coverage for direct loss caused by the following:

1. Fire or lightning.

2. Windstorm or hail.

a. Insurers may exclude loss to the interior of the dwelling or other structure or the household and personal property within caused by rain, snow, sand, or dust unless the rain, snow, sand, or dust enters through an opening caused by the force of wind or hail; and

b. Insurers may exclude loss to watercraft while not inside a fully enclosed building. This exclusion does not apply to rowboats or canoes.

3. Explosion.

4. Riot or civil commotion.

5. Aircraft.

6. Vehicles.

7. Sudden and accidental damage from soot or smoke, other than smoke from agricultural smudging or industrial operations.

8. Vandalism or malicious mischief.

9. Falling objects. Insurers may exclude loss to:

a. Property within a dwelling or other structure caused by a falling object unless the falling object first damages the exterior of the roof or walls of the dwelling or other structure; or

b. The falling object itself.

10. Weight of ice, snow, or sleet that damages household and personal property contained in a dwelling or other structure if the weight of ice, snow, or sleet first damages the dwelling or other structure.

11. Sudden and accidental tearing apart, cracking, burning, or bulging of a steam or hot water heating system, or of an appliance for heating water, but excluding loss caused by or resulting from freezing.

12. Freezing of plumbing, heating, or air conditioning systems, and domestic appliances.

13. Accidental discharge, leakage, or overflow of water or steam from within a plumbing, heating, or air conditioning system, or domestic appliance.

14. Sudden and accidental injury from electrical currents artificially generated to electrical appliances, devices, fixtures, and wiring.

15. Theft of household and personal property, except insurers may exclude coverage for loss by theft:

a. If committed by an insured;

b. In or to a dwelling or other structure under construction, or of materials and supplies for use in the construction, unless the dwelling is occupied;

c. If committed by (i) roomers, (ii) boarders, or (iii) tenants, employees of the tenants, or members of the tenants' household;

d. Of money, bullion, silver, gold, platinum, coin collections, medals, bank notes, letters of credit, notes other than bank notes, passports, tickets, stamp collections, jewelry, silverware, goldware, pewterware, silver-plated ware, gold-plated ware, or furs while the part of the residence premises customarily occupied exclusively by an insured is rented to others;

e. Of household and personal property in a location other than the residence premises that is owned, rented, or occupied by an insured, except (i) while an insured is temporarily residing at that location and (ii) property of a student who is an insured if the student has been at that location at any time during the 45 days immediately before a loss; or

f. From the unauthorized use of a credit card or debit card; or loss by forgery or alterations of a written promise, order, or direction to pay a sum certain in money.

16. Breakage of glass that is a part of the dwelling or other [~~structures~~ structure] if it results in damage to household and personal property. Insurers may exclude this coverage if the dwelling was vacant.

14VAC5-342-60. Exclusions applicable to property coverages.

A. For policies providing open causes of loss, insurers may exclude direct loss to the dwelling, other structures, or household and personal property caused by any of the following:

1. Wear and tear; marring or scratching; deterioration; inherent vice; latent defect; mechanical breakdown; rust; mold; wet or dry rot; pollutants; smog; smoke from agricultural smudging or industrial operations; settling, cracking, shrinkage, bulging, or expansion of pavements, patios, foundations, walls, floors, roofs, or ceilings; or birds, vermin, rodents, insects, or animals owned or kept by an insured. If a covered cause of loss ensues, insurers shall provide coverage for the ensuing loss.

2. Theft in or to a dwelling under construction, or of materials or supplies for use in the construction, until construction is completed and the residence premises is occupied.

3. Vandalism and malicious mischief or glass breakage if the dwelling on the insured premises was vacant. If a covered cause of loss ensues, insurers shall provide coverage for the ensuing loss.

4. Collapse, except as required by subsection N of 14VAC5-342-40.

B. For policies providing open causes of loss, insurers may exclude direct loss to household and personal property caused by any of the following:

1. Breakage of eyeglasses, glassware, statuary, marbles, bric-a-brac, porcelains, and similar fragile articles, except jewelry, watches, bronzes, cameras, and photographic lenses. This exclusion shall not apply to loss caused by or resulting from the causes of loss in subsection C of 14VAC5-342-50, earthquake, and water not otherwise excluded.

2. Dampness of atmosphere or extremes of temperature unless the loss is directly caused by rain, snow, sleet, or hail.

3. Refinishing, renovating, or repairing property other than watches, jewelry, and furs.

4. From the unauthorized use of a credit card or debit card; or loss by forgery or alterations of a written promise, order, or direction to pay a sum certain in money.

5. Destruction or seizure by order of any government or public authority.

6. Collision, sinking, swamping, or stranding of watercraft, trailers used with watercraft, and watercraft furnishings, equipment, and motors. This exclusion does not apply to collision involving a motor vehicle.

C. For all causes of loss, insurers may:

1. [~~Exclude~~ Regardless of any other cause of loss or event contributing concurrently or in any sequence, exclude] loss caused directly or indirectly by any of the following:

a. Water, as follows:

(1) Flood, ground surface water, waves, seiche, tidal water or tidal waves, overflow of a body of water, or spray from any of these [, whether natural or manmade];

(2) Water that backs up through sewers or drains;

(3) Water that overflows or is discharged from a sump pump or other type of system designed to remove subsurface water that is drained from the foundation area;

(4) Water below the surface of the ground including water that exerts pressure on or flows, seeps, or leaks through (i) sidewalks; (ii) driveways; (iii) foundations; (iv) swimming pools; (v) walls; (vi) basements or floors; or (vii) doors, windows, or other openings;

(5) Material carried or moved by water referred to in subdivisions 1 a (1), 1 a (2), and 1 a (3) of this subsection; or

(6) The exclusions for water loss in subdivisions 1 a (1) through 1 a (5) of this subsection do not apply to:

(a) A loss by theft; or

(b) An ensuing loss caused by fire or explosion.

b. Earth movement, natural or manmade, including earthquake, volcanic eruption, landslide, mudflow, or other earth movement caused by sinking, rising, shifting, or expansion. Insurers shall provide coverage for:

(1) A loss by theft; or

(2) An ensuing loss caused by fire, explosion, or breakage of glass that is a part of the dwelling or other [~~structures~~ structure].

c. Enforcement of ordinances or laws regulating the construction, repair, or demolition of dwellings or other structures. Insurers shall provide coverage when an ordinance or law requires the use of safety glass in replacement of damaged glass that is a part of the [~~dwellings~~ dwelling] or other [~~structures~~ structure].

d. Interruption of power or other utility service furnished to the insured premises if the interruption takes place away from the insured premises. Insurers shall provide coverage for the ensuing loss if a covered cause of loss ensues on the insured premises because of the power interruption.

e. Enemy attack by armed forces including action taken by military, naval, or air forces in resisting an actual or immediately impending enemy attack, invasion, insurrection, rebellion, revolution, civil war, usurped power, or action taken by governmental authority in hindering, combating, or defending against the event; order of civil authority except acts of destruction at the time of and for preventing the spread of fire, provided that the fire did not originate from an excluded cause of loss.

f. Nuclear reaction, nuclear radiation, or radioactive contamination as set forth in § 38.2-2102 A of the Code of Virginia.

g. The exclusions in subdivisions 1 a through 1 f of this subsection apply [even] if one or more of the following concurrently contribute to the loss:

(1) Weather conditions;

(2) Acts or decisions, or the failure to act or decide, of a person, group, organization, or governmental body; or

(3) Faulty, inadequate, or defective:

(a) Planning, zoning, development, surveying, or siting;

(b) Design, specifications, workmanship, repair, construction, renovation, remodeling, grading, or compaction;

(c) Materials used in repair, construction, renovation, or remodeling; or

(d) Maintenance.

2. Exclude direct loss caused by:

a. Freezing of or by discharge, leakage, or overflow from plumbing, heating, or air conditioning systems or domestic appliances. This exclusion applies only to a dwelling that is vacant, under construction, or unoccupied for four or more consecutive days, and the insured has failed to (i) exercise due diligence to maintain heat in the dwelling or other structures, or (ii) drain the systems and appliances and shut off the water supply.

b. Continuous or repeated seepage or leakage of water [or steam from within a plumbing, heating, or air conditioning system or domestic appliance] over a period of weeks, months, or years. This exclusion does not apply to household and personal property.

c. Freezing, thawing, or by the pressure or weight of ice or water to fences, pavements, patios, swimming pools, foundations, retaining walls, bulkheads, piers, wharves, or docks.

d. Windstorm or hail to the following property (i) overhead structures, including supports and screening, constructed principally of cloth, metal, fiberglass, or plastic and erected to provide protection from the elements; (ii) fences; (iii) seawalls; (iv) property line or other free-standing walls; (v) greenhouses, hothouses, slathouses, trellises, pergolas, or cabanas; (vi) wharves, docks, piers, boathouses, bulkheads, or other similar structures located over or partially over water and the property on or within these structures; or (vii) outdoor equipment pertaining to the service of the residence premises.

e. Neglect of the insured to use all reasonable means to protect the property during and after a loss.

f. An intentional act by a person insured under the policy that was directed or committed by that person, but only with respect to that person.

D. Insurers may exclude coverage for the following types of property:

1. Accounts, bills, or currency including virtual or digital, deeds, evidences of debt, money, scrip, stored value cards, smart cards, securities, bullion, manuscripts, letters of credit, bank notes, or notes other than bank notes;

2. Aircraft and parts except insurers shall provide coverage for (i) drones without cameras and drones that are not capable of carrying people or cargo and (ii) hobby aircraft or model aircraft that is not capable of carrying people or cargo;

3. Animals, birds, or fish;

4. Business property [, except household and personal property is not business property unless the property is in that part of the residence premises rented and occupied for home-sharing];

5. Electronic equipment that is permanently installed in a motor vehicle;

6. Tapes, wires, records, discs, or other media used with electronic equipment in a motor vehicle while the property is in or on a motor vehicle;

7. Motor vehicles, motorized bicycles, and hovercraft; except (i) vehicles used to service the residence premises, (ii) utility trailers that are not licensed for road use, and (iii) electric mobility devices designed to assist an individual that has a disability;

8. Property of (i) tenants [~~and;~~] (ii) roomers and boarders not related to the insured [; and (iii) home-sharing occupants during the period of their home-sharing rental];

9. Property rented to others except as provided in subdivision C 3 of 14VAC5-342-40;

10. Property that is unlawful to own or possess under state or federal law; or

11. Property that is separately described and specifically insured by this insurance or other insurance.

14VAC5-342-70. Loss settlement condition.

A. Insurers shall include loss settlement provisions in accordance with this section.

B. Insurers shall apply actual cash value loss settlement as follows:

1. Subject to the limit of liability, insurers may pay the smaller of the following amounts:

a. Cost to repair or replace with like kind and quality; or

b. Actual cash value of the damaged property.

2. Insurers may apply actual cash value loss settlement to:

a. Household and personal property;

b. Outdoor radio and television antennas; satellite dishes; or

c. Awnings.

C. Insurers shall apply replacement cost loss settlement as follows:

1. Insurers shall apply replacement cost loss settlement to property described under subsections A and B of 14VAC5-342-40, including permanently installed flooring. Wall-to-wall carpeting is permanently installed flooring.

2. Insurers may limit replacement cost loss settlement to the following:

a. The limit of liability applicable to the dwelling or other [~~structure~~ structures];

b. The replacement cost of the dwelling or other [~~structure~~ structures] or a part of the dwelling or other structure on the residence premises and intended for the same occupancy and use; or

c. The amount spent in repairing or replacing the dwelling or other [~~structure~~ structures], or a part of the dwelling or other structure and intended for the same occupancy and use.

3. The insured may assert a claim for the actual cash value of the dwelling or other [~~structure~~ structures] without prejudicing the insured's right to make further claim for the difference between the actual cash value and the replacement cost in accordance with § 38.2-2119 B of the Code of Virginia. The claim for the difference must be made within six months of (i) the last date on which the insured received a payment for actual cash value or (ii) date of entry of a final order of a court of competent jurisdiction declaratory of the right of the insured to full replacement cost, whichever shall last occur.

4. When the repair or replacement cost is $2,500 or less, insurers shall be liable for the full cost of repair or replacement before the repair or replacement has been completed.

5. Insurers may apply an insurance-to-value ratio for replacement cost loss settlement as follows:

a. Insurers may require an insurance-to-value ratio of no more than 80% before full replacement cost loss settlement applies.

b. If the insurance-to-value is less than 80% for a dwelling or other structure, an insurer may limit its liability for loss to the larger of the following:

(1) The actual cash value of that part of the dwelling or other [~~structures~~ structure]; or

(2) That proportion of the full cost of repair or replacement without deduction for depreciation of that part of the dwelling or other structure damaged or destroyed that the whole amount of insurance applicable to the dwelling or other structure for the cause of loss bears to 80% of the full replacement cost of the dwelling or other structure.

c. In calculating the 80% insurance-to-value ratio, insurers shall disregard the cost of (i) excavations; (ii) underground flues and pipes; (iii) underground wiring and drains; and (iv) brick, stone, and concrete foundations, piers, and other supports that are below the under surface of the lowest basement floor, or where there is no basement that are below the surface of the ground inside the foundation walls.

6. Insurers may provide replacement cost loss settlement on household and personal property as authorized by § 38.2-2119 of the Code of Virginia.

D. Insurers may offer functional replacement cost loss settlement for the property described in subsections A and B of 14VAC5-342-40, under the conditions outlined in this subsection.

1. Functional replacement cost is only permitted at the option of the insured.

2. Insurers may not apply functional replacement cost loss settlement to property that qualifies for an amount of insurance equal to 80% or more of the full replacement cost of the dwelling or other structure.

3. Insurers shall provide the notice required by § 38.2-2119 C of the Code of Virginia.

4. Insurers may limit functional replacement cost loss settlement to the following:

a. The limit of liability applicable to the dwelling or other [~~structure~~ structures];

b. The amount necessary to repair or replace the property with functionally equivalent property at a lower cost than would be required to replace the property with material of like kind and quality; or

c. The amount spent to repair or replace the dwelling or other structure or part of the dwelling or other structure intended for the same occupancy and use.

E. Insurers shall determine loss to property that is part of a pair or set in a reasonable and fair proportion of the total value of the pair or set.

F. Insurers shall adjust losses with the named insured and shall pay the named insured unless another payee is specifically named.

G. Insurers shall restore the limits of liability after a loss [~~is paid~~].

H. Insurers may apply a property deductible unless prohibited or otherwise limited in this chapter. Insurers may apply a special property deductible for the following causes of loss (i) wind, (ii) hail, or (iii) theft. No more than one deductible may be applied to a loss. The amount of any property deductible may not exceed 10% of the dwelling limit of coverage.

I. Insurers may (i) take all or part of the damaged property at the agreed or appraised value or (ii) repair, rebuild, or replace the damaged property with other of like kind and quality within a reasonable time. Within 30 days after receiving the insured's proof of loss, insurers shall provide notice to the insured of the insurer's decision to (i) take the property at the agreed or appraised value or (ii) repair, rebuild, or replace the damaged property.

14VAC5-342-80. Conditions applicable to property coverage.

A. Insurers shall include the following statutory conditions:

1. The nuclear clause set forth in § 38.2-2102 of the Code of Virginia.

2. The conditions set forth in § 38.2-2104 of the Code of Virginia:

a. Assignment of the policy.

b. The time that coverage begins and ends.

3. The conditions set forth in § 38.2-2105 of the Code of Virginia:

a. Abandonment.

b. Appraisal.

c. Mortgagee interests and obligations.

d. Pro rata liability.

e. Requirements in case loss occurs.

f. Suit.

g. When loss payable.

B. Insurers may include any of the following conditions:

1. The insured shall notify the police when loss is by theft.

2. A bailee for hire shall not benefit under the policy.

14VAC5-342-90. Personal liability coverage.

A. Insurers shall provide personal liability coverage as follows:

1. Insurers shall pay on behalf of the insured all sums that the insured is legally obligated to pay as damages for bodily injury or property damage caused by a covered occurrence.

2. Insurers shall defend a suit against the insured seeking damages for bodily injury or property damage, even if any of the allegations of the suit are groundless, false, or fraudulent.

3. Insurers shall investigate any claim or suit and may settle any claim or suit as it deems expedient.

4. Insurers shall not be obligated to pay a claim or judgment after the limit of liability has been exhausted by payment of judgments or settlements.

B. In addition to the limit of liability applicable to personal liability coverage, insurers shall provide coverage for any of following personal liability claims expenses:

1. All expenses incurred by the insurer and all costs taxed against an insured in a suit defended by the insurer;

2. All premiums on appeal bonds required in a suit; premiums on bonds to release attachments in a suit for an amount not more than the applicable limit of liability of the policy; and the cost of bail bonds required of an insured because of an occurrence to which the policy applies, of at least $250 per bail bond, except the insurer shall have no obligation to apply for or furnish the bonds;

3. Pre-judgment interest incurred;

4. Post-judgment interest on the part of a judgment that does not exceed the limit of the insurer's liability; and

5. Reasonable expenses incurred by an insured of at least $50 per day. Reasonable expenses include (i) loss of earnings except loss of other income, (ii) vacation time, and (iii) other benefit loss because of an insured's attendance at hearings or trials or assistance with the investigation as requested.

C. In addition to the limit of liability applicable to personal liability coverage, insurers shall provide coverage for the following:

1. Insurers shall pay for damage to property of others caused by an insured during the policy period at the actual cash value or the cost to repair or replace the damaged property with other property of like kind and quality.

a. Insurers may limit this coverage to $250 per occurrence.

b. Insurers may exclude damage to property of others:

(1) Caused intentionally by an insured 13 years of age or older;

(2) Rented to an insured;

(3) Owned by or rented to (i) roomers, (ii) boarders, (iii) tenants, or (iv) residents of the insured's household;

(4) Arising out of (i) an act or omission in connection with a premises owned, rented, or controlled by an insured other than the insured premises; (ii) business pursuits or professional services; or (iii) the ownership, maintenance, operation, use, loading, or unloading of a vehicle, trailer or semi-trailer, farming machinery or equipment, aircraft, or watercraft; or

(5) If the property is covered elsewhere under the policy.

2. Insurers shall pay expenses incurred by an insured at the time of an occurrence for first aid to others for bodily injury covered under the policy.

14VAC5-342-100. Medical payments coverage.

A. Insurers shall provide medical payments coverage in accordance with this chapter. This coverage applies:

1. While the person is on the insured premises with the permission of an insured.

2. While the person is elsewhere, if the bodily injury:

a. Arises out of a condition on the insured premises or the ways immediately adjoining;

b. Is caused by the activities of an insured or by a residence employee during the residence employee's employment by the insured;

c. Is caused by an animal owned by or in the care of an insured; or

d. Is sustained by a residence employee and arises out of the residence employee's employment by the insured.

B. Insurers shall provide coverage for reasonable medical expenses incurred to each person injured within one year from the date of the occurrence.

14VAC5-342-110. Exclusions applicable to personal liability and medical payments coverage.

A. Insurers may exclude losses under personal liability coverage for:

1. Liability assumed by the insured under contracts or agreements that are not in writing. This exclusion does not apply to liability that the insured would have had without a contract or agreement.

2. Liability assumed by the insured under a contract or agreement relating to the insured's business.

3. The insured's share of any loss assessment charged against all members of any property owners' association.

4. Bodily injury to a person covered or required to be covered under a workers' compensation or other similar law.

5. Damage to property owned by the insured.

6. Damage to property of others in the care, custody, or control of the insured.

7. Sickness, disease, or death of a residence employee unless written claim is made or suit is brought against the insured within 36 months after the end of the policy term.

B. Insurers may exclude losses under medical payments coverage:

1. To a person covered or required to be covered under a workers' compensation or other similar law;

2. To any person covered as an insured;

3. To a person, except a residence employee, regularly residing on the insured premises;

4. To a residence employee if the bodily injury occurs off the insured premises unless the injury arises out of the residence employee's employment by an insured; or

5. To a person on the insured premises because an insured's business is conducted on the premises or professional services are rendered on the premises.

C. Insurers may exclude occurrences applicable to personal liability and medical payments coverages arising from:

1. Aircraft. Insurers shall provide coverage for (i) drones without cameras and drones that are not capable of carrying people or cargo or (ii) hobby aircraft or model aircraft that are not capable of carrying people or cargo.

2. Motor vehicles, recreational motor vehicles, or hovercraft. Insurers shall provide coverage for:

a. Vehicles primarily used in servicing the residence premises while on or off the residence premises;

b. Golf carts used for golfing purposes within a golfing facility, including crossing public roads to access other parts of the golfing facility;

c. Recreational motor vehicles or hovercraft on an insured premises; and

d. Motor vehicles held in dead storage on the residence premises.

3. Watercraft that is powered by an engine with more than 25 horsepower and sailing vessels more than 26 feet in length with or without auxiliary power. Insurers shall provide coverage for bodily injury or property damage occurring on the insured premises.

4. Rendering of or failing to render professional services.

5. Business pursuits of an insured except for incidental business activities (i) conducted by an insured who is younger than 21 years of age, (ii) that produce revenues of no more than $2,500 during the policy period, or (iii) a combination of clauses (i) and (ii) of this subdivision.

6. Any premises, owned, rented, or controlled by an insured other than the insured premises.

7. An intentional act by a person insured under the policy that was directed or committed by that person, but only with respect to that person.

8. War, invasion, insurrection, rebellion, revolution, civil war, usurped power, or action taken by governmental authority in hindering, combating, or defending against any of these events.

9. Smuggling or trafficking.

10. Sexual molestation, corporal punishment, or physical or mental abuse.

11. Transmission of a communicable disease by an insured.

12. Manufacture, delivery, use, sale, transfer, or possession of property that is unlawful.

13. Manufacture, delivery, use, sale, transfer, or possession of a controlled substance, except for the legitimate use of prescription drugs by a person following the orders of a licensed medical provider.

14. Discharge of carbon monoxide pursuant to § 38.2-235 of the Code of Virginia.

15. Bodily injury to an insured as defined in subdivisions 1 and 2 of the definition of insured in 14VAC5-342-30.

16. Entrustment or supervision by an insured of any excluded aircraft, motor vehicle, recreational motor vehicle, hovercraft, or watercraft.

17. Vicarious liability for the actions of a minor using any excluded aircraft, motor vehicle, recreational motor vehicle, hovercraft, or watercraft.

18. Nuclear reaction, radiation, or radio-active contamination.

14VAC5-342-120. Conditions applicable to personal liability and medical payments coverage.

A. An insurer may limit its liability for personal liability coverage and medical payments coverage as follows:

1. For personal liability coverage, the limit of liability that applies to an occurrence is the total limit of the insurer's liability under personal liability coverage for all damages as the result of an occurrence.

2. For medical payments coverage, insurers may apply a limit of liability per person and a limit of liability for two or more persons as the result of an occurrence.

3. For personal liability and medical payments, the limit of liability applies separately to each insured against whom claim is made or suit is brought for an occurrence but does not increase the limit of liability that applies to an occurrence.

B. If an occurrence, claim, or suit occurs, insurers may require an insured to comply with any of the following:

1. To provide notice, in writing, as soon as practicable, containing details sufficient to establish a notice of claim.

2. If claim is made or suit is brought against an insured, to promptly send to the insurer every demand, notice, summons, or other process received by the insured or the representative of the insured.

3. To (i) cooperate with the insurer; (ii) at the request of the insurer, assist in making settlements, in the conduct of suits, and in enforcing a right of contribution or indemnity against a person or organization who may be liable to the insured; (iii) attend hearings and trials; (iv) give and secure evidence; and (v) assist in obtaining the attendance of witnesses.

4. To obtain permission of the insurer before making a voluntary payment, assuming an obligation, or incurring expenses, other than first aid expenses.

5. Under damage to property of others, to:

a. Submit a sworn proof of loss within 60 days after an occurrence unless extended by the insurer.

b. Exhibit damaged property if within the insured's control.

C. For claims under medical payments coverage, insurers may require:

1. An injured person or someone on the injured person's behalf to provide details about the claim, in writing if requested.

2. An injured person or someone on the injured person's behalf to execute authorizations enabling the insurer to get copies of medical reports and records.

3. An injured person to submit to examinations by a medical professional selected by the insurer when and as often as the insurer reasonably requires.

D. For claims under medical payments coverage, insurers may pay the injured person or the person rendering medical services. Payment under medical payments coverage for each occurrence:

1. May reduce the amount payable for a covered injury; and

2. Is not an admission of liability by an insured or the insurer.

E. With respect to a suit under the policy, the insurer may:

1. Require that the insured not bring suit or action against the insurer unless the insured has complied with all the provisions of the policy.

2. Provide that no person or organization may join the insurer as a party to an action against the insured.

3. Require that the amount of the insured's obligation to pay has been determined by (i) judgment against the insured after trial or (ii) written agreement of the claimant and the insurer.

F. The insurer shall provide that its obligations under the policy are not relieved by the bankruptcy or insolvency of the insured or the insured's estate.

G. If execution on a judgment against the insured or the insured's personal representative is returned unsatisfied in an action brought to recover damages for injury or for loss or damage during the policy term, then an action may be maintained against the insurer for the amount of the judgment not exceeding the amount of the applicable limit of coverage.

H. If more than one policy applies [on a primary basis] to an occurrence, the insurer shall pay that proportion of the loss that the limit of liability of the policy bears to the total amount of insurance that applies to the loss. Except, insurers may provide liability coverage on an excess basis for vehicles or watercraft to which the policy applies. This condition does not apply to medical payments coverage.

14VAC5-342-130. Policy Conditions.

A. Insurers may restrict the application of the policy to loss or an occurrence during the policy term.

B. Insurers may void the entire policy (i) if, whether before or after a loss, the insured has willfully concealed or misrepresented any material fact or circumstance concerning the insurance or the interest of the insured in the insurance or (ii) in the case of any fraud or false swearing by the insured relating to the insurance.

C. If an insurer adopts any revision to its forms or endorsements that would broaden coverage currently provided without additional premium charge, the insurer shall automatically apply the broadened coverage from the effective date of the revisions.

D. If a named insured dies, insurers shall modify the definition of insured in 14VAC5-342-30 as follows:

1. The named insured includes:

a. The spouse, if not already a named insured and if residing in the household at the time of the death; and

b. The legal representative with respect to the insured premises and property of the deceased insured at the time of death.

2. Insured also includes:

a. Members of the deceased's household who were insured at the time of the named insured's death but only while residents of the insured premises; and

b. Persons having proper temporary custody of the insured property until the appointment and qualification of the legal representative.

E. Insurers may not invalidate the policy if the insured waives, in writing, before a loss any right of recovery against a party for loss occurring on the insured premises. If not waived, the insurer may require from the insured an assignment of all right of recovery against a party for a loss or occurrence to the extent that the insurer made payment.

F. Terms or conditions in the policy that are less favorable than those provided for in this chapter or the applicable statutes are construed to conform to this chapter and those statutes.

G. Insurers shall include the relevant termination provisions in §§ 38.2-2113 and 38.2-2114 of the Code of Virginia in the policy. In addition, the following apply:

1. Return premium calculations resulting from an insurer-initiated termination shall be pro rata.

2. Terminations for non-payment of premium shall be calculated pro rata.

3. Return premium calculations resulting from an insured-initiated termination may be a short rate calculation, except the penalty may not be more than 10% of the pro rata premium for the expired time.

4. Insurers may refuse to renew the policy in accordance with the provisions of §§ 38.2-2113 and 38.2-2114 of the Code of Virginia.

H. If an insurer elects to waive a policy provision, the waiver must be in writing.

I. Insurers may require that coverage under the policy is excess over a service agreement, home warranty, or similar service warranty.

J. Insurers may exclude coverage, refuse to pay claims, or refuse to provide benefits under a policy if those actions would expose the insurer to a violation of applicable trade or economic sanctions, laws, or regulations. including those administered and enforced by the U.S. Treasury Department's Office of Foreign Assets Control.

VA.R. Doc. No. R22-6887; Filed December 21, 2021, 6:35 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD FOR BARBERS AND COSMETOLOGY

Fast-Track Regulation

Titles of Regulations: **18VAC41-20. Barbering and Cosmetology Regulations (amending 18VAC41-20-50, 18VAC41-20-210).**

18VAC41-70. Esthetics Regulations (amending 18VAC41-70-190).

Statutory Authority: § 54.1-201 of the Code of Virginia.

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: February 16, 2022.

Effective Date: March 7, 2022.

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 A 5 of the Code of Virginia gives authority to the Board for Barbers and Cosmetology to promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) 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 decrease the regulatory burden placed on applicants for licensure by providing them a more uniform method for transferring between licensed programs. Currently, applicants may only transfer between accredited and licensed schools and the transfer period is limited to two years. This limits the number of students eligible for transfer, as only 15% of the board's licensed schools are accredited. The board's Standing Committee on Training reviewed this area in response to requests from the public and as part of its general goal of reviewing its training requirements to ensure best practices and minimally burdensome regulations. The board approved this change along with several others that reduce the burden on the licensees while still protecting the health, safety, and welfare of the public.

For almost 15 years, the regulation has allowed for transfers, and the board has not encountered any negative impacts on

health, safety, and welfare of the public under the esthetics transfer rules. The board agreed that expanding the esthetics transfer policy to also cover barbering, cosmetology, nail care, or waxing schools would not reduce the health, safety, and welfare of the public. It strengthens those protections by requiring the school to utilize specific controls before awarding hours, including a competency exam and confirmation of completed hours.

The current transfer student guidance for barbering, cosmetology, nail care, or waxing schools is limited both in its status as a guidance document and its restrictive qualifications. Few students can qualify for transfers under the guidance. Nonaccredited schools frequently complain that they should be allowed to accept transfer students, but the board does not feel comfortable allowing this under the current regulation. This change incorporates a transfer policy that is effective, well accepted, and available to all licensees.

Rationale for Using Fast-Track Rulemaking Process: This proposal is expected to be noncontroversial as it would resolve many of the complaints about the current guidance document that limits transfers between schools under the Board for Barbers and Cosmetology regulations. The proposal is based on the esthetics regulation governing student transfers and would allow transfers between schools based on a competency exam and transcripts from the prior school. The number of hours awarded may not exceed the actual number of hours of instruction or the number of hours specified for a topic in the board approved curriculum. This proposal also removes the limit on hours that can be transferred in the esthetics regulation. 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 of the public. It does so by expanding an existing transfer policy that is effective, well accepted, and available to all licensees.

Substance: The amendments remove the combined education and prior experience requirement for master barber students enrolling in Virginia Cosmetology training schools, allow a school to conduct an assessment of a student's competence in the respective profession, based on the assessment, give credit toward the hours requirements, and remove the limit on the maximum number of hours a student can transfer into a new program.

Issues: The primary advantage to the public is the economic opportunity it provides by allowing students to transfer between schools without losing all of their completed training hours. Currently, most students have to restart their training if they transfer schools, which results in an economic loss from tuition and lost earning due to the extra time spent repeating completed training. The new transfer policy maintains protection of public health and safety while expanding economic benefits to students. Schools will also benefit economically from the increased access to transfer students. Additionally, schools that cannot accept transfer students are not eligible for federal Veterans Administration funding for veteran students. A uniform transfer policy will level the playing field for all Virginia schools to have access to these students and funding. There are no disadvantages to the public.

The Commonwealth will benefit by becoming a more welcoming environment for students, including students who wish to transfer from out-of-state schools. It will also improve its relationship with licensed, unaccredited schools, which largely hold negative views regarding the current policy. There are no disadvantages to the agency.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Pursuant to recommendations from its Standing Committee on Training, the Board for Barbers and Cosmetology (Board) proposes to implement transfer policies in 18VAC41-20 Barbering and Cosmetology Regulations and 18VAC41-70 Esthetics Regulations.

Background. The current training requirements put forth in 18VAC41-20, Barbering and Cosmetology Regulations, which cover not only barbers and cosmetologists but also nail and wax technicians, generally do not address transferring credit hours between schools or programs. The Board issued a guidance document regarding transfers; as per the document, applicants may only transfer between accredited and licensed schools and the transfer period is limited to two years.[1] The Board reports that only 15% of licensed schools are accredited, which limits students' options.[2] It also makes unaccredited schools ineligible to receive U.S. Department of Veterans Affairs (VA) financial aid, and several licensed schools in Virginia have specifically asked the Board to reconsider its current policy limiting transfers due to this issue.[3]

Currently, section 50 Exceptions to training requirements addresses transfers between barber and cosmetology schools as follows:

> Virginia licensed master barbers with less than two years of work experience and Virginia master barber students enrolling in a Virginia cosmetology training school shall be given educational credit for the training received for the performances completed at a barber school; likewise, licensed Virginia cosmetologists with less than two years of work experience and Virginia cosmetology students enrolling in a Virginia barber or master barber training school shall be given educational credit for the training received for the performances completed at a cosmetology school.

The Board seeks to repeal this language and replace it with a more general transfer policy, which would be modeled on the current transfer policy for esthetics schools.

The proposed amendments, which would be added to 18VAC41-20-210, Curriculum requirements, would allow all licensed schools with an approved training program to conduct an assessment of a student's competence in the respective profession and accordingly give credit towards the hours

requirements specified in section 210 as well as section 220, Hours of instruction and performances. This policy would apply to schools with approved barber, master barber, dual barber/master barber, cosmetology, nail technician, and wax technician programs. The proposed amendments include the following requirements and guidelines for the school's assessment: (i) the school's assessment shall be based on a review of the student's transcript and the successful completion of a board-approved competency examination administered by the school, (ii) the school may request a copy of a catalog or bulletin giving the full course description when making the evaluation, and (iii) the number of credit hours awarded shall not exceed the actual hours of instruction verified on the transcript or the number of hours specified in the board-approved curriculum for a specific topic.

The amendments described above are analogous to the policy governing transfer hours for estheticians, which would be amended to match these by removing a 300-hour cap currently in place. Specifically, 18VAC41-70-190, Curriculum and hours of instruction requirements, currently limits the number of transfer credit hours for esthetician students to 300 hours, which can be allocated towards the theory or practical components of the training requirements. The Board reports that there is no available evidence to support maintaining the cap in terms of the potential impacts on the health, safety, and welfare of the public.[4]

Estimated Benefits and Costs. The proposed amendments would primarily benefit students enrolled in approved barber, master barber, dual barber/master barber, cosmetology, nail technician, and wax technician programs at schools that are licensed but unaccredited, who seek to transfer to a different school or a different program with overlapping curricular requirements. Such students would save the tuition they would have had to pay to re-take coursework as well as the time spent repeating practical training hours that could not be transferred under the current regulation.

The option to transfer to a different school, as stipulated in the proposed amendments, benefits all enrolled students by providing greater flexibility in response to unforeseen circumstances that might cause a student to pause their coursework for more than two years, and/or relocate to or within Virginia. Thus, all students enrolling in any of these training programs would benefit from having the option of transferring between schools without losing all their completed training hours, even if they do not necessarily intend to transfer at the time of enrollment. Similarly, the proposed amendments would benefit students in esthetician training programs by allowing them to transfer more than 300 hours, provided the school approved the hours based on their assessment of the student's transcript and the student's performance on the board-approved competency examination.

The proposed amendments would also benefit licensed schools that offer approved training programs by allowing them to accept transfer credit hours, which would in turn make them eligible to receive VA financial aid and make them attractive to students who wish to transfer from out-of-state schools. In order to accept transfer students, schools would have to assess the applicant's transcript and offer a competency test that would have to be approved by the Board; they would likely incur some costs to implement this process. However, the proposed amendments would not require training schools to accept transfer students. The fact that training schools have petitioned the Board to make the proposed changes suggests that the costs of assessing transfer credits and maintaining the corresponding paperwork are small relative to the value of enrolling transfer students. The Board reports that esthetics schools, some of which have been conducting assessments for transfer credits for 15 years, do not charge an assessment fee for transfer students and therefore expect that training schools that would be newly allowed to conduct such assessments would not charge fees for assessments either.

The Board reports that roughly 1 to 2 students per year transfer from a master barber training program to a cosmetology training program or vice versa under the current language in 18VAC41-20-50 that would be repealed. These students would no longer be guaranteed transfer credits and would have to go through the same assessment process as other transfer students, which would require a transcript review and a board-approved test. Transfer students who are unable to meet the assessment criteria to receive full transfer credits at one school may either go to another school or raise the issue with the Board. To the extent that implementation of the board-approved competency examination is standardized across schools, failing the exam would indicate insufficient training and thus requiring the exam protects public health and safety. However, implementation of the transcript review may vary significantly across schools; some schools may be improperly incentivized to deny transfer credits because they would lose the income that would result from providing that training.

To the extent that licensed schools seeking to attract transfer students operate in a competitive market, as the Board reports, competition would tend to create disincentives for schools to improperly deny transfer credit hours or to charge students for conducting assessments. Although there is no reporting requirement, the proposed amendments would require training schools to document the basis for transfer, which would be implicitly reviewed by the Board when transfer students eventually submit their transcripts for their license applications. Thus, even in the absence of local competition, the Board would maintain some oversight of the transfer credit assessment process.

Businesses and Other Entities Affected. The Board reports that there are currently 67 barber schools, 155 cosmetology schools, 40 nail schools, 13 wax schools and 47 licensed esthetic schools that would all be affected by the proposed changes.

Small Businesses[5] Affected. The Board estimates that all schools are likely small businesses, and that most are owned

and operated by experienced practitioners. The proposed amendments would benefit these businesses by allowing them to accept transfer students and grant credits towards prior training.

Localities[6] Affected.[7] 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 increase the flexibility for students enrolling in training programs to be become barbers, master barbers, cosmetologists, nail and wax technicians, and estheticians by allowing them to transfer credit hours between schools and between programs with overlapping requirements. This may lead to more individuals enrolling in these programs and eventually working in these professions. The magnitude of the potential increase in the number of professionals working in these fields is difficult to predict without data on current training costs, enrollment rates, and costs of becoming licensed and starting to work in these fields.

Effects on the Use and Value of Private Property. The proposed amendments would increase the value of licensed training schools by allowing them to potentially serve more students, including students transferring from other states, and by making them eligible for VA financial aid. Real estate development costs are not affected.

[1] See https://townhall.virginia.gov/l/ViewGDoc.cfm?gdid=5502 for the guidance document effective May 12, 2014.

[2] Agency Background Document (ABD), page 3. See https://townhall.virginia.gov/l/GetFile.cfm?File=134\5815\9386\AgencyStatement_DPOR_9386_v1.pdf

[3] In an e-mail to the Department of Planning and Budget, the Board stated that the VA requires all schools to be able to evaluate prior credit, grant credit as appropriate, notify the student of the evaluation, and shorten the program certified accordingly. Whenever a student initially enrolls in a school or changes programs at a school the VA requires the school to complete a credit evaluation. VA will then review credit evaluations during compliance surveys and credit evaluation records must be kept and made available to VA upon request. This requirement is found in Title 38, Code of Federal Regulations, Sections 21.4253(d)(3) and 21.4254(C)(4).

[4] See ABD, page 9. (Link in note 2.)

[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 agency concurs with the economic impact analysis prepared by the Department of Planning and Budget.

Summary:

The amendments (i) create specific rules for barbering schools to accept transfer students, allowing transfers between schools based on a competency exam and transcripts from the prior school and limiting the number of hours awarded to the actual number of hours of instruction or the number of hours specified for a topic in the board approved curriculum and (ii) remove the limit on hours that can be transferred in the esthetics regulations.

18VAC41-20-50. Exceptions to training requirements.

A. Virginia licensed cosmetologists with a minimum of two years of work experience shall be eligible for the master barber examination; likewise, a Virginia licensed master barber with a minimum of two years of work experience shall be eligible for the cosmetology examination.

~~B. Virginia licensed master barbers with less than two years of work experience and Virginia master barber students enrolling in a Virginia cosmetology training school shall be given educational credit for the training received for the performances completed at a barber school; likewise, licensed Virginia cosmetologists with less than two years of work experience and Virginia cosmetology students enrolling in a Virginia barber or master barber training school shall be given educational credit for the training received for the performances completed at a cosmetology school.~~

~~C.~~ B. Any barber, master barber, cosmetologist, nail technician, or wax technician applicant having been trained as a barber, master barber, cosmetologist, nail technician, or wax technician in any Virginia state institution shall be eligible for the respective examination.

~~D.~~ C. Any barber, master barber, cosmetologist, nail technician, or wax technician applicant having a minimum of two years of experience in barbering, master barbering, cosmetology, nail care, or waxing in the United States armed forces and having provided documentation satisfactory to the board of that experience shall be eligible for the respective examination.

~~E.~~ D. Any licensed barber or barber student enrolling in a master barber training program in a licensed barber school shall be given educational credit for the training and performances completed in a barbering program at a licensed barber school.

18VAC41-20-210. Curriculum requirements.

A. Each barber school shall submit with its application a curriculum including a course syllabus, a detailed course content outline, a sample of five lesson plans, a sample of evaluation methods to be used, and a breakdown of hours and performances for all courses to be taught that will lead to licensure. The outline for barbering shall include the following:

1. School policies;

2. State law, regulations, and professional ethics;

3. Business and shop management;

4. Client consultation;

5. Personal hygiene;

6. Cutting the hair with a razor, clippers, and shears;

7. Tapering the hair;

8. Thinning the hair;

9. Shampooing the hair;

10. Shaving;

11. Trimming a moustache or beard;

12. Applying hair color;

13. Analyzing skin or scalp conditions;

14. Giving scalp treatments;

15. Giving basic facial massage or treatment;

16. Sanitizing and maintaining implements and equipment; and

17. Honing and stropping a razor.

B. Each barber school seeking to add a master barber program shall submit with its application a curriculum including a course syllabus, a detailed course content outline, a sample of five lesson plans, a sample of evaluation methods to be used, and a breakdown of hours and performances for all courses to be taught that will lead to licensure. The outline for master barbering shall include the following:

1. Styling the hair with a hand hair dryer;

2. Thermal waving;

3. Permanent waving with chemicals;

4. Relaxing the hair;

5. Lightening or toning the hair;

6. Hairpieces and wigs; and

7. Waxing limited to the scalp.

C. Each school seeking to add a dual barber/master barber program shall submit with its application a curriculum including a course syllabus, a detailed course content outline, a sample of five lesson plans, a sample of evaluation methods to be used, and a breakdown of hours and performances for all courses to be taught that will lead to licensure. The outline for dual barber/master barber program shall include the following:

1. School policies;

2. State law, regulations, and professional ethics;

3. Business and shop management;

4. Client consultation;

5. Personal hygiene;

6. Cutting the hair with a razor, clippers, and shears;

7. Tapering the hair;

8. Thinning the hair;

9. Shampooing the hair;

10. Styling the hair with a hand hair dryer;

11. Thermal waving;

12. Permanent waving with chemicals;

13. Relaxing the hair;

14. Shaving;

15. Trimming a moustache or beard;

16. Applying hair color;

17. Lightening or toning the hair;

18. Analyzing skin or scalp conditions;

19. Giving scalp treatments;

20. Waxing limited to the scalp;

21. Giving basic facial massage or treatment;

22. Hair pieces;

23. Sanitizing and maintaining implements and equipment; and

24. Honing and stropping a razor.

D. Each cosmetology school shall submit with its application a curriculum including a course syllabus, a detailed course content outline, a sample of five lesson plans, a sample of evaluation methods to be used, and a breakdown of hours and performances for all courses to be taught that will lead to licensure. The outline for cosmetology shall include the following:

1. Orientation:

a. School policies;

b. State law, regulations, and professional ethics;

c. Personal hygiene; and

d. Bacteriology, sterilization, and sanitation.

2. Manicuring and pedicuring:

a. Anatomy and physiology;

b. Diseases and disorders;

c. Procedures to include both natural and artificial application; and

d. Sterilization.

3. Shampooing and rinsing:

a. Fundamentals;

b. Safety rules;

c. Procedures; and

d. Chemistry, anatomy, and physiology.

4. Scalp treatments:

a. Analysis;

b. Disorders and diseases;

c. Manipulations; and

d. Treatments.

5. Hair styling:

a. Anatomy and facial shapes;

b. Finger waving, molding, and pin curling;

c. Roller curling, combing, and brushing; and

d. Heat curling, waving, and pressing.

6. Hair cutting:

a. Anatomy and physiology;

b. Fundamentals, materials, and equipment;

c. Procedures; and

d. Safety practices.

7. Permanent waving-chemical relaxing:

a. Analysis;

b. Supplies and equipment;

c. Procedures and practical application;

d. Chemistry;

e. Recordkeeping; and

f. Safety.

8. Hair coloring and bleaching:

a. Analysis and basic color theory;

b. Supplies and equipment;

c. Procedures and practical application;

d. Chemistry and classifications;

e. Recordkeeping; and

f. Safety.

9. Skin care and make-up:

a. Analysis;

b. Anatomy;

c. Health, safety, and sanitary rules;

d. Procedures;

e. Chemistry and light therapy;

f. Temporary removal of hair; and

g. Lash and brow tinting.

10. Wigs, hair pieces, and related theory:

a. Sanitation and sterilization;

b. Types; and

c. Procedures.

11. Salon management:

a. Business ethics; and

b. Care of equipment.

E. Each nail school shall submit with its application a curriculum including a course syllabus, a detailed course content outline, a sample of five lesson plans, a sample of evaluation methods to be used, and a breakdown of hours and performances for all courses to be taught that will lead to licensure. The outline for nail care shall include the following:

1. Orientation:

a. School policies; and

b. State law, regulations, and professional ethics;

2. Sterilization, sanitation, bacteriology, and safety;

3. Anatomy and physiology;

4. Diseases and disorders of the nail;

5. Nail procedures (i.e., manicuring, pedicuring, and nail extensions); and

6. Nail theory and nail structure and composition.

F. Each waxing school shall submit with its application a curriculum including a course syllabus, a detailed course content outline, a sample of five lesson plans, a sample of evaluation methods to be used, and a breakdown of hours and performances for all courses to be taught that will lead to licensure. The outline for waxing shall include the following:

1. Orientation:

a. School policies;

b. State law, regulations, and professional ethics; and

c. Personal hygiene.

2. Skin care and treatment:

a. Analysis;

b. Anatomy and physiology;

c. Diseases and disorders of the skin;

d. Health sterilization, sanitation, bacteriology, and safety including infectious disease control measures; and

e. Temporary removal of hair.

3. Skin theory, skin structure, and composition.

4. Client consultation:

a. Health conditions;

b. Skin analysis;

c. Treatments;

d. Client expectations; and

e. Health forms and questionnaires.

5. Waxing procedures for brow, lip, facial, legs, arms, underarm, chest, back, and bikini areas:

a. Fundamentals;

b. Safety rules; and

c. Procedures.

6. Wax treatments:

a. Analysis;

b. Disorders and diseases;

c. Manipulations; and

d. Treatments.

7. Salon management:

a. Business ethics; and

b. Care of equipment.

G. A licensed school with an approved barber, master barber, dual barber/master barber, cosmetology, nail technician, or wax technician program may conduct an assessment of a student's competence in the respective profession and, based on the assessment, give credit toward the hours requirements specified in the respective subsection of this section and 18VAC41-20-220.

The school shall make the assessment based on a review of the student's transcript and the successful completion of a board-approved competency examination administered by the school. The school may also request a copy of a catalog or bulletin giving the full course description when making the evaluation. The number of credit hours awarded shall not exceed the actual hours of instruction verified on the transcript or the number of hours specified in the board-approved curriculum for a specific topic.

18VAC41-70-190. Curriculum and hours of instruction requirements.

A. Each esthetics school shall submit with its application a curriculum including~~, but not limited to,~~ a course syllabus, a detailed course content outline, a sample of five lessons plans, a sample of evaluation methods to be used, and a breakdown of hours or credit hours and performances for all courses to be taught that will lead to licensure or certification. In addition, if a school awards credit in accordance with subsection D of this section, the school shall submit copies of the assessment policy, method of evaluation of transcripts and the examination to be used in making the assessment.

B. The esthetics curriculum and hours of instruction in this technology shall consist of 600 hours or equivalent credit hours and shall include~~, but not be limited to,~~ the following:

1. Orientation and business topics - minimum of 25 hours of instruction.

a. School policies;

b. Management;

c. Sales, inventory, and retailing;

d. Taxes and payroll;

e. Insurance;

f. Client records and confidentiality; and

g. Professional ethics and practices.

2. Laws and regulations - minimum of 10 hours of instruction.

3. General sciences - minimum of 80 hours of instruction.

a. Bacteriology;

b. Microorganisms;

c. Infection control, disinfection, sterilization;

d. Occupational Safety and Health Administration (OSHA) requirements;

e. Material Safety Data Sheet (MSDS);

f. General procedures and safety measures;

g. Cosmetic chemistry;

h. Products and ingredients; and

i. Nutrition.

4. Applied sciences - minimum of 95 hours of instruction.

a. Anatomy and physiology;

b. Skin structure and function;

c. Skin types;

d. Skin conditions; and

e. Diseases and disorders of the skin.

5. Skin care - minimum of 255 hours of instruction.

a. Health screening;

b. Skin analysis and consultation;

c. Effleurage and related movements and manipulations of the face and body;

d. Cleansings procedures;

e. Masks;

f. Extraction techniques;

g. Machines, equipment, and electricity;

h. Manual facials and treatments;

i. Machine, electrical facials, and treatments; and

j. General procedures and safety measures.

6. Makeup - minimum of 65 hours of instruction.

a. Setup, supplies, and implements;

b. Color theory;

c. Consultation;

d. General and special occasion application;

e. Camouflage;

f. Application of false lashes and lash extensions;

g. Lash and tinting;

h. Lash perming;

i. Lightning of the hair on body except scalp; and

j. General procedures and safety measures.

7. Body and other treatments - minimum of 20 hours of instruction.

a. Body treatments;

b. Body wraps;

c. Body masks;

d. Body scrubs;

e. Aromatherapy; and

f. General procedures and safety measures.

8. Hair removal - minimum of 50 hours of instruction.

a. Types of hair removal;

b. Wax types;

c. Tweezing;

d. Chemical hair removal;

e. Mechanical hair removal; and

f. General procedures and safety measures.

C. The master esthetics curriculum and hours of instruction in this technology shall consist of 600 hours or equivalent credit hours and shall include~~, but not be limited to,~~ the following:

1. Orientation, advanced business subjects, and infection control - minimum of 45 hours of instruction.

a. School policies and procedures;

b. Professional ethics and practices;

c. Ethics and professional conduct;

d. Insurance and liability issues;

e. Confidentiality and Health Insurance Portability and Accountability Act of 1996 Privacy Rule (HIPAA);

f. Client records and documentation;

g. Microbiology and bacteriology;

h. Infection control, disinfection, and sterilization;

i. Occupational Safety and Health Administration (OSHA), U.S. Food and Drug Administration (FDA); and Material Safety Data Sheet (MSDS); and

j. Personal protective equipment.

2. State laws, rules and regulations - minimum of 10 hours of instruction.

3. Advanced anatomy and physiology - minimum of 65 hours of instruction.

a. Advanced anatomy and physiology;

b. Advanced skin structure and functions;

c. Advanced skin typing, and conditions;

d. Advanced disease and disorders;

e. Advanced cosmetic ingredients;

f. Pharmacology; and

g. Advanced homecare.

4. Advanced skin care and advanced modalities - minimum of 90 hours of instruction.

a. Introduction to microdermabrasion and dermaplaning;

b. Indications and contraindications for crystal microdermabrasion;

c. General procedures and safety measures for crystal microdermabrasion;

d. Indications and contraindications for crystal-free microdermabrasion and dermaplaning;

e. General procedures and safety measures for crystal-free microdermabrasion and dermaplaning;

f. Equipment safety: crystal and crystal-free microdermabrasion and dermaplaning;

g. Waste disposal, Occupational Safety and Health Administration (OSHA);

h. Introduction to microdermabrasion techniques and proper protocols;

i. Machine parts, operation, protocols, care, waste disposal, and safety;

j. Practical application and consultation for crystal microdermabrasion;

k. Practical application and consultation for crystal-free microdermabrasion and dermaplaning; and

l. Pretreatment and posttreatment for microdermabrasion.

5. Advanced procedures and chemical exfoliation - minimum of 270 hours of instruction.

a. Advanced skin analysis and consultation and health screening and documentation;

b. Advanced procedures, light treatments, light-emitting diode (LED), intense pulsed light device (IPL);

c. Advanced manual, machine, and electric treatments, microcurrent, and ultrasound;

d. Introduction to chemical exfoliation and peels of the epidermis;

e. Fundamentals of skin care associated with chemical exfoliation and peels and wound healing;

f. Pretreatment and posttreatment for chemical exfoliation and peels;

g. Assessing suitability and predicting chemical exfoliation efficacy;

h. General practical application and consultation protocols;

i. Practical application and consultation for enzymes, herbal exfoliations, and vitamin-based peels;

j. Indications and contraindications for enzymes, herbal exfoliations, and vitamin-based peels;

k. General procedures and safety measures for herbal exfoliations, and vitamin-based peels;

l. Pretreatments and posttreatments for herbal exfoliations, and vitamin-based peels;

m. Practical application and consultation for alpha hydroxy peels;

n. Indications and contraindications for alpha hydroxy peels;

o. General procedures and safety measures for alpha hydroxy peels;

p. Pretreatment and posttreatment for alpha hydroxy peels;

q. Practical application and consultation for beta hydroxy peels;

r. Indications and contraindications for beta hydroxy peels;

s. General procedures and safety measures for beta hydroxy peels;

t. Pretreatment and posttreatment for beta hydroxy peels;

u. Practical application and consultation for Jessner and Modified Jessner peels;

v. Indications and contraindications for Jessner and Modified Jessner peels;

w. General procedures and safety measures for Jessner and Modified Jessner peels;

x. Pretreatment and posttreatment for Jessner and Modified Jessner peels;

y. Practical application and consultation for trichloracetic acid peels;

z. Indications and contraindications for trichloracetic acid peels;

aa. General procedures and safety measures for trichloracetic acid peels; and

bb. Pretreatment and posttreatment for trichloracetic acid peels.

6. Lymphatic drainage - minimum of 120 hours of instruction.

a. Introduction to lymphatic drainage;

b. Tissues and organs of the lymphatic system;

c. Functions of the lymphatic system;

d. Immunity;

e. Etiology of edema;

f. Indications and contraindications for lymphatic drainage;

g. Lymphatic drainage manipulations and movements;

h. Face and neck treatment sequence;

i. Lymphatic drainage on the trunk and upper extremities;

j. Lymphatic drainage on the trunk and lower extremities;

k. Cellulite;

l. Using lymphatic drainage with other treatments; and

m. Machine-aided lymphatic drainage.

D. A licensed esthetics school with an approved esthetics program may conduct an assessment of a student's competence in esthetics and, based on the assessment, give ~~a maximum of 300 hours~~ credit ~~towards~~ toward the requirements specified in subsection B of this section and 18VAC41-70-200 A. A licensed esthetics school with an approved master esthetics program may conduct an assessment of a student's competence in master esthetics and, based on the assessment, give ~~a maximum of 300 hours~~ credit ~~towards~~ toward the requirements specified in subsection C of this section and 18VAC41-70-200 B.

The school shall make the assessment based on a review of the student's transcript and the successful completion of a board-approved competency examination administered by the school. The school may also request a copy of a catalog or bulletin giving the full course description when making the evaluation. The number of credit hours awarded shall not exceed the actual hours of instruction verified on the transcript or the number of hours specified in the board-approved curriculum for a specific topic.

E. The instructor curriculum and hours of instruction shall consist of 400 hours or equivalent credit hours and shall include~~, but not be limited to,~~ the following:

1. Orientation;

2. Curriculum;

3. Course outline and development;

4. Lesson planning;

5. Classroom management;

6. Teaching techniques;

7. Methods of instruction;

8. Learning styles;

9. Learning disabilities;

10. Teaching aids;

11. Developing, administering, and grading examinations;

12. School administration;

13. Recordkeeping;

14. Laws and regulations;

15. Presentation of theoretical subjects;

16. Presentation of practical subjects;

17. Supervision of clinic floor; and

18. Practicum teaching.

VA.R. Doc. No. R22-6509; Filed December 22, 2021, 1:53 p.m.

BOARD FOR BRANCH PILOTS

Action Withdrawn

Registrar's Notice: The Board for Branch Pilots submitted on September 21, 2021, at 12:32 p.m. a regulatory action certified by the Office of Attorney General as within the board's regulatory authority and appropriate for exemption from Article 2 (§ 2.2-4006 et seq.) of the Administrative Process Act pursuant to § 2.2-4006 A 4 a of the Code of Virginia, which exempts actions necessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved. This action was to conform regulation to Chapters 500 and 501 of the 2021 Acts of Assembly, Special Session I. The action was "Certified pursuant to § 2.2-4103 of the Code of Virginia" by the agency regulatory coordinator upon transmittal. The statement of final agency action was provided on a Virginia Regulatory Town Hall Form TH-09 dated September 20, 2021, as "At its meeting on September 13, 2021, the Board authorized staff to file the necessary exempt action to conform the Board for Branch Pilots Regulations."

Title of Regulation: **18VAC45-20. Board for Branch Pilots Regulations (amending 18VAC45-20-5, 18VAC45-20-40).**

Statutory Authority: § 54.1-902 of the Code of Virginia.

The Board for Branch Pilots has WITHDRAWN the regulatory action for **18VAC45-20, Board for Branch Pilots Regulations,** which was published in 38:4 VA.R. 452-453 October 11, 2021. The action was withdrawn on December 21, 2021. The reason for withdrawal is as provided: "This action must be withdrawn because it was never properly adopted by the Board. Va. Code § 2.2-4103 states, in relevant part, "No regulation or amendment or repeal thereof shall be effective until filed with the Registrar." Because the board never adopted the exempt action, it was never properly filed with the Registrar and, therefore, never became effective. The regulations in effect are those dated December 1, 2012. At its December 10, 2021, meeting, the Board directed staff to withdraw this action. The Board will incorporate the changes required by SB 1406 through the standard regulatory review process at a later date."

Agency Contact: Kathleen R. Nosbisch, Executive Director, Board for Branch Pilots, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8514, FAX (804) 527-4294, or email branchpilots@dpor.virginia.gov.

VA.R. Doc. No. R22-5014; Filed December 21, 2021, 8:49 p.m.

BOARD FOR CONTRACTORS

Final Regulation

Title of Regulation: **18VAC50-22. Board for Contractors Regulations (amending 18VAC50-22-30 through 18VAC50-22-60).**

Statutory Authority: § 54.1-201 of the Code of Virginia.

Effective Date: February 16, 2022.

Agency Contact: Eric L. Olson, Executive Director, Board for Contractors, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-2785, FAX (866) 430-1033, or email contractors@dpor.virginia.gov.

Summary:

The amendments divide the existing sewage disposal system contracting specialty into two new specialties - alternative sewage disposal system contracting and conventional sewage disposal system contracting - to align the licensing of the contractor licenses for these specialties issued by the Board for Contractors with the individual licenses of the specialties issued by the Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals.

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

18VAC50-22-30. Definitions of specialty services.

The following words and terms when used in this chapter unless a different meaning is provided or is plainly required by the context shall have the following meanings:

"Accessibility services contracting" (Abbr: ASC) means the service that provides for all work in connection with the constructing, installing, altering, servicing, repairing, testing, or maintenance of wheelchair lifts, incline chairlifts, dumbwaiters with a capacity limit of 300 pounds, and private residence elevators in accordance with the Virginia Uniform Statewide Building Code (13VAC5-63). The EEC specialty may also perform this work. This specialty does not include work on limited use-limited application (LULA) elevators.

"Accessibility services contracting - LULA" (Abbr: ASL) means the service that provides for all work in connection with the constructing, installing, altering, servicing, repairing, testing, or maintenance of wheelchair lifts, incline chairlifts, dumbwaiters with a capacity limit of 300 pounds, private residence elevators, and limited use-limited application (LULA) elevators in accordance with the Virginia Uniform Statewide Building Code (13VAC5-63). The EEC specialty may also perform this work.

"Alternative energy system contracting" (Abbr: AES) means the service that provides for the installation, repair or improvement, from the customer's meter, of alternative energy generation systems, supplemental energy systems and associated equipment annexed to real property. This service does not include the installation of emergency generators powered by fossil fuels. No other classification or specialty service provides this function. This specialty does not provide for electrical, plumbing, gas fitting, or HVAC functions.

"Alternative sewage disposal system contracting" (Abbr: ADS) means the service that provides for the installation, repair, improvement, or removal of a treatment works that is not a conventional onsite sewage system and does not result in

a point source discharge. No other classification or specialty service provides this function.

"Asbestos contracting" (Abbr: ASB) means the service that provides for the installation, removal, or encapsulation of asbestos containing materials annexed to real property. No other classification or specialty service provides for this function.

"Asphalt paving and sealcoating contracting" (Abbr: PAV) means the service that provides for the installation of asphalt paving or sealcoating, or both, on subdivision streets and adjacent intersections, driveways, parking lots, tennis courts, running tracks, and play areas, using materials and accessories common to the industry. This includes height adjustment of existing sewer manholes, storm drains, water valves, sewer cleanouts and drain grates, and all necessary excavation and grading. The H/H classification also provides for this function.

"Billboard/sign contracting" (Abbr: BSC) means the service that provides for the installation, repair, improvement, or dismantling of any billboard or structural sign permanently annexed to real property. H/H and CBC are the classifications that can perform this work except that a contractor in this specialty may connect or disconnect signs to existing electrical circuits. No trade related plumbing, electrical, or HVAC work is included in this function.

"Blast/explosive contracting" (Abbr: BEC) means the service that provides for the use of explosive charges for the repair, improvement, alteration, or demolition of any real property or any structure annexed to real property.

"Commercial improvement contracting" (Abbr: CIC) means the service that provides for repair or improvement to structures not defined as dwellings and townhouses in the USBC. The CBC classification also provides for this function. The CIC specialty does not provide for the construction of new buildings, accessory buildings, electrical, plumbing, HVAC, or gas work.

"Concrete contracting" (Abbr: CEM) means the service that provides for all work in connection with the processing, proportioning, batching, mixing, conveying, and placing of concrete composed of materials common to the concrete industry. This includes finishing, coloring, curing, repairing, testing, sawing, grinding, grouting, placing of film barriers, sealing, and waterproofing. Construction and assembling of forms, molds, slipforms, and pans, centering, and the use of rebar are also included. The CBC, RBC, and H/H classifications also provide for this function.

"Conventional sewage disposal system contracting" (Abbr: CDS) means the service that provides for the installation, repair, improvement, or removal of a treatment works consisting of one or more septic tanks with gravity, pumped, or siphoned conveyance to a gravity distributed subsurface drainfield. The ADS specialty may also perform this work.

"Drug lab remediation contracting" (Abbr: DLR) means the service that provides for the cleanup, treatment, containment, or removal of hazardous substances at or in a property formerly used to manufacture methamphetamine or other drugs and may include demolition or disposal of structures or other property. No other classification or specialty provides for this function.

"Drywall contracting" (Abbr: DRY) means the service that provides for the installation, taping, and finishing of drywall, panels and assemblies of gypsum wallboard, sheathing, and cementitious board, and the installation of studs made of sheet metal for the framing of ceilings and nonstructural partitioning. The CBC and RBC classifications and HIC and CIC specialties also provide for this function.

"Electronic/communication service contracting" (Abbr: ESC) means the service that provides for the installation, repair, improvement, or removal of electronic or communications systems annexed to real property including telephone wiring, computer cabling, sound systems, data links, data and network installation, television and cable TV wiring, antenna wiring, and fiber optics installation, all of which operate at 50 volts or less. A firm holding an ESC license is responsible for meeting all applicable tradesman licensure standards. The ELE classification also provides for this function.

"Elevator/escalator contracting" (Abbr: EEC) means the service that provides for the installation, repair, improvement, or removal of elevators or escalators permanently annexed to real property. A firm holding an EEC license is responsible for meeting all applicable individual license and certification regulations. No other classification or specialty service provides for this function.

"Environmental monitoring well contracting" (Abbr: EMW) means the service that provides for the construction of a well to monitor hazardous substances in the ground.

"Environmental specialties contracting" (Abbr: ENV) means the service that provides for installation, repair, removal, or improvement of pollution control and remediation devices. No other specialty provides for this function. This specialty does not provide for electrical, plumbing, gas fitting, or HVAC functions.

"Equipment/machinery contracting" (Abbr: EMC) means the service that provides for the installation or removal of equipment or machinery including conveyors or heavy machinery. Boilers exempted by the Virginia Uniform Statewide Building Code (13VAC5-63) but regulated by the Department of Labor and Industry are also included in this specialty. This specialty does not provide for any electrical, plumbing, process piping, or HVAC functions.

"Farm improvement contracting" (Abbr: FIC) means the service that provides for the installation, repair, or improvement of a nonresidential farm building or structure, or nonresidential farm accessory-use structure, or additions thereto. The CBC classification also provides for this function.

The FIC specialty does not provide for any electrical, plumbing, HVAC, or gas fitting functions.

"Finish carpentry contracting" (Abbr: FIN) means the service that provides for the installation, repair, and finishing of cabinets, sash casing, door casing, wooden flooring, baseboards, countertops, and other millwork. Finish carpentry does not include the installation of ceramic tile, marble, and artificial or cultured stone. The CBC and RBC classifications and HIC and CIC specialties also provide for this function.

"Fire alarm systems contracting" (Abbr: FAS) means the service that provides for the installation, repair, or improvement of fire alarm systems that operate at 50 volts or less. The ELE classification also provides for this function. A firm with an FAS license is responsible for meeting all applicable tradesman licensure standards.

"Fire sprinkler contracting" (Abbr: SPR) means the service that provides for the installation, repair, alteration, addition, testing, maintenance, inspection, improvement, or removal of sprinkler systems using water as a means of fire suppression when annexed to real property. This specialty does not provide for the installation, repair, or maintenance of other types of fire suppression systems. The PLB classification allows for the installation of systems permitted to be designed in accordance with the plumbing provisions of the USBC. This specialty may engage in the installation of backflow prevention devices in the fire sprinkler supply main and incidental to the sprinkler system installation when the installer has received formal vocational training approved by the board that included instruction in the installation of backflow prevention devices.

"Fire suppression contracting" (Abbr: FSP) means the service that provides for the installation, repair, improvement, or removal of fire suppression systems including halon and other gas systems, dry chemical systems, and carbon dioxide systems annexed to real property. No other classification provides for this function. The FSP specialty does not provide for the installation, repair, or maintenance of water sprinkler systems.

"Flooring and floor covering contracting" (Abbr: FLR) means the service that provides for the installation, repair, improvement, or removal of materials that are common in the flooring industry. This includes wood and wood composite flooring, tack strips or other products used to secure carpet, vinyl and linoleum, ceramic, marble, stone, and all other types of tile, and includes the installation or replacement of subflooring, leveling products, or other materials necessary to facilitate the installation of the flooring or floor covering. This does not include the installation, repair, or removal of floor joists or other structural components of the flooring system. The CBC and RBC classifications and HIC and CIC specialties also provide for this function.

"Framing subcontractor" (Abbr: FRM) means the service which, while serving in the role of a subcontractor to a licensed prime contractor, provides for the construction, removal, repair, or improvement to any framing or rough carpentry necessary for the construction of framed structures, including the installation and repair of individual components of framing systems. The CBC and RBC classifications and HIC and CIC specialties also provide for this function.

"Gas fitting contracting" (Abbr: GFC) means the service that provides for the installation, repair, improvement, or removal of gas piping and appliances annexed to real property. A firm holding a GFC license is responsible for meeting all applicable individual (tradesman) licensure regulations.

"Glass and glazing contracting" (Abbr: GLZ) means the service that provides for the installation, assembly, repair, improvement, or removal of all makes and kinds of glass, glass work, mirrored glass, and glass substitute for glazing; executes the fabrication and glazing of frames, panels, sashes and doors; or installs these items in any structure. This specialty includes the installation of standard methods of weatherproofing, caulking, glazing, sealants, and adhesives. The CBC and RBC classifications and HIC and CIC specialties also provide for this function.

"Home improvement contracting" (Abbr: HIC) means the service that provides for repairs or improvements to dwellings and townhouses as defined in the USBC or structures annexed to those dwellings or townhouses as defined in the USBC. The RBC classification also provides for this function. The HIC specialty does not provide for electrical, plumbing, HVAC, or gas fitting functions. It does not include new construction functions beyond the existing building structure other than decks, patios, driveways, and utility out buildings that do not require a permit per the USBC.

"Industrialized building contracting" (Abbr: IBC) means the service that provides for the installation or removal of an industrialized building as defined in the Virginia Industrialized Building Safety Regulations (13VAC5-91). This classification covers foundation work in accordance with the provisions of the Virginia Uniform Statewide Building Code (13VAC5-63) and allows the licensee to complete internal tie-ins of plumbing, gas, electrical, and HVAC systems. It does not allow for installing additional plumbing, gas, electrical, or HVAC work such as installing the service meter, or installing the outside compressor for the HVAC system. The CBC and RBC classifications also provide for this function.

"Insulation and weather stripping contracting" (Abbr: INS) means the service that provides for the installation, repair, improvement, or removal of materials classified as insulating media used for the sole purpose of temperature control or sound control of residential and commercial buildings. It does not include the insulation of mechanical equipment and ancillary lines and piping. The CBC and RBC classifications and HIC and CIC specialties also provide for this function.

"Landscape irrigation contracting" (Abbr: ISC) means the service that provides for the installation, repair, improvement, or removal of irrigation sprinkler systems or outdoor sprinkler systems. The PLB and H/H classifications also provide for this function. This specialty may install backflow prevention devices incidental to work in this specialty when the installer has received formal vocational training approved by the board that included instruction in the installation of backflow prevention devices.

"Landscape service contracting" (Abbr: LSC) means the service that provides for the alteration or improvement of a land area not related to any other classification or service activity by means of excavation, clearing, grading, construction of retaining walls for landscaping purposes, or placement of landscaping timbers. This specialty may remove stumps and roots below grade. The CBC, RBC, and H/H classifications also provide for this function.

"Lead abatement contracting" (Abbr: LAC) means the service that provides for the removal or encapsulation of lead-containing materials annexed to real property. No other classification or specialty service provides for this function, except that the PLB and HVA classifications may provide this service incidental to work in those classifications.

"Liquefied petroleum gas contracting" (Abbr: LPG) means the service that includes the installation, maintenance, extension, alteration, or removal of all piping, fixtures, appliances, and appurtenances used in transporting, storing, or utilizing liquefied petroleum gas. This excludes hot water heaters, boilers, and central heating systems that require an HVA or PLB license. The GFC specialty also provides for this function. A firm holding an LPG license is responsible for meeting all applicable individual license and certification regulations.

"Manufactured home contracting" (Abbr: MHC) means the service that provides for the installation or removal of a manufactured home as defined in the Virginia Manufactured Home Safety Regulations (13VAC5-95). This classification does not cover foundation work; however, it does allow installation of piers covered under HUD regulations. It does allow a licensee to do internal tie-ins of plumbing, gas, electrical, or HVAC equipment. It does not allow for installing additional plumbing, gas, electrical, or HVAC work such as installing the service meter or installing the outside compressor for the HVAC system. No other specialty provides for this function.

"Marine facility contracting" (Abbr: MCC) means the service that provides for the construction, repair, improvement, or removal of any structure the purpose of which is to provide access to, impede, or alter a body of surface water. The CBC and H/H classifications also provide for this function. The MCC specialty does not provide for the construction of accessory structures or electrical, HVAC, or plumbing functions.

"Masonry contracting" (Abbr: BRK) means the service that includes the installation of brick, concrete block, stone, marble, slate, or other units and products common to the masonry industry, including mortarless type masonry products. This includes installation of grout, caulking, tuck pointing, sand blasting, mortar washing, parging, and cleaning and welding of reinforcement steel related to masonry construction. The CBC and RBC classifications and the HIC and CIC specialties also provide for this function.

"Miscellaneous contracting" (Abbr: MSC) means the service that may fall under another classification or specialty service but is more limited than the functions provided by the other classification or specialty. This specialty is limited to a single activity and will be restricted to that specialty only. This specialty may not be used for work that would fall under the ELE, HVA, PLB, GFC, LPG, NGF, EEC, WWP, ASC, LAC, or ASB classification or specialty. Contractors applying for the MSC specialty will have their applications reviewed by the Board for Contractors.

"Natural gas fitting provider contracting" (Abbr: NGF) means the service that provides for the incidental repair, testing, or removal of natural gas piping or fitting annexed to real property. This does not include new installation of gas piping for hot water heaters, boilers, central heating systems, or other natural gas equipment that requires an HVA or PLB license. The GFC specialty also provides for this function. A firm holding an NGF license is responsible for meeting all applicable individual license and certification regulations.

"Painting and wallcovering contracting" (Abbr: PTC) means the service that provides for the application of materials common to the painting and decorating industry for protective or decorative purposes, the installation of surface coverings such as vinyls, wall papers, and cloth fabrics. This includes surface preparation, caulking, sanding, and cleaning preparatory to painting or coverings and includes both interior and exterior surfaces. The CBC and RBC classifications and the HIC and CIC specialties also provide for this function.

"Radon mitigation contracting" (Abbr: RMC) means the service that provides for additions, repairs, or improvements to buildings or structures, for the purpose of mitigating or preventing the effects of radon gas. No electrical, plumbing, gas fitting, or HVAC functions are provided by this specialty.

"Recreational facility contracting" (Abbr: RFC) means the service that provides for the construction, repair, or improvement of any recreational facility, excluding paving and the construction of buildings, plumbing, electrical, and HVAC functions. The CBC classification also provides for this function.

"Refrigeration contracting" (Abbr: REF) means the service that provides for installation, repair, or removal of any refrigeration equipment (excluding HVAC equipment). No electrical, plumbing, gas fitting, or HVAC functions are

provided by this specialty. This specialty is intended for those contractors who repair or install coolers, refrigerated casework, ice-making machines, drinking fountains, cold room equipment, and similar hermetic refrigeration equipment. The HVA classification also provides for this function.

"Roofing contracting" (Abbr: ROC) means the service that provides for the installation, repair, removal, or improvement of materials common to the industry that form a watertight, weather resistant surface for roofs and decks. This includes roofing system components when installed in conjunction with a roofing project, application of dampproofing or waterproofing, and installation of roof insulation panels and other roof insulation systems above roof deck. The CBC and RBC classifications and the HIC and CIC specialties also provide for this function.

~~"Sewage disposal systems contracting" (Abbr: SDS) means the service that provides for the installation, repair, improvement, or removal of septic tanks, septic systems, and other onsite sewage disposal systems annexed to real property.~~

"Steel erection contracting" (Abbr: STL) means the service that provides for the fabrication and erection of structural steel shapes and plates, regardless of shape or size, to be used as structural members, or tanks, including any related riveting, welding, and rigging. This specialty includes the fabrication, placement and tying of steel reinforcing bars (rods), and post-tensioning to reinforce concrete buildings and structures. The CBC and RBC classifications and HIC and CIC specialties also provide for this function.

"Swimming pool construction contracting" (Abbr: POL) means the service that provides for the construction, repair, improvement, or removal of in-ground swimming pools. The CBC and RBC classifications and the RFC specialty also provide for this function. No trade related plumbing, electrical, backflow, or HVAC work is included in this specialty.

"Tile, marble, ceramic, and terrazzo contracting" (Abbr: TMC) means the service that provides for the preparation, fabrication, construction, and installation of artificial marble, burned clay tile, ceramic, terrazzo, encaustic, faience, quarry, semi-vitreous, cementitious board, and other tile, excluding hollow or structural partition tile. The CBC and RBC classifications and HIC and CIC specialties also provide for this function.

"Underground utility and excavating contracting" (Abbr: UUC) means the service that provides for the construction, repair, improvement, or removal of main sanitary sewer collection systems, main water distribution systems, storm sewer collection systems, and the continuation of utility lines from the main systems to a point of termination up to and including the meter location for the individual occupancy, sewer collection systems at property line, or residential or single-occupancy commercial properties, or on multi-occupancy properties at manhole or wye lateral extend to an invert elevation as engineered to accommodate future building sewers, water distribution systems, or storm sewer collection systems at storm sewer structures. This specialty may install empty underground conduits in rights-of way, easements, platted rights-of-way in new site development, and sleeves for parking lot crossings if each conduit system does not include installation of any conductor wiring or connection to an energized electrical system. The H/H classification also provides for this function.

"Vessel construction contracting" (Abbr: VCC) means the service that provides for the construction, repair, improvement, or removal of nonresidential vessels, tanks, or piping that hold or convey fluids other than sanitary, storm, waste, or potable water supplies. The H/H classification also provides for this function.

"Water well/pump contracting" (Abbr: WWP) means the service that provides for the installation of a water well system, including geothermal wells, which includes construction of a water well to reach groundwater, as defined in § 62.1-255 of the Code of Virginia, and the installation of the well pump and tank, including pipe and wire, up to and including the point of connection to the plumbing and electrical systems. No other classification or specialty service provides for construction of water wells. This regulation shall not exclude the PLB, ELE, or HVA classification from installation of pumps and tanks.

Note: Specialty contractors engaging in construction that involves the following activities or items or similar activities or items may fall under the CIC, HIC, and FIC specialty services, or they may fall under the CBC or RBC classification.

Appliances	Fences	Railings
Awnings	Fiberglass	Rigging
Blinds	Fireplaces	Rubber linings
Bulkheads	Fireproofing	Sandblasting
Carpeting	Fixtures	Scaffolding
Ceilings	Grouting	Screens
Chimneys	Guttering	Shutters
Chutes	Interior decorating	Siding
Curtains	Lubrication	Skylights
Curtain walls	Metal work	Storage bins and lockers
Decks	Millwrighting	Stucco
Doors	Mirrors	Vaults
Drapes	Miscellaneous iron	Wall panels

Epoxy	Ornamental iron	Waterproofing
Exterior decoration	Partitions	Windows
Facings	Protective coatings	

18VAC50-22-40. Requirements for a Class C license.

A. A firm applying for a Class C license must meet the requirements of this section.

B. For every classification or specialty in which the firm seeks to be licensed, the firm shall name a qualified individual who meets the following requirements:

1. Is at least 18 years old;

2. Has a minimum of two years of experience in the classification or specialty for which he is the qualifier;

3. Is a full-time employee of the firm as defined in this chapter or is a member of the responsible management of the firm; and

4. a. Has obtained the appropriate certification for the following specialties:

(1) Blast/explosive contracting (Department of Fire Programs explosive use certification);

(2) Fire sprinkler (NICET Sprinkler III certification); and

(3) Radon mitigation (EPA or DEQ accepted radon certification).

b. Has obtained, pursuant to the Individual Licensing and Certification Regulations, a master license for Plumbing, HVAC, Electrical, Gas Fitting, Natural Gas Fitting Provider, and Liquefied Petroleum Gas Contracting.

c. Has completed, for the drug lab remediation specialty, a remediation course approved by the board and a board-approved examination.

d. Has obtained, pursuant to the Individual Licensing and Certification Regulations, certification as an Elevator Mechanic for Elevator Escalator Contracting and certification as a Water Well Systems Provider for Water Well/Pump Contracting.

e. Has obtained, pursuant to the Onsite Sewage System Professionals Licensing Regulations (18VAC160-40), a master conventional onsite sewage system installer license for Conventional Sewage Disposal System Contracting and a master alternative onsite sewage system installer license for Alternative Sewage Disposal System Contracting.

f. Has been approved by the Board for Contractors for the miscellaneous specialty (MSC).

~~f.~~ g. Has completed a board-approved examination for all other classifications and specialties that do not require other certification or licensure.

C. The firm shall provide information for the past five years prior to application on any outstanding, past-due debts and judgments; outstanding tax obligations; defaults on bonds; or pending or past bankruptcies. The firm and all members of the responsible management of the firm shall submit information on any past-due debts and judgments or defaults on bonds directly related to the practice of contracting as defined in Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1 of the Code of Virginia.

D. The firm and all members of the responsible management of the firm shall disclose at the time of application any current or previous contractor licenses held in Virginia or in other jurisdictions and any disciplinary actions taken on these licenses. This includes any monetary penalties, fines, suspensions, revocations, surrender of a license in connection with a disciplinary action, or voluntary termination of a license in Virginia or in any other jurisdiction.

E. In accordance with § 54.1-204 of the Code of Virginia, all applicants shall disclose the following information about the firm, all members of the responsible management, and the qualified individual for the firm:

1. All non-marijuana misdemeanor convictions within three years of the date of application; and

2. All felony convictions during their lifetimes.

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.

F. A member of responsible management shall have successfully completed a board-approved basic business course.

18VAC50-22-50. Requirements for a Class B license.

A. A firm applying for a Class B license must meet the requirements of this section.

B. A firm shall name a designated employee who meets the following requirements:

1. Is at least 18 years old;

2. Is a full-time employee of the firm as defined in this chapter, or is a member of responsible management as defined in this chapter;

3. Has passed a board-approved examination as required by § 54.1-1108 of the Code of Virginia or has been exempted from the exam requirement in accordance with § 54.1-1108.1 of the Code of Virginia; and

4. Has followed all rules established by the board or by the testing service acting on behalf of the board with regard to conduct at the examination. Such rules shall include any written instructions communicated prior to the examination date and any oral or written instructions given at the site on the date of the exam.

C. For every classification or specialty in which the firm seeks to be licensed, the firm shall name a qualified individual who meets the following requirements:

1. Is at least 18 years old;

2. Has a minimum of three years of experience in the classification or specialty for which he is the qualifier;

3. Is a full-time employee of the firm as defined in this chapter or is a member of the responsible management of the firm;

4. a. Has obtained the appropriate certification for the following specialties:

(1) Blast/explosive contracting (Department of Fire Programs explosive use certification);

(2) Fire sprinkler (NICET Sprinkler III certification); and

(3) Radon mitigation (EPA or DEQ accepted radon certification).

b. Has obtained, pursuant to the Individual Licensing and Certification Regulations, a master license for Plumbing, HVAC, Electrical, Gas Fitting, Natural Gas Fitting Provider, and Liquefied Petroleum Gas Contracting.

c. Has completed, for the drug lab remediation specialty, a remediation course approved by the board and a board-approved examination.

d. Has obtained, pursuant to the Individual Licensing and Certification Regulations, certification as an Elevator Mechanic for Elevator Escalator Contracting and certification as a Water Well Systems Provider for Water Well/Pump Contracting.

e. Has obtained, pursuant to the Onsite Sewage System Professionals Licensing Regulations (18VAC160-40), a master conventional onsite sewage system installer license for Conventional Sewage Disposal System Contracting and a master alternative onsite sewage system installer license for Alternative Sewage Disposal System Contracting.

f. Has been approved by the Board for Contractors for the miscellaneous specialty (MSC).

~~f.~~ g. Has completed a board-approved examination for all other classifications and specialties that do not require other certification or licensure.

D. Each firm shall submit information on its financial position. Excluding any property owned as tenants by the entirety, the firm shall state a net worth or equity of $15,000 or more.

E. Each firm shall provide information for the five years prior to application on any outstanding, past-due debts and judgments; outstanding tax obligations; defaults on bonds; or pending or past bankruptcies. The firm, its designated employee, and all members of the responsible management of the firm shall submit information on any past-due debts and judgments or defaults on bonds directly related to the practice of contracting as defined in Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1 of the Code of Virginia.

F. The firm, the designated employee, and all members of the responsible management of the firm shall disclose at the time of application any current or previous substantial identities of interest with any contractor licenses issued in Virginia or in other jurisdictions and any disciplinary actions taken on these licenses. This includes any monetary penalties, fines, suspension, revocation, or surrender of a license in connection with a disciplinary action. The board, in its discretion, may deny licensure to any applicant when any of the parties listed in this subsection have had a substantial identity of interest (as deemed in § 54.1-1110 of the Code of Virginia) with any firm that has had a license suspended, revoked, voluntarily terminated or surrendered in connection with a disciplinary action in Virginia or any other jurisdiction.

G. In accordance with § 54.1-204 of the Code of Virginia, all applicants shall disclose the following information about the firm, designated employee, all members of the responsible management, and the qualified individual for the firm:

1. All non-marijuana misdemeanor convictions within three years of the date of application; and

2. All felony convictions during their lifetimes.

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.

H. The designated employee or a member of responsible management shall have successfully completed a board-approved basic business course.

18VAC50-22-60. Requirements for a Class A license.

A. A firm applying for a Class A license shall meet all of the requirements of this section.

B. A firm shall name a designated employee who meets the following requirements:

1. Is at least 18 years old;

2. Is a full-time employee of the firm as defined in this chapter or is a member of the responsible management of the firm as defined in this chapter;

3. Has passed a board-approved examination as required by § 54.1-1106 of the Code of Virginia or has been exempted from the exam requirement in accordance with § 54.1-1108.1 of the Code of Virginia; and

4. Has followed all rules established by the board or by the testing service acting on behalf of the board with regard to conduct at the examination. Such rules shall include any written instructions communicated prior to the examination date and any oral or written instructions given at the site on the day of the exam.

C. For every classification or specialty in which the firm seeks to be licensed, the firm shall name a qualified individual who meets the following requirements:

1. Is at least 18 years old;

2. Has a minimum of five years of experience in the classification or specialty for which he is the qualifier;

3. Is a full-time employee of the firm as defined in this chapter or is a member of the firm as defined in this chapter or is a member of the responsible management of the firm;

4. a. Has obtained the appropriate certification for the following specialties:

(1) Blast/explosive contracting (DHCD explosive use certification);

(2) Fire sprinkler (NICET Sprinkler III certification); and

(3) Radon mitigation (EPA or DEQ accepted radon certification).

b. Has obtained, pursuant to the Individual Licensing and Certification Regulations, a master license for Plumbing, HVAC, Electrical, Gas Fitting, Natural Gas Fitting Provider, and Liquefied Petroleum Gas Contracting.

c. Has completed, for the drug lab remediation specialty, a remediation course approved by the board and a board-approved examination.

d. Has obtained, pursuant to the Individual Licensing and Certification Regulations, certification as an Elevator Mechanic for Elevator Escalator Contracting and certification as a Water Well Systems Provider for Water Well/Pump Contracting.

e. Has obtained, pursuant to the Onsite Sewage System Professionals Licensing Regulations (18VAC160-40), a master conventional onsite sewage system installer license for Conventional Sewage Disposal System Contracting and a master alternative onsite sewage system installer license for Alternative Sewage Disposal System Contracting.

f. Has been approved by the Board for Contractors for the miscellaneous specialty (MSC).

~~f.~~ g. Has completed a board-approved examination for all other classifications and specialties that do not require other certification or licensure.

D. Each firm shall submit information on its financial position. Excluding any property owned as tenants by the entirety, the firm shall state a net worth or equity of $45,000.

E. The firm shall provide information for the five years prior to application on any outstanding, past-due debts and judgments; outstanding tax obligations; defaults on bonds; or pending or past bankruptcies. The firm, its designated employee, and all members of the responsible management of the firm shall submit information on any past-due debts and judgments or defaults on bonds directly related to the practice of contracting as defined in Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1 of the Code of Virginia.

F. The firm, the designated employee, and all members of the responsible management of the firm shall disclose at the time of application any current or previous substantial identities of interest with any contractor licenses issued in Virginia or in other jurisdictions and any disciplinary actions taken on these licenses. This includes any monetary penalties, fines, suspensions, revocations, or surrender of a license in connection with a disciplinary action. The board, in its discretion, may deny licensure to any applicant when any of the parties listed in this subsection have had a substantial identity of interest (as deemed in § 54.1-1110 of the Code of Virginia) with any firm that has had a license suspended, revoked, voluntarily terminated, or surrendered in connection with a disciplinary action in Virginia or in any other jurisdiction.

G. In accordance with § 54.1-204 of the Code of Virginia, all applicants shall disclose the following information about the firm, all members of the responsible management, the designated employee, and the qualified individual for the firm:

1. All non-marijuana misdemeanor convictions within three years of the date of application; and

2. All felony convictions during their lifetimes.

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.

H. The designated employee or a member of responsible management shall have successfully completed a board-approved basic business course.

VA.R. Doc. No. R21-6438; Filed December 21, 2021, 7:19 p.m.

BOARD FOR HEARING AID SPECIALISTS AND OPTICIANS

Fast-Track Regulation

Title of Regulation: **18VAC80-20. Hearing Aid Specialists Regulations (amending 18VAC80-20-80).**

Statutory Authority: § 54.1-201 of the Code of Virginia.

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: February 16, 2022.

Effective Date: March 7, 2022.

Agency Contact: Stephen Kirschner, Executive Director, Board for Hearing Aid Specialists and Opticians, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8590, FAX (866) 245-9693, or email hearingaidspec@dpor.virginia.gov.

Basis: Section 54.1-201.5 of the Code of Virginia gives authority to the Board for Hearing Aid Specialists and Opticians to promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) 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: This regulation is being amended for consistency in laws and regulations and to reduce the regulatory burden on licensees. The board currently allows licensed opticians two years to obtain passing exam scores, while hearing aid specialists, functionally, must pass within nine months (three successive examinations offered by the Department of Health Professions). The wording of the current regulations frequently has an unintended negative consequence, where individuals who inadvertently miss a testing window or miss their exam due to illness or accident are not afforded extra time and lose passing scores from a previous exam. The board determined this change would reduce the regulatory burden on hearing aid specialist applicants. There is no additional risk to the health, safety, or welfare of the citizens by allowing applicants for licensure more time to obtain and provide passing exam scores to the board.

Rationale for Using Fast-Track Rulemaking Process: The department expects the proposed amendments to be noncontroversial because the changes will give applicants more time to obtain and provide passing exam scores to the board with their application for licensure. The direct effect of the board's regulatory changes will be limited to those who are candidates for examination and applicants for licensure as hearing aid specialists.

Substance: The proposed amendment updates this section to allow applicants for licensure two years to obtain passing exam scores on all sections.

Issues: The primary advantage of allowing applicants two years to obtain passing exam scores is that it may lead to additional economic growth opportunities by allowing applicants to avoid having to retake portions of the exam they have already passed, and thereby obtain their license faster, with less expense. This reduces the economic burden on applicants, as well as affords them the opportunity to enter the profession sooner, including increased wages that come along with the license. Additionally, implementing this change requires no additional training for candidates or applicants. There are no disadvantages to the public or individual private citizens or businesses.

The primary advantage to the Commonwealth is that the regulatory program will be more accessible to qualified applicants. Currently, qualified applicants face difficulty in providing valid passing exam scores to the board due to the short period each exam score will remain valid. There are no identified disadvantages to the agency or Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board for Hearing Aid Specialists and Opticians (Board) proposes to allow applicants more time to pass all sections of the hearing aid specialist licensure exam.

Background. Exam Description and Administration. The hearing aid specialist licensure exam has six sections in total. The written part has two sections: 1) Theory and 2) Rules and Regulations. The Theory section is administered by the International Hearing Society (IHS), and the Rules and Regulations section is administered by PSI, LLC (PSI). According to the Department of Professional and Occupational Regulation (DPOR), both IHS and PSI have testing centers spread across the Commonwealth. The practical part has four sections: 1) Audiogram Testing, 2) Speech Audiometry, 3) Earmold Impressions, and 4) Hearing Aid Troubleshooting and Maintenance. The four sections of the practical part are administered by DPOR at one location in Richmond.

Proposed Change. The current regulation states the following for candidates of hearing aid specialist licensure:

> "C. Applicants for licensure shall pass a two part examination, of which Part I is a written examination and Part II is a practical examination.
>
> 1. The applicant shall pass each section of the written and practical examination administered by the board. Candidates failing one or more sections of the written or practical examination will be required to retake only those sections failed.
>
> 2. Any candidate failing to achieve a passing score on all sections in ~~three successive scheduled examinations~~[1] must reapply as a new applicant for licensure and repeat all sections of the written and practical examination."

The Board proposes to replace the stricken text with "two years from the initial test date" to read:

> "2. Any candidate failing to achieve a passing score on all sections in two years from the initial test date[2] must reapply as a new applicant for licensure and repeat all sections of the written and practical examination."

Fees

Fee Type	Fee Amount	Fee Recipient
Application	$30	Board
Exam: Theory	$225	IHS
Exam: Rules and Regulations	$35	PSI
Exam: Practical (all four sections)	$90	Board
Retake: Theory	$225	IHS
Retake: Rules and Regulations	$35	PSI
Retake: Practical (same fee regardless of number of sections)	$90	Board

Estimated Benefits and Costs. The exams are offered every three months. Thus, under the current regulation, candidates must pass all six sections within a nine month window. If the candidate does not pass all six sections within 9 months, he or she would have to reapply as a new applicant and retake all sections of the exam. The proposed amendment would give candidates two years to pass all sections, without having to retake sections already passed and paying another application fee.

According to data provided by DPOR, each year there are about five to nine candidates who do not pass all sections of the exam within nine months. The proposed amendment enables these candidates, assuming that they intend to keep trying to pass the full licensure exam, to save the costs resulting from fees as well as time and transportation when they are taking exam sections after nine months from their initial test date and within two years of their initial test date. The table below describes the savings based on different potential situations.

Situation	Savings
Passed Theory section and Rules and Regulations section, but not all four Practical sections.	$290 in fees ($30 application fee, $225 retake of Theory, $35 retake of Rules and Regulations). Time to retake the two written section tests and the Practical sections already passed, and the time to travel to and from the closest IHS and PSI testing centers. Transportation costs of travelling to and from the IHS and PSI testing centers.
Passed Theory section and all four Practical sections, but not Rules and Regulations section.	$345 in fees ($30 application fee, $225 retake of Theory, $90 retake of Practical sections). Time to retake the Theory section and the Practical sections, and the time to travel to and from the closest IHS testing center and to and from Richmond (for the practical sections). Transportation costs of travelling to and from the closest IHS testing center and to and from Richmond.
Passed Rules and Regulations section and all four Practical sections, but not Theory section.	$155 in fees ($30 application fee, $35 retake of Rules and Regulations, $90 retake of Practical sections). Time to retake the Rules and Regulations section and the Practical sections, and the time to travel to and from the closest PSI testing center and to and from Richmond (for the practical sections). Transportation costs of travelling to and from the closest PSI testing center and to and from Richmond.
Passed Theory section, but not Rules and Regulations section and all four Practical sections.	$255 in fees ($30 application fee, $225 retake of Theory) Time to retake the Theory section and the Practical sections already passed, and the time to travel to and from the closest IHS testing center. Transportation costs of travelling to and from the closest IHS testing center.
Passed Rules and Regulations section, but not Theory section and all four Practical sections.	$65 in fees ($30 application fee, $35 retake of Rules and Regulations) Time to retake the Rules and Regulations section and the Practical sections already passed, and the time to travel to and from the closest PSI testing center. Transportation costs of travelling to and from the closest PSI testing center.
Passed all four Practical sections, but not Theory section and Rules and Regulations section.	$120 in fees ($30 application fee, $90 retake of Practical sections). Time to retake the Practical sections, and the time to travel to and from Richmond (for the practical sections). Transportation costs of travelling to and from Richmond

The savings in fees paid described in the above table, would mean commensurate reductions in revenue for the three exam administrating organizations.

Having to reapply as a new applicant and retake all of the exam sections if all are not passed within nine months may discourage some candidates from continuing to attempt to become licensed. By allowing substantially more time to pass all sections without having to start from scratch if not completed within nine months, some individuals who under the current regulation may stop attempting to become a licensed hearing aid specialist may instead with the proposed amendment continue their pursuit and eventually become licensed. To the extent that this would occur, some businesses and other entities that employ licensed hearing aid specialists may benefit by a modestly larger supply of potential employees.

Businesses and Other Entities Affected. The proposed amendment particularly affects the approximate five to nine hearing aid specialist licensure candidates who each year are unable to pass all sections of the licensure examination within nine months. The proposed amendment also affects the three organizations that administer the different sections of the exam, and potential employers of hearing aid specialists. The U.S. Bureau of Labor Statistics lists the following as the top five employers of hearing aid specialists (employs the most, employs second most, etc.):[3] health and personal care stores, offices of other health practitioners,[4] other ambulatory health care services,[5] offices of physicians, and general medical and surgical hospitals.

An adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined. Since the proposed amendment would likely result in fewer instances of candidates retaking exam sections, the administrators of the exams would likely receive less exam fee revenue. Thus, an adverse impact is indicated.

Small Businesses[6] Affected. The proposed amendments do not appear to adversely affect small businesses.[7]

Localities[8] Affected.[9] The proposed amendments neither disproportionally affect any particular locality, nor introduce costs for local governments.

Projected Impact on Employment. To the extent that some individuals who under the current regulation may give up on becoming a licensed hearing aid specialist, instead with the proposed amendment continue their pursuit and eventually become licensed, there may be a modest increase in the number of people who become employed as hearing aid specialists.

Effects on the Use and Value of Private Property. To the extent that some individuals who under the current regulation may give up on becoming a licensed hearing aid specialist, instead with the proposed amendment continue their pursuit and eventually become licensed, the supply of licensed hearing aid specialists may modestly increase. This may modestly reduce the cost to firms of hiring hearing aid specialists, which may in turn have a small positive impact on their value.

The one private entity that administers exam sections, PSI, would likely have the number of retaking of exam sections they administer reduced by less than 10 per year. Given that PSI delivers over 30 million assessments annually,[10] this would have a negligible impact on the firm.

The proposed amendment does not affect real estate development costs.

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[1]Bold added for emphasis.

[2]Ibid

[3]See https://www.bls.gov/oes/current/oes292092.htm

[4]"Offices of other health practitioners" includes "offices of audiologists," which likely accounts for most if not all of the hearing aid specialists employed in this category.

5"Other ambulatory health care services" includes "hearing testing services (excluding audiologist offices)," which likely accounts for most if not all of the hearing aid specialists employed in this category.

[6]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."

[7]PSI, LLC would likely receive somewhat fewer test taking fees; but with over 2,000 employees and over 30 million assessments delivered annually (see https://www.psionline.com/company/about-us/), it does not likely meet the statutory definition of a small business.

[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.

[10]See https://www.psionline.com/company/about-us/

Agency's Response to Economic Impact Analysis: The agency concurs with the economic impact analysis submitted by the Department of Planning and Budget.

Summary:

The amendment allows applicants more time to pass all sections of the exam. Under the new requirement, passing scores will remain valid for two years, which is consistent with other occupations, including opticians.

18VAC80-20-80. Examinations.

A. All examinations required for licensure shall be approved by the board and administered by the board, a testing service acting on behalf of the board, or another governmental agency or organization.

B. The candidate for examination shall follow all rules established by the board with regard to conduct at the examination. Such rules shall include any written instructions communicated prior to the examination date and any instructions communicated at the site, either written or oral, on the date of the examination. Failure to comply with all rules established by the board with regard to conduct at the examination shall be grounds for denial of the application.

C. Applicants for licensure shall pass a two part examination, of which Part I is a written examination and Part II is a practical examination.

1. The applicant shall pass each section of the written and practical examination administered by the board. Candidates failing one or more sections of the written or practical examination will be required to retake only those sections failed.

2. Any candidate failing to achieve a passing score on all sections in ~~three successive scheduled examinations~~ two years from the initial test date must reapply as a new applicant for licensure and repeat all sections of the written and practical examination.

3. If the temporary permit holder fails to achieve a passing score on any section of the examination in three successive scheduled examinations, the temporary permit shall expire upon receipt of the examination failure letter resulting from the third attempt.

VA.R. Doc. No. R22-6931; Filed December 22, 2021, 2:06 p.m.

BOARD OF MEDICINE

Emergency Regulation

Title of Regulation: **18VAC85-80. Regulations Governing the Practice of Occupational Therapy (amending 18VAC85-80-10, 18VAC85-80-26, 18VAC85-80-70, 18VAC85-80-71).**

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

Effective Dates: January 1, 2022, through June 30, 2023.

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.

Preamble:

Section 2.2-4011 B of the Code of Virginia states that agencies may adopt emergency regulations in situations in which Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment, and the regulation is not exempt under the provisions of § 2.2-4006 A 4 of the Code of Virginia.

Chapter 242 of the 2021 Acts of the Assembly, Special Session I, mandates membership of the Commonwealth of Virginia in the Occupational Therapy Interjurisdictional Compact and requires the Board of Medicine to promulgate regulations to implement the provisions. The amendments add definitions consistent with the compact, set the fee for a compact privilege to practice in Virginia, and specify that renewal of the privilege is based on adherence to compact rules for continued competency.

18VAC85-80-10. Definitions.

A. The following words and terms when used in this chapter shall have the meanings ascribed to them in § 54.1-2900 of the Code of Virginia:

"Board"

"Occupational therapy assistant"

"Practice of occupational therapy"

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

"ACOTE" means the Accreditation Council for Occupational Therapy Education.

"Active practice" means a minimum of 160 hours of professional practice as an occupational therapist or an occupational therapy assistant within the 24-month period immediately preceding renewal or application for licensure, if previously licensed or certified in another jurisdiction. The active practice of occupational therapy may include supervisory, administrative, educational or consultative activities or responsibilities for the delivery of such services.

"Advisory board" means the Advisory Board of Occupational Therapy.

"Compact" means the Occupational Therapy Interjurisdictional Licensure Compact.

"Compact privilege" means the same as the definition of the term in § 54.1-2956.7:1 of the Code of Virginia.

"Contact hour" means 60 minutes of time spent in continued learning activity.

"NBCOT" means the National Board for Certification in Occupational Therapy, under which the national examination for certification is developed and implemented.

"National examination" means the examination prescribed by NBCOT for certification as an occupational therapist or an occupational therapy assistant and approved for licensure in Virginia.

"Occupational therapy personnel" means appropriately trained individuals who provide occupational therapy services under the supervision of a licensed occupational therapist.

"Practitioner" means an occupational therapist or occupational therapy assistant licensed in Virginia or an occupational therapist or occupational therapy assistant practicing in Virginia with a compact privilege.

18VAC85-80-26. Fees.

A. The following fees have been established by the board:

1. The initial fee for the occupational therapist license shall be $130; for the occupational therapy assistant, it shall be $70.

2. The fee for reinstatement of the occupational therapist license that has been lapsed for two years or more shall be $180; for the occupational therapy assistant, it shall be $90.

3. The fee for active license renewal for an occupational therapist shall be $135; for an occupational therapy assistant, it shall be $70. The fees for inactive license renewal shall be $70 for an occupational therapist and $35 for an occupational therapy assistant. Renewals shall be due in the birth month of the licensee in each even-numbered year. For 2020, the fee for renewal of an active license as an occupational therapist shall be $108; for an occupational therapy assistant, it shall be $54. For renewal of an inactive license in 2020, the fees shall be $54 for an occupational therapist and $28 for an occupational therapy assistant.

4. The additional fee for processing a late renewal application within one renewal cycle shall be $50 for an occupational therapist and $30 for an occupational therapy assistant.

5. The fee for a letter of good standing or verification to another jurisdiction for a license shall be $10.

6. The fee for reinstatement of licensure pursuant to § 54.1-2408.2 of the Code of Virginia shall be $2,000.

7. The handling fee for a returned check or a dishonored credit card or debit card shall be $50.

8. The fee for a duplicate license shall be $5.00, and the fee for a duplicate wall certificate shall be $15.

9. The fee for an application or for the biennial renewal of a restricted volunteer license shall be $35, due in the licensee's birth month. An additional fee for late renewal of licensure shall be $15 for each renewal cycle.

10. The fee for issuance of a compact privilege or the biennial renewal of such privilege shall be $75 for an occupational therapist and $40 for an occupational therapy assistant.

B. Unless otherwise provided, fees established by the board shall not be refundable.

18VAC85-80-70. Biennial renewal of licensure.

A. An occupational therapist or an occupational therapy assistant shall renew his license biennially during his birth month in each even-numbered year by:

1. Paying to the board the renewal fee prescribed in 18VAC85-80-26;

2. Indicating that he has been engaged in the active practice of occupational therapy as defined in 18VAC85-80-10; and

3. Attesting to completion of continued competency requirements as prescribed in 18VAC85-80-71.

B. An occupational therapist or an occupational therapy assistant whose license has not been renewed by the first day of the month following the month in which renewal is required shall pay an additional fee as prescribed in 18VAC85-80-26.

C. In order to renew a compact privilege to practice in Virginia, the holder shall comply with the rules adopted by the Occupational Therapy Compact Commission in effect at the time of the renewal.

18VAC85-80-71. Continued competency requirements for renewal of an active license.

A. In order to renew an active license biennially, ~~a practitioner~~ a licensee shall complete at least 20 contact hours of continuing learning activities as follows:

1. A minimum of 10 of the 20 hours shall be in Type 1 activities, which shall consist of an organized program of study, classroom experience, or similar educational experience that is related to a licensee's current or anticipated roles and responsibilities in occupational therapy and approved or provided by one of the following organizations or any of its components:

a. Virginia Occupational Therapy Association;

b. American Occupational Therapy Association;

c. National Board for Certification in Occupational Therapy;

d. Local, state, or federal government agency;

e. Regionally accredited college or university;

f. Health care organization accredited by a national accrediting organization granted authority by the Centers for Medicare and Medicaid Services to assure compliance with Medicare conditions of participation; or

g. An American Medical Association Category 1 Continuing Medical Education program.

2. No more than 10 of the 20 hours may be Type 2 activities, which may include consultation with another therapist, independent reading or research, preparation for a presentation, or other such experiences that promote continued learning. Up to two of the Type 2 continuing education hours may be satisfied through delivery of occupational therapy services, without compensation, to low-income individuals receiving services through a local health department or a free clinic organized in whole or primarily for the delivery of health services. One hour of continuing education may be credited for three hours of providing such volunteer services as documented by the health department or free clinic.

B. ~~A practitioner~~ A licensee shall be exempt from the continuing competency requirements for the first biennial renewal following the date of initial licensure in Virginia.

C. The ~~practitioner~~ licensee shall retain in ~~his~~ the licensee's records all supporting documentation for a period of six years following the renewal of an active license.

D. The board shall periodically conduct a representative random audit of its active licensees to determine compliance. The ~~practitioners~~ licensees selected for the audit shall provide all supporting documentation within 30 days of receiving notification of the audit.

E. Failure to comply with these requirements may subject the licensee to disciplinary action by the board.

F. The board may grant an extension of the deadline for continuing competency requirements for up to one year for good cause shown upon a written request from the licensee prior to the renewal date.

G. The board may grant an exemption for all or part of the requirements for circumstances beyond the control of the licensee, such as temporary disability, mandatory military service, or officially declared disasters.

VA.R. Doc. No. R22-6878; Filed December 22, 2021, 2:06 p.m.

BOARD OF NURSING

Fast-Track Regulation

Titles of Regulations: **18VAC90-30. Regulations Governing the Licensure of Nurse Practitioners (amending 18VAC90-30-80, 18VAC90-30-105).**

18VAC90-40. Regulations for Prescriptive Authority for Nurse Practitioners (amending 18VAC90-40-40).

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

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: February 16, 2022.

Effective Date: April 1, 2022.

Agency Contact: Jay P. Douglas, R.N., Executive Director, Board of Nursing, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4520, FAX (804) 527-4455, or email jay.douglas@dhp.virginia.gov.

Basis: Regulations are promulgated under the general authority of § 54.1-2400 of the Code of Virginia, which provides the Boards of Nursing and Medicine the authority to promulgate regulations to administer the regulatory system. Section 54.1-2957 of the Code of Virginia authorizes the boards to regulate licensure and practice of nurse practitioners.

Purpose: The purpose of the regulatory change is to use language consistent with the education and practice of clinical nurse specialists that will allow them to be licensed and to renew licensure to continue providing care to patients to protect public health and safety.

Rationale for Using Fast-Track Rulemaking Process: The amendments are not expected to be controversial because they are consistent with the current terminology and intended to allow for renewal of all clinical nurse specialists who were previously registered by the Board of Nursing but are now licensed by the joint boards.

Substance: 18VAC90-30-80 and 18VAC90-40-40 are amended to include the term "advanced practice registered nurse" to include clinical nurse specialists and all categories of nurse practitioners to ensure the graduate programs for clinical nurse specialists qualify them for licensure. 18VAC90-30-105 is amended to allow clinical nurse specialists who were registered with a retired certification by the Board of Nursing to renew their nurse practitioner license by completion of hours of continuing education rather than holding current specialty certification.

Issues: There are no advantages or disadvantages to the public apart from clarification of terminology and the ability of some clinical nurse specialists to renew licensure and continue to practice. There are no particular advantages or disadvantages to the agency.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Pursuant to Chapter 157 of the 2021 Acts of Assembly, the Boards of Nursing and Medicine seek to amend 18VAC90-30, Regulations Governing the Licensure of Nurse Practitioners and 18VAC90-40, Regulations Governing Prescriptive Authority for Nurse Practitioners.[1] The proposed amendments to 18VAC90-30 would align language regarding the qualifications for initial licensure and for continuing competency with the new legislation, and the proposed amendments to 18VAC90-40 would allow advanced practice registered nurses to apply for prescriptive authority.

Background. Chapter 157 of the 2021 Acts of Assembly repealed sections of Chapter 30 of Title 54.1 relating to the registration of clinical nurse specialists (CNS) under the Board of Nursing and enacted changes to Chapter 29 of Title 54.1 authorizing licensure of CNS as nurse practitioners under the Joint Boards of Nursing and Medicine. The Department of Health Professions (DHP) reports that this legislation was introduced at the request of the CNS' organization in Virginia in an effort to recognize CNS as one category of Advanced Practice Registered Nurses (APRNs) and to be granted prescriptive authority.[2] Thus, the proposed amendments would not make any substantive change to the registration requirements or the responsibilities of CNS. DHP reports that the Board of Nursing would continue to handle applications for all four types of APRNs, whereas disciplinary actions matters would be addressed by a committee of the joint boards.

In order to conform the regulations to statute, the Board of Nursing has adopted an exempt action to remove sections of 18VAC90-19, Regulations Governing the Practice of Nursing that refer to the registration of CNS.[3] Concurrently, the Boards of Nursing and Medicine adopted another exempt action to amend 18VAC90-30 to add a definition of CNS and grant prescriptive authority to CNS who enter into a practice

agreement with a physician.[4] Thus, the proposed amendments in this action seek to conform those sections of 18VAC90-30 and 18VAC90-40, that were not directly impacted by the legislation, with the changes made in the two exempt actions. Specifically, section 80 would be amended to replace "nurse practitioners" with APRN, which includes NP and CNS. Similarly, the proposed amendments to 18VAC90-40 would add APRNs in section 40 pertaining to prescriptive authority in keeping with other changes to that chapter.

The only proposed amendment that is clearly discretionary would be to amend 18VAC90-30-105, which lays out continuing competency requirements, so that CNS who were registered by the Board of Nursing with a retired certification could renew their nurse practitioner licenses by meeting the same requirements currently in place for those who registered prior to May 8, 2002. Currently, CNS are able to renew their registration with a retired certification provided it had been maintained; however, this provision would be repealed by the exempt actions described above.[5] The proposed amendment would require CNS with retired certifications to complete 40 hours of approved continuing education in order to renew their license.

Estimated Benefits and Costs. Because the proposed amendments do not change the requirements to register as CNS, the benefits of the proposed amendments are mainly to conform the regulation to the Code of Virginia. However, CNS with retired certifications (including those whose certifications may be retired in the future) would only be allowed to renew their license if they have 40 hours of approved continuing education. This change would create new costs for any CNS with a retired certification. On the whole, the proposed amendments would grant CNS prescriptive authority, which would allow them to engage in more autonomous practice and could benefit the CNS as well as their patients.

Businesses and Other Entities Affected. The proposed amendments primarily affect current and future registered CNS. DHP reports that there were 408 registered CNS as of October 1, 2021. Their registrations were automatically changed to licensure under the Boards of Nursing and Medicine once the changes to statute made by Chapter 157 became effective on July 1, 2021. The number of CNS with a retired certification is unknown.

Small Businesses[6] Affected. Some CNS may operate as a small business; however, DHP reports that the majority of CNS are likely employed by large health systems. Except for CNS with retired certifications who operate as small businesses, the proposed amendments would not adversely affect small businesses.

Localities[7] Affected.[8] 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 impact the number of CNS in the workforce or the employment rates of CNS.

Effects on the Use and Value of Private Property. The proposed amendments would not affect the use or value of private property. Real estate development costs are not affected.

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[1]See https://lis.virginia.gov/cgi-bin/legp604.exe?212+ful+CHAP0157.

[2]There are four categories of APRNs: certified nurse midwives, certified nurse anesthetists, nurse practitioners (NP) and CNS. See https://www.ncsbn.org/aprn.htm for details.

[3]See https://townhall.virginia.gov/l/ViewStage.cfm?stageid=9352; changes become effective November 10, 2021.

[4]See https://townhall.virginia.gov/l/ViewStage.cfm?stageid=9369; changes become effective November 10, 2021.

[5]See https://townhall.virginia.gov/l/ViewAction.cfm?actionid=5306 for details.

[6]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."

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

[8]§ 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

Agency's Response to Economic Impact Analysis: The Board of Nursing concurs with the economic impact analysis of the Department of Planning and Budget.

Summary:

The amendments conform these sections to the education and licensure requirements of clinical nurse specialists who were previously registered under the Board of Nursing and pursuant to Chapter 157 of the 2021 Acts of Assembly, Special Session I, became licensed as nurse practitioners under the joint Boards of Nursing and Medicine.

18VAC90-30-80. Qualifications for initial licensure.

A. An applicant for initial licensure as a nurse practitioner shall:

1. Hold a current, active license as a registered nurse in Virginia or hold a current multistate licensure privilege as a registered nurse;

2. Submit evidence of a graduate degree in nursing or in the appropriate nurse practitioner specialty from an educational program designed to prepare ~~nurse practitioners~~ advanced practice registered nurses that is an approved program as defined in 18VAC90-30-10. Evidence shall include a transcript that shows that the applicant has successfully completed core coursework that prepares the applicant for licensure in the appropriate specialty;

3. Submit evidence of professional certification that is consistent with the specialty area of the applicant's educational preparation issued by an agency accepted by the boards as identified in 18VAC90-30-90;

4. File the required application; and

5. Pay the application fee prescribed in 18VAC90-30-50.

B. Provisional licensure may be granted to an applicant who satisfies all requirements of this section with the exception of subdivision A 3 of this section, provided the board has received evidence of the applicant's eligibility to sit for the certifying examination directly from the national certifying body. An applicant may practice with a provisional license for either six months from the date of issuance or until issuance of a permanent license or until he receives notice that he has failed the certifying examination, whichever occurs first.

18VAC90-30-105. Continuing competency requirements.

A. In order to renew a license biennially, a nurse practitioner initially licensed on or after May 8, 2002, shall hold current professional certification in the area of specialty practice from one of the certifying agencies designated in 18VAC90-30-90, except for those renewing their licenses in accordance with subsection B of this section.

B. In order to renew a license biennially, nurse practitioners licensed prior to May 8, 2002, or clinical nurse specialists who were registered by the Board of Nursing with a retired certification, shall meet one of the following requirements:

1. Hold current professional certification in the area of specialty practice from one of the certifying agencies designated in 18VAC90-30-90; or

2. Complete at least 40 hours of continuing education in the area of specialty practice approved by one of the certifying agencies designated in 18VAC90-30-90 or approved by Accreditation Council for Continuing Medical Education (ACCME) of the American Medical Association as a Category I Continuing Medical Education (CME) course.

C. The nurse practitioner shall retain evidence of compliance and all supporting documentation for a period of four years following the renewal period for which the records apply.

D. The boards shall periodically conduct a random audit of their licensees to determine compliance. The nurse practitioners selected for the audit shall provide the evidence of compliance and supporting documentation within 30 days of receiving notification of the audit.

E. The boards may delegate the authority to grant an extension or exemption for all or part of the requirements for circumstances beyond the control of the licensee, such as temporary disability, mandatory military service, or officially declared disasters.

18VAC90-40-40. Qualifications for initial approval of prescriptive authority.

An applicant for prescriptive authority shall meet the following requirements:

1. Hold a current, unrestricted license as a nurse practitioner in the Commonwealth of Virginia;

2. Provide evidence of one of the following:

a. Continued professional certification as required for initial licensure as a nurse practitioner;

b. Satisfactory completion of a graduate level course in pharmacology or pharmacotherapeutics obtained as part of the nurse practitioner or advanced practice registered nurse education program within the five years prior to submission of the application;

c. Practice as a nurse practitioner for no less than 1000 hours and 15 continuing education units related to the area of practice for each of the two years immediately prior to submission of the application; or

d. Thirty contact hours of education in pharmacology or pharmacotherapeutics acceptable to the boards taken within five years prior to submission of the application. The 30 contact hours may be obtained in a formal academic setting as a discrete offering or as noncredit continuing education offerings and shall include the following course content:

(1) Applicable federal and state laws;

(2) Prescription writing;

(3) Drug selection, dosage, and route;

(4) Drug interactions;

(5) Information resources; and

(6) Clinical application of pharmacology related to specific scope of practice.;

3. Develop a practice agreement between the nurse practitioner and the patient care team physician as required in 18VAC90-40-90; and

4. File a completed application and pay the fees as required in 18VAC90-40-70.

VA.R. Doc. No. R22-6913; Filed December 22, 2021, 2:18 p.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: February 16, 2022.

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 (i) remove compounds from regulatory text that have been placed in Schedule I of the Drug Control Act, into § 54.1-3446 of the Code of Virginia, by legislative action; and (ii) add five compounds into Schedule I 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.~~ 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. 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.~~ 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. 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.

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.

1-(4-cinnamyl-2,6-dimethylpiperazin-1-yl)propan-1-one (other name: AP-238), 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-methallyloxy-3,5-dimethoxyphenethylamine (other name: Methallylescaline), 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. Alpha-pyrrolidino-2-phenylacetophenone (other name: alpha-D2PV), 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.

3. Cannabimimetic agents.

a. Ethyl 2-[1-pentyl-1H-indazole-3-carboxamido]-3,3-dimethylbutanoate (other name: EDMB-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-phenethyl-1H-indazole-3-carboxamide (other name: ADB-PHETINACA), 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 August 16, 2023, unless enacted into law in the Drug Control Act.

VA.R. Doc. No. R22-7050; Filed December 29, 2021, 10:58 a.m.

Emergency Regulation

Titles of Regulations: **18VAC110-20. Regulations Governing the Practice of Pharmacy (amending 18VAC110-20-150).**

18VAC110-21. Regulations Governing the Licensure of Pharmacists and Registration of Pharmacy Technicians (adding 18VAC110-21-46).

Statutory Authority: §§ 54.1-2400 and 54.1-3307 of the Code of Virginia.

Effective Dates: December 22, 2021, through June 21, 2023.

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.

Preamble:

Section 2.2-4011 B of the Code of Virginia states that agencies may adopt emergency regulations in situations in which Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment, and the regulation is not exempt under the provisions of § 2.2-4006 A 4 of the Code of Virginia.

The amendments add drugs and devices that may be initiated by a pharmacist and the authority to dispense controlled paraphernalia or other supplies or equipment to 18VAC110-21-46, a section added by an emergency regulatory action in 2020 (37:2 VA.R. 1316-1317 September 14, 2020). The amendments (i) define drugs, devices, and controlled paraphernalia pursuant to applicable statute; (ii) add "other supplies and equipment available over-the-counter, covered by the patient's health carrier when the patient's out-of-pocket cost is lower than the out-of-pocket cost to purchase an over-the-counter equivalent of the same drug, device, controlled paraphernalia, or other supplies or equipment"; (iii) include on the list vaccines on the Immunization Schedule published by the Centers for Disease Control and Prevention or that have a current emergency use authorization from the U.S. Food and Drug Administration; (iv) include on the list tuberculin purified protein derivative for tuberculosis testing; and (v) include on the list controlled substances for the prevention of human immunodeficiency virus, including controlled substances prescribed for pre-exposure and post-exposure prophylaxis pursuant to guidelines and recommendations of the Centers for Disease Control and Prevention.

The emergency action implements Chapter 214 of the 2021 Acts of Assembly.

18VAC110-20-150. Physical standards for all pharmacies.

A. The prescription department shall not be less than 240 square feet. The patient waiting area or the area used for counseling, devices, cosmetics, and proprietary medicines shall not be considered a part of the minimum 240 square feet. The total area shall be consistent with the size and scope of the services provided.

B. Access to stock rooms, rest rooms, and other areas other than an office that is exclusively used by the pharmacist shall not be through the prescription department. A rest room in the prescription department, used exclusively by pharmacists and personnel assisting with dispensing functions, may be allowed provided there is another rest room outside the prescription department available to other employees and the public. This subsection shall not apply to prescription departments in existence prior to November 4, 1993.

C. The pharmacy shall be constructed of permanent and secure materials. Trailers or other moveable facilities or temporary construction shall not be permitted.

D. The entire area of the location of the pharmacy practice, including all areas where drugs are stored, shall be well lighted and well ventilated; the proper storage temperature shall be maintained to meet USP-NF specifications for drug storage.

E. The prescription department counter work space shall be used only for the compounding and dispensing of drugs and necessary recordkeeping.

F. A sink with hot and cold running water shall be within the prescription department. A pharmacy issued a limited-use permit that does not stock prescription drugs as part of its operation is exempt from this requirement.

G. Adequate refrigeration facilities equipped with a monitoring thermometer for the storage of drugs requiring cold storage temperature shall be maintained within the prescription department if the pharmacy stocks such drugs.

H. A pharmacy stocking drugs requiring cold storage temperature shall record the temperature daily and adjust the thermostat as necessary to ensure an appropriate temperature range. The record shall be maintained manually or electronically for a period of two years.

I. The physical settings of a pharmacy in which a pharmacist initiates treatment with, dispenses, or administers drugs, devices, controlled paraphernalia, and other supplies and equipment pursuant to § 54.1-3303.1 of the Code of Virginia and 18VAC110-21-46 shall protect patient confidentiality and comply with the Health Insurance Portability and Accountability Act, 42 USC § 1320d et seq.

18VAC110-21-46. Initiation of treatment by a pharmacist.

A. Pursuant to § 54.1-3303.1 of the Code of Virginia, a pharmacist may initiate treatment with, dispense, or administer the following drugs, devices, controlled paraphernalia, and other supplies and equipment to persons 18 years of age or older:

1. Naloxone or other opioid antagonist, including such controlled paraphernalia as defined in § 54.1-3466 of the

Code of Virginia as may be necessary to administer such naloxone or other opioid antagonist;

2. Epinephrine;

3. Injectable or self-administered hormonal contraceptives, provided the patient completes an assessment consistent with the United States Medical Eligibility Criteria for Contraceptive Use;

4. Prenatal vitamins for which a prescription is required;

5. Dietary fluoride supplements in accordance with recommendations of the American Dental Association for prescribing of such supplements for persons whose drinking water has a fluoride content below the concentration recommended by the U.S. Department of Health and Human Services;

6. Drugs and devices as defined in § 54.1-3401 of the Code of Virginia, controlled paraphernalia as defined in § 54.1-3466 of the Code of Virginia, and other supplies and equipment available over the counter, covered by the patient's health carrier when the patient's out-of-pocket cost is lower than the out-of-pocket cost to purchase an over-the-counter equivalent of the same drug, device, controlled paraphernalia, or other supplies or equipment;

7. Vaccines included on the Immunization Schedule published by the Centers for Disease Control and Prevention or that have a current emergency use authorization from the U.S. Food and Drug Administration;

8. Tuberculin purified protein derivative for tuberculosis testing; and

9. Controlled substances for the prevention of human immunodeficiency virus, including controlled substances prescribed for pre-exposure and post-exposure prophylaxis pursuant to guidelines and recommendations of the Centers for Disease Control and Prevention.

B. Pharmacists who initiate treatment with, dispense, or administer a drug, device, controlled paraphernalia, or other supplies or equipment pursuant to subsection A of this section shall:

1. Follow the statewide protocol adopted by the board for each drug, device, controlled paraphernalia, or other supplies or equipment.

2. Notify the patient's primary health care provider that treatment has been initiated with such drug or device or that such drug or device has been dispensed or administered to the patient, provided that the patient consents to such notification. If the patient does not have a primary health care provider, the pharmacist shall counsel the patient regarding the benefits of establishing a relationship with a primary health care provider and, upon request, provide information regarding primary health care providers, including federally qualified health centers, free clinics, or local health departments serving the area in which the patient is located. If the pharmacist is initiating treatment with, dispensing, or administering injectable or self-administered hormonal contraceptives, the pharmacist shall counsel the patient regarding seeking preventative care, including (i) routine well-woman visits, (ii) testing for sexually transmitted infections, and (iii) pap smears. If the pharmacist is administering a vaccine pursuant to this section, the pharmacist shall report such administration to the Virginia Immunization Information System in accordance with the requirements of § 32.1-46.01 of the Code of Virginia.

3. Maintain a patient record for a minimum of six years following the last patient encounter with the following exceptions:

a. Records that have previously been transferred to another practitioner or health care provider or provided to the patient or the patient's personal representative; or

b. Records that are required by contractual obligation or federal law to be maintained for a longer period of time.

4. Perform the activities in a manner that protects patient confidentiality and complies with the Health Insurance Portability and Accountability Act, 42 USC § 1320d et seq.

VA.R. Doc. No. R22-6989; Filed December 22, 2021, 2:03 p.m.

Final Regulation

REGISTRAR'S NOTICE: The agency is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 54.1-3442.6 of the Code of Virginia, which excludes actions of the Board of Pharmacy relating to the permits to operate pharmaceutical processors or cannabis dispensing facilities.

Title of Regulation: **18VAC110-60. Regulations Governing Pharmaceutical Processors (amending 18VAC110-60-10, 18VAC110-60-160, 18VAC110-60-190, 18VAC110-60-230, 18VAC110-60-300).**

Statutory Authority: §§ 54.1-3442.6 and 54.1-3447 of the Code of Virginia.

Effective Date: February 16, 2022.

Agency Contact: Caroline Juran, RPh, Executive Director, Board of Pharmacy, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4456, FAX (804) 527-4472, or email caroline.juran@dhp.virginia.gov.

Summary:

The amendments (i) replace "cannabis oil" with the term "cannabis product"; (ii) add "cannabis dispensing facility" as a regulated pharmaceutical processor to conform to the Code of Virginia; (iii) move the phrase "in a cannabis dispensing facility" in 18VAC110-60-190 to correct a typo; and (iv) eliminate references in laboratory requirements in 18VAC110-60-300 to botanical cannabis.

18VAC110-60-10. Definitions.

In addition to words and terms defined in §§ 54.1-3408.3 and 54.1-3442.5 of the Code of Virginia, the following words and terms when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise:

"90-day supply" means the amount of cannabis products reasonably necessary to ensure an uninterrupted availability of supply for a 90-day period for registered patients.

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

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

"Board" means the Board of Pharmacy.

"Certification" means a written statement, consistent with requirements of § 54.1-3408.3 of the Code of Virginia, issued by a practitioner for the use of cannabis products for treatment of or to alleviate the symptoms of any diagnosed condition or disease determined by the practitioner to benefit from such use.

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

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

a. Incorrect product;

b. Incorrect product strength;

c. Incorrect dosage form;

d. Incorrect patient; or

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

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

a. Known therapeutic duplication;

b. Known drug-disease contraindications;

c. Known drug-drug interactions;

d. Incorrect drug dosage or duration of drug treatment;

e. Known drug-allergy interactions;

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

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

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

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

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

"ISO/IEC" means the joint technical committee of the International Organization for Standardization (ISO) and the International Electrotechnical Commission (IEC).

"ISO/IEC 17025" means the general requirements specified by the ISO/IEC for the competence of testing and calibration laboratories.

"On duty" means that a pharmacist, the responsible party, or a person who is qualified to provide supervision in accordance with 18VAC110-60-170 is on the premises at the address of the permitted pharmaceutical processor and is available as needed.

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

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

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

"Qualifying patient" means a Virginia resident who has received from a practitioner, as defined in § 54.1-3408.3 of the Code of Virginia, a written certification for the use of cannabis products for treatment of or to alleviate the symptoms of any diagnosed condition or disease.

"Registered patient" means a qualifying patient who has been issued a registration by the board for the dispensing of cannabis products to such patient.

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

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

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

"Temperature and humidity" means temperature and humidity maintained in the following ranges:

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

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

18VAC110-60-160. Grounds for action against a pharmaceutical processor permit or a cannabis dispensing facility.

In addition to the bases enumerated in § 54.1-3316 of the Code of Virginia, the board may suspend, revoke, or refuse to grant or renew a permit issued; place such permit on probation; place conditions on such permit; or take other actions permitted by statute or regulation on the following grounds:

1. Any criminal conviction under federal or state statutes or regulations or local ordinances, unless the conviction was based on a federal statute or regulation related to the possession, purchase, or sale of cannabis products that is authorized under state law and regulations;

2. Any civil action under any federal or state statute or regulation or local ordinance (i) relating to the applicant's, licensee's, permit holder's, or registrant's profession or (ii) involving drugs, medical devices, or fraudulent practices, including fraudulent billing practices;

3. Failure to maintain effective controls against diversion, theft, or loss of Cannabis, cannabis products, or other controlled substances;

4. Intentionally or through negligence obscuring, damaging, or defacing a permit or registration card;

5. Permitting another person to use the permit of a permit holder or registration of a qualifying patient, parent, legal guardian or registered agent, except as required for a registered agent to act on behalf of a patient;

6. Failure to cooperate or give information to the board on any matter arising out of conduct at a pharmaceutical processor or cannabis dispensing facility; or

7. Discontinuance of business for more than 60 days, unless the board approves an extension of such period for good cause shown upon a written request from a pharmaceutical processor or cannabis dispensing facility. Good cause includes exigent circumstances that necessitate the closing of the facility. Good cause shall not include a voluntary closing of the pharmaceutical processor or cannabis dispensing facility.

18VAC110-60-190. Pharmacy technicians; ratio; supervision and responsibility.

A. The ratio of pharmacy technicians to pharmacists on duty in the areas of a pharmaceutical processor ~~a cannabis dispensing facility~~ designated for production or dispensing or in a cannabis dispensing facility shall not exceed six pharmacy technicians to one pharmacist.

B. The pharmacist providing direct supervision of pharmacy technicians may be held responsible for the pharmacy technicians' actions. Any violations relating to the dispensing of cannabis products resulting from the actions of a pharmacy technician shall constitute grounds for action against the license of the pharmacist and the registration of the pharmacy technician. As used in this subsection, "direct supervision" means a supervising pharmacist who:

1. Is on duty where the pharmacy technician is performing routine cannabis product production or dispensing functions; and

2. Conducts in-process and final checks on the pharmacy technician's performance.

C. Pharmacy technicians shall not:

1. Counsel a registered patient or the patient's parent legal guardian, or registered agent regarding (i) cannabis products or other drugs either before or after cannabis products have been dispensed or (ii) any medical information contained in a patient medication record;

2. Consult with the practitioner who certified the qualifying patient, or the practitioner's agent, regarding a patient or any

medical information pertaining to the patient's cannabis product or any other drug the patient may be taking;

3. Interpret the patient's clinical data or provide medical advice;

4. Determine whether a different formulation of cannabis product should be substituted for the cannabis product or formulation recommended by the practitioner or requested by the registered patient or parent or legal guardian; or

5. Communicate with a practitioner who certified a registered patient, or the practitioner's agent, to obtain a clarification on a qualifying patient's written certification or instructions.

18VAC110-60-230. Inventory requirements.

A. Each pharmaceutical processor or cannabis dispensing facility prior to commencing business shall:

1. Conduct an initial comprehensive inventory of all Cannabis plants, including the seeds, parts of plants, extracts, and cannabis products, at the facility. The responsible party shall ensure all required inventories are performed in the cultivation and production areas, and the PIC shall ensure all required inventories are performed in the dispensing area. The inventories shall include, at a minimum, the date of the inventory, a summary of the inventory findings, and the name, signature, and title of the pharmacist, pharmacy technician, responsible party, or person authorized by the responsible party who provides supervision of cultivation or production-related activities who conducted the inventory. If a facility commences business with no Cannabis or cannabis products on hand, the pharmacist or responsible party shall record this fact as the initial inventory; and

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

B. Upon commencing business, each pharmaceutical processor shall conduct a weekly inventory of all Cannabis plants, including the seeds, parts of plants, and cannabis products in stock, that shall include, at a minimum, the date of the inventory, a summary of the inventory findings, and the name, signature, and title of the pharmacist, pharmacy technician, responsible party, or person authorized by the responsible party who provides supervision of cultivation or production-related activities who conducted the inventory.

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

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

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

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

G. Inventory records shall be maintained for three years from the date the inventory was taken.

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

18VAC110-60-300. Laboratory requirements; testing.

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

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

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

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

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

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

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

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

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

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

B. After processing and before dispensing the cannabis oil product, a pharmaceutical processor shall make a sample available from each homogenized batch of product for a laboratory to (i) test for microbiological contaminants, mycotoxins, heavy metals, residual solvents, and pesticide chemical residue~~, and, for botanical cannabis, the water activity and moisture content~~; and (ii) conduct an active ingredient analysis and terpenes profile. Each laboratory shall determine a valid sample size for testing, which may vary due to sample matrix, analytical method, and laboratory-specific procedures. A minimum sample size of 0.5% of individual units for dispensing or distribution from each homogenized batch of cannabis oil is required to achieve a representative sample for analysis.

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

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

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

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

G. If a sample of cannabis oil product does not pass the microbiological, mycotoxin, heavy metal, pesticide chemical residue, or residual solvent test based on the standards set forth in this subsection, the batch may be remediated with further processing. After further processing, the batch shall be retested for microbiological, mycotoxin, heavy metal, pesticide chemical residue, and residual solvent, and an active ingredient analysis and terpenes profile shall be conducted.

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

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

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

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

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

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

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

a. Tetrahydrocannabinol (THC);

b. Tetrahydrocannabinol acid (THC-A);

c. Cannabidiols (CBD); and

d. Cannabidiolic acid (CBDA).

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

6. For the purposes of the residual solvent test, a sample of the cannabis oil product shall be deemed to have passed if it meets the standards and limits recommended by the American Herbal Pharmacopia for Cannabis Inflorescence.

H. If a sample of botanical cannabis product does not pass the microbiological, mycotoxin, heavy metal, pesticide chemical residue, water activity, or moisture content test based on the standards set forth in this subsection, the batch may be remediated. Once remediated, the batch shall be retested for microbiological, mycotoxin, heavy metal, pesticide chemical residue, water activity, and moisture content, and an active ingredient analysis and terpenes profile shall be conducted. If the botanical cannabis batch fails retesting, it shall be considered usable cannabis and may be processed into cannabis oil, unless the failure is related to pesticide requirements, in which case the batch shall not be considered usable cannabis and shall not be processed into cannabis oil. Any batch processed into cannabis oil shall comply with all testing standards set forth in subsection G of this section.

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

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

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

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

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

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

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

a. Total tetrahydrocannabinol (THC); and

b. Total cannabidiol (CBD).

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

I. If a sample of cannabis product passes the required tests listed in subsections G and H of this section, the entire batch

may be utilized by the processor for immediate packaging and labeling for sale. An expiration date shall be assigned to the product that is based upon validated stability testing that addresses product stability when opened and the shelf-life for unopened products, except stability testing shall not be required for cannabis products if the pharmaceutical processor assigns an expiration date of six months or less from the date of packaging.

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

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

VA.R. Doc. No. R22-6976; Filed December 29, 2021, 10:58 a.m.

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION

Final Regulation

Title of Regulation: **18VAC120-30. Regulations Governing Polygraph Examiners (amending 18VAC120-30-100, 18VAC120-30-120, 18VAC120-30-130, 18VAC120-30-160 through 18VAC120-30-190; repealing 18VAC120-30-140, 18VAC120-30-150).**

Statutory Authority: § 54.1-1802.1 of the Code of Virginia.

Effective Date: March 1, 2022.

Agency Contact: Eric L. Olson, Board Director, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-7226, FAX (866) 430-1033, or email polygraph@dpor.virginia.gov.

Summary:

The amendments extend the license term and reinstatement periods currently in place for polygraph examiners, eliminating the requirement that licenses be renewed annually and extending the reinstatement period to provide a longer amount of time a licensee may be late with a renewal payment and not have the license terminated.

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

18VAC120-30-100. Fees.

A. All application fees for licenses and registrations are nonrefundable and shall not be prorated. The date of receipt by the department is the date that will be used to determine whether or not the fee is on time.

B. Application and examination fees must be submitted with the application for licensure. All other fees are discussed in greater detail in later sections of this chapter.

C. In the event that a check, money draft, or similar instrument for payment of a fee required by statute or regulation is not honored by the bank or financial institution named, the applicant or regulant shall be required to remit fees sufficient to cover the original fee, plus an additional processing charge set by the department.

D. 1. The following fees listed in the table apply:

FEE TYPE	AMOUNT DUE	WHEN DUE
Application for Examiner's License	~~$45~~ $90	With application
Application for Examiner's License by Reciprocity	~~$95~~ $190	With application
Application for Intern Registration	$75	With application
Application for Examiner's License by Examination	$200	With application
Reexamination	$200	With approval letter
Renewal	~~$55~~ $110	~~Up to one calendar month after the expiration date on license~~ Up to the expiration date on the license
Reinstatement	~~$75~~ $150	~~One to six~~ From the expiration date to 24 calendar months after the expiration date on license

2. For renewal fees received on or before June 30, 2022, the fee shall be ~~$20~~ $40.

18VAC120-30-120. Renewal required.

Licenses issued under this chapter shall expire ~~12 months~~ 24 months from the last day of the month in which the license was issued, as indicated on the license.

18VAC120-30-130. Procedures for renewal.

The department will mail a renewal application form to the licensee at the last known address of department record. Failure to receive this notice shall not relieve the licensee of the obligation to renew. Prior to the expiration date shown on the license, each licensee desiring to renew his license must return to the department all required forms and the appropriate fee as referenced in 18VAC120-30-100. Any licensee who fails to submit the renewal payment on or prior to the expiration date shall be required to apply for reinstatement.

18VAC120-30-140. ~~Fees for renewal.~~ (Repealed.)

~~Licensees shall be required to renew their license by submitting the proper fee made payable to the Treasurer of Virginia. Any licensee who fails to renew within one calendar month after the license expires, shall be required to apply for reinstatement.~~

18VAC120-30-150. ~~Department discretion to deny renewal.~~ (Repealed.)

~~The department may deny renewal of a license for the same reasons as it may refuse initial licensure or discipline a licensee. The licensee is entitled to a review of such action. Appeals from such actions shall be in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).~~

~~Failure to timely pay a monetary penalty, reimbursement of cost, or other fee assessed by consent order or final order shall result in delaying or withholding services provided by the department, such as, but not limited to, renewal, reinstatement, processing of a new application, or examination administration.~~

18VAC120-30-160. Qualifications for renewal.

A. Applicants for renewal of a license shall continue to meet the standards for entry as set forth in subdivisions A 2 through A 5 of 18VAC120-30-40. ~~The board may deny renewal of a license for the same reasons as it may refuse initial issuance or discipline a regulant. The regulant has a right to appeal any such action by the board under the Virginia Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).~~

B. The department may deny renewal of a license for the same reasons as it may refuse initial licensure or discipline a licensee. The licensee has a right to appeal any such action by the department under the Virginia Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

C. Failure to timely pay any monetary penalty, reimbursement of cost, or other fee assessed by consent order or final order shall result in delaying or withholding services provided by the department, such as~~, but not limited to,~~ renewal, reinstatement, or processing of a new application; or exam administration.

18VAC120-30-170. Reinstatement required.

A. Any licensee who fails to renew his license ~~within one calendar month after~~ on or prior to the expiration date on the license shall be required to apply for reinstatement and submit the proper fee referenced in 18VAC120-30-100.

B. ~~Six~~ Twenty-four calendar months after the expiration date on the license, reinstatement is no longer possible. To resume practice as a polygraph examiner, the former licensee must apply as a new applicant for licensure, meeting all then current entry requirements at the time of reapplication, including retaking an examination.

C. Any examiner activity conducted subsequent to the expiration of the license may constitute unlicensed activity and may be subject to prosecution under § 54.1-111 of the Code of Virginia.

18VAC120-30-180. ~~Department discretion to deny~~ Qualifications for reinstatement.

~~The department may deny reinstatement of a license for the same reasons as it may refuse initial licensure or discipline a licensee.~~

A. Applicants for reinstatement of a license shall continue to meet the standards for entry as set forth in subdivisions A 2 through A 5 of 18VAC120-30-40.

B. The department may deny reinstatement of a license for the same reasons as it may refuse initial licensure or discipline a licensee. The licensee has a right to appeal any such action by the department under the Virginia Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

C. Failure to timely pay any monetary penalty, reimbursement of cost, or other fee assessed by consent order or final order shall result in delaying or withholding ~~the~~ services provided by the department, such as~~, but not limited to,~~ renewal, reinstatement, processing of a new application, or examination administration. ~~The regulant has a right to appeal any such action by the board under the Virginia Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).~~

18VAC120-30-190. Status of a license during the period before reinstatement.

A. When a license is reinstated, the licensee shall continue to have the same license number and shall be assigned an expiration date ~~one year~~ two years from the previous expiration date of the license.

B. A licensee who reinstates his license shall be regarded as having been continually licensed without interruption. Therefore, the licensee shall remain under the disciplinary authority of the department during this entire period. Nothing

in this chapter shall divest the department of its authority to discipline a licensee for a violation of the law or regulations during the period of licensure.

VA.R. Doc. No. R19-5965; Filed December 21, 2021, 7:22 p.m.

TITLE 20. PUBLIC UTILITIES AND TELECOMMUNICATIONS

STATE CORPORATION COMMISSION

Notice of Extension of Public Comment Period

REGISTRAR'S NOTICE: The State Corporation Commission is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency that by the Constitution is expressly granted any of the powers of a court of record.

Title of Regulation: **20VAC5-315. Regulations Governing Net Energy Metering (amending 20VAC5-315-20).**

Statutory Authority: §§ 12.1-13 and 56-594 of the Code of Virginia.

AT RICHMOND, DECEMBER 3, 2021

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. PUR-2021-00251

Ex Parte: In the matter of amending regulations governing net energy metering

ORDER MODIFYING NOTICE REQUIREMENTS AND PROCEDURAL SCHEDULE

The Regulations Governing Net Energy Metering, 20 VAC 5-315-10 et seq. ("Net Energy Metering Rules"), adopted by the State Corporation Commission ("Commission") pursuant to § 56-594 of the Code of Virginia ("Code"), establish the requirements for participation by an eligible customer-generator in net energy metering in the Commonwealth.

Chapter 266 of the 2021 Acts of Assembly, Special Session I ("Chapter 266"), amended the definition of "[s]mall agricultural generator" in Code § 56-594.2 as follows:

"Small agricultural generator" means a customer that:

"2. Operates a small agricultural generating facility as part of (i) an agricultural business or (ii) any business granted a manufacturer license pursuant to subdivisions 1 through 6 of § 4.1-206.1;"

The current Net Energy Metering Rules must be revised to reflect the change set forth in Chapter 266. Thus, on November 12, 2021, the Commission entered an Order Establishing Proceeding initiating this proceeding to amend the Net Energy Metering Rules in keeping with the expanded definition of "[s]mall agricultural generator" in Chapter 266. Commission Staff ("Staff") prepared a proposed amendment to Rule 20 VAC 5-315-20 of the Net Energy Metering Rules ("Proposed Amendment").

It came to the Commission's attention that the Order Establishing Proceeding was entered without the Proposed Amendment being appended thereto and that Ordering Paragraph (7) of the Order Establishing Proceeding contained an incorrect date reference. Therefore, the Commission entered an Order Nunc Pro Tunc on November 16, 2021, to which the Proposed Amendment was appended thereto and made a part of the record. The Order Nunc Pro Tunc also removed and replaced the incorrect date reference.

Ordering Paragraph (4) of the Order Establishing Proceeding, as modified by Ordering Paragraph (3) of the Order Nunc Pro Tunc, requires each Virginia electric distribution company to which the Net Energy Metering Rules apply to serve, on or before December 2, 2021, a copy of the Order Establishing Proceeding and the Order Nunc Pro Tunc (including the attached Proposed Amendment) upon each of their respective net metering customers and each of their existing small agricultural generators, and to file with the Clerk of the Commission a certificate of service no later than December 22, 2021.

On November 22, 2021, Virginia Electric and Power Company ("Dominion Energy Virginia") and Appalachian Power Company ("Appalachian") (collectively, "the Companies") filed the Joint Motion of Virginia Electric and Power Company and Appalachian Power Company for Amended Notice Requirements ("Companies' Motion") seeking an order from the Commission replacing the above-referenced notice and service requirement with a provision authorizing the Companies to provide notice of this proceeding by publication in newspapers of general circulation throughout their respective service territories in Virginia. The Companies' Motion also seeks to extend the service deadline of December 2, 2021, until December 15, 2021. The Companies' Motion includes a proposed notice to be published. The Companies represent that Staff does not object to the Companies' Motion.

On November 24, 2021, the Virginia Electric Cooperatives ("Cooperatives")[1] filed their Motion to Amend Notice Requirements and Procedural Schedule ("Cooperatives' Motion") seeking to limit the notice and service requirement to only small agricultural generators.[2] Among other things, the Cooperatives cite the high cost and time constraints of printing and mailing copies of both the Order Establishing Proceeding and Order Nunc Pro Tunc to each affected Cooperative member-consumer in Virginia by December 2, 2021.[3]

Should the Commission not limit the notice and service requirement to small agricultural generators, the Cooperatives alternatively request that the Commission allow for notice of the Proposed Amendment to the Net Energy Metering Rules by publication in each Cooperative's regular member

publication.[4] The Cooperatives propose a form of notice as an exhibit to the Cooperatives' Motion.

The Cooperatives also move to amend the procedural schedule to accommodate any potential publication requirement, citing that the January/February issue of one member publication has already closed for editorial changes.[5] As such, the Cooperatives propose the following amended procedural schedule: (i) that notice be published and the publications be mailed to members on or before April 1, 2022; (ii) that certificates of such publication be filed by May 16, 2022; (iii) that the comment period be closed by July 29, 2022; and (iv) that the Staff report be filed in this case by October 31, 2022.[6]

The Cooperatives represent that Commission Staff has no objections to the Cooperatives' Motion. The Cooperatives further represent that Appalachian, Kentucky Utilities Company d/b/a Old Dominion Power Company, and Dominion Energy Virginia have no objections to the Cooperatives' Motion nor to the proposed procedural schedule.[7]

NOW THE COMMISSION, upon consideration of these matters, is of the opinion and finds that the Companies' Motion and the Cooperatives' Motion should be granted in part and denied in part as discussed herein. The Commission finds that Ordering Paragraph (4) of the Order Establishing Proceeding, as modified by Ordering Paragraph (3) of the Order *Nunc Pro Tunc*, should be amended to allow the option for notice of this proceeding and the Proposed Amendment by publication.[8] The Commission also amends procedural deadlines in this case to accommodate such publication, while bearing in mind the requirement of Chapter 266 that the Commission complete its rulemaking proceeding within 12 months of initiation of this case.

Accordingly, IT IS ORDERED THAT:

(1) The Companies' Motion and the Cooperatives' Motion are granted to the extent set forth herein.

(2) The Commission's Order Establishing Proceeding and Order *Nunc Pro Tunc* previously entered in this docket are amended as discussed herein.

(3) The Commission's Division of Information Resources forthwith shall forward a copy of this Order Modifying Notice Requirements and Procedural Schedule to the Registrar of Regulations for publication in the Virginia Register of Regulations.

(4) On or before April 1, 2022, each Virginia electric distribution company to which the Net Energy Metering Rules apply shall serve a copy of the Order Establishing Proceeding, the Order Nunc Pro Tunc (including the attached Proposed Amendment), and this Order Modifying Notice Requirements and Procedural Schedule, upon each of its net metering customers and existing small agricultural generators.[9] As an alternative to service on such individual customers, on or before April 1, 2022, any Virginia electric distribution company to which the Net Energy Metering Rules apply shall cause the following notice to be published either (i) as display advertising (not classified) on one occasion in newspapers of general circulation throughout that electric distribution company's service territory in Virginia or (ii) for a Cooperative, in that Cooperative's respective regular member publication. In the latter case, the publication and mailing thereof to member-consumers shall be accomplished on or before April 1, 2022. The notice shall read as follows, with the electric distribution company supplying the information required in the bracketed sections:

NOTICE TO THE PUBLIC OF A PROPOSED AMENDMENT

TO THE STATE CORPORATION COMMISSION'S REGULATIONS GOVERNING NET ENERGY METERING

CASE NO. PUR-2021-00251

The Regulations Governing Net Energy Metering, 20 VAC 5-315-10 et seq. ("Net Energy Metering Rules"), adopted by the State Corporation Commission ("Commission") pursuant to § 56-594 of the Code of Virginia ("Code"), establish the requirements for participation by an eligible customer-generator in net energy metering in the Commonwealth. The Net Energy Metering Rules include conditions for interconnection and metering, billing, and contract requirements between net metering customers, electric distribution companies, and energy service providers.

Chapter 266 of the 2021 Acts of Assembly, Special Session I ("Chapter 266"), amended the definition of "[s]mall agricultural generator" in Code § 56-594.2 as follows (with changes noted in italics):

"Small agricultural generator" means a customer that:

"2. Operates a small agricultural generating facility as part of (i) an agricultural business or (ii) any business granted a manufacturer license pursuant to subdivisions 1 through 6 of § 4.1-206.1;"

The added language generally refers to types of manufacturing licensees issued to businesses by the Virginia Alcoholic Beverage Control Authority pursuant to Code § 4.1-206.1, including distilleries, limited distilleries, breweries, limited breweries, wineries, and farm wineries. The current Net Energy Metering Rules must be revised to reflect this change.

On November 12, 2021, the Commission docketed Case Number PUR-2021-00251 and issued an Order Establishing Proceeding seeking to amend the Net Energy Metering Rules in keeping with the expanded definition of "[s]mall agricultural generator" in Chapter 266. The Commission Staff prepared a proposed amendment to Rule 20 VAC 5-

315-20 of the Net Energy Metering Rules ("Proposed Amendment"). The Proposed Amendment is appended to the Order Nunc Pro Tunc issued in that docket on November 16, 2021. The Commission subsequently entered an Order Modifying Notice Requirements and Procedural Schedule.

TAKE NOTICE THAT on or before May 27, 2022, any interested person may comment on, propose modifications or supplements to, or request a hearing on the Proposed Amendment following the instructions on the Commission's website: scc.virginia.gov/casecomments/Submit-Public-Comments. Those unable, as a practical matter, to submit such documents 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 such documents shall refer to Case No. PUR-2021-00251. Individuals should be specific in their comments, proposals, or supplements to the Proposed Amendment and should address only those issues pertaining to the amendment of Code § 56-594.2 pursuant to Chapter 266. Issues outside the scope of this amendment will not be considered. Any request for hearing shall state with specificity why the issues raised in the request for hearing cannot be adequately addressed in written comments. If a sufficient request for hearing is not received, the Commission may consider the matter and enter an order based upon the comments, documents or other pleadings filed in this proceeding.

The Commission takes judicial notice of the ongoing public health issues 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. In accordance therewith, all comments and other documents and pleadings filed in this matter shall 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"), as modified and described in the Order Establishing Proceeding. Confidential and Extraordinarily Sensitive Information shall not be submitted electronically and shall comply with Rule 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.

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 Establishing Proceeding, all filings shall comply fully with the requirements of 5 VAC 5-20-150, Copies and format, of the Commission's Rules of Practice.

An electronic copy of the Order Establishing Proceeding, Order Nunc Pro Tunc, Order Modifying Notice Requirements and Procedural Schedule, and the Proposed Amendment may be obtained by submitting a written request to counsel for [name of electric distribution company], [name and title of counsel, mailing and e-mail addresses].

An electronic copy of the Proposed Amendment itself may be obtained by submitting a request to Michael A. Cizenski in the Commission's Division of Public Utility Regulation at the following email address: mike.cizenski@scc.virginia.gov. An electronic copy of the Proposed Amendment can be found at the Division of Public Utility Regulation's website: scc.virginia.gov/pages/Rulemaking.

The Commission's Rules of Practice, the Order Establishing Proceeding, Order *Nunc Pro Tunc* and Proposed Amendment, and the Order Modifying Notice Requirements and Procedural Schedule may be viewed at: scc.virginia.gov/pages/Case-Information.

[NAME OF ELECTRIC DISTRIBUTION COMPANY]

(5) Proof of service on the individual customers or proof of publication, as applicable, shall be filed with the Clerk of the Commission on or before May 16, 2022, at scc.virginia.gov/clk/efiling/. Any proof of publication shall include a clear and accurate representation of what information the electric distribution company inserted into the bracketed areas marked of the sample public notice set forth in Ordering Paragraph (4).

(6) The deadline for any interested person to comment on, propose modifications or supplements to, or request a hearing on the Proposed Amendment is changed to on or before May 27, 2022.

(7) The deadline for the Staff's report on or response to any comments, proposals, or requests for hearing submitted to the Commission on the Proposed Amendment is changed to on or before July 29, 2022.

(8) To the extent necessary, the Commission explicitly waives, for all Virginia electric distribution companies to which the Net Energy Metering Rules apply, the requirements of the Order Establishing Proceeding and the Order Nunc Pro Tunc that service be made on net energy metering customers and small agricultural generators by December 2, 2021, and that proof of such service be filed by December 22, 2021.

(9) All other provisions of the Order Establishing Proceeding and Order Nunc Pro Tunc remain in full force and effect.

(10) 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]The Cooperatives that join the Cooperatives' Motion are: A&N Electric Cooperative, BARC Electric Cooperative, Central Virginia Electric Cooperative, Community Electric Cooperative, Craig-Botetourt Electric Cooperative, Mecklenburg Electric Cooperative, Northern Neck Electric Cooperative, Northern Virginia Electric Cooperative, Prince George Electric Cooperative, Rappahannock Electric Cooperative, Shenandoah Valley Electric Cooperative, and Southside Electric Cooperative. Not included in the Cooperative Motion is Powell Valley Electric Cooperative. See Cooperatives' Motion at 1, n.1.

[2]Id. at 2-3. The Cooperatives state that small agricultural generators for the Cooperatives would be subscribers to their Schedule SAG. The Cooperatives represent that they have no subscribers to Schedule SAG at this time. Id. at 3.

[3]Id. at 2-3.

[4]Id. at 3-4. The Cooperatives represent that notice by publication could be accomplished in Cooperative Living magazine, which is already distributed to every member-consumer in Virginia, except for members of Central Virginia Electric Cooperative, who receive the Current Communicator. Id. at 4.

[5]Id. at 5.

[6]Id.

[7]Id. at 6.

[8]The Commission will not require notice by publication for any Virginia electric distribution company to which the Net Energy Metering Rules apply who desires to provide notification of the Proposed Amendment and this proceeding by service by mail upon each of their respective net metering customers and each of their existing small agricultural generators. See infra Ordering Paragraph (4).

[9]To the extent any of these Orders already have been served upon net metering customers and existing small agricultural generators, the electric distribution company need not re-send those specific Orders.

The State Corporation Commission noticed a public comment period on amendments to the **Regulations Governing Net Energy Metering (20VAC5-315)** in the December 6, 2021, issue of the Virginia Register of Regulations (38:8 V.A.R. 789-793 December 6, 2021).

The public comment period has been extended through May 27, 2022.

Agency Contact: Mike Cizenski, Principal Utility Engineer, Public Utility Regulation Division, State Corporation Commission, P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9441, or email mike.cizenski@scc.virginia.gov.

VA.R. Doc. No. R22-6231; Filed December 21, 2021, 12:30 p.m.

Final Regulation

REGISTRAR'S NOTICE: The State Corporation Commission is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency that by the Constitution is expressly granted any of the powers of a court of record.

Title of Regulation: **20VAC5-319. Regulations Governing Accelerated Renewable Energy Buyers (adding 20VAC5-319-10 through 20VAC5-319-70).**

Statutory Authority: §§ 12.1-13 and 56-585.5 of the Code of Virginia.

Effective Date: February 1, 2022.

Agency Contact: Allison Samuel, Manager, Public Utility Regulation Division, State Corporation Commission, P.O. Box 1197, Richmond, VA 23218, telephone (804) 225-3177, or email allison.samuel@scc.virginia.gov.

Summary:

Pursuant to Chapters 1193 and 1194 of the 2020 Acts of Assembly, the amendments add a new chapter that establishes procedures for certification of accelerated renewable energy buyers to conform to requirements of § 56-585.5 G of the Code of Virginia. Under the new regulation, an accelerated renewable energy buyer may choose to certify through the Phase I or Phase II Utility in whose certificated service territory its accounts are located or through the commission procedures provided for in the regulation.

Changes to the proposed regulation include (i) revising the definition of "bundled contract" to conform to § 56-585.5 G of the Code of Virginia; (ii) requiring a Phase I or Phase II Utility to ensure appropriate internal protections are in place to protect the confidentiality of information submitted by potential accelerated renewable energy buyers from unauthorized disclosure to third parties; and (iii) clarifying that in lieu of resubmitting executed contracts or excerpts from contracts on an annual basis, previously certified accelerated renewable energy buyers may be recertified by providing an attestation from a corporate officer that there have been no material changes to the relevant contract.

AT RICHMOND, DECEMBER 10, 2021

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. PUR-2021-00089

Ex Parte: In the matter of establishing rules and regulations pursuant to § 56-585.5 G of the Code of Virginia related to accelerated renewable energy buyers

ORDER ADOPTING REGULATIONS

On May 12, 2021, the State Corporation Commission ("Commission") issued an Order Establishing Proceeding ("Initial Order") docketing this matter for the purpose of determining whether rules and regulations are necessary to implement the provisions of Code § 56-585.5 G and, if so, the appropriate rules and regulations that should be adopted. Enacted as part of the Virginia Clean Economy Act by the 2020 Virginia General Assembly,[1] Code § 56-585.5 G permits certain customers of Appalachian Power Company ("APCo")

and Virginia Electric and Power Company ("Dominion") to be certified as accelerated renewable energy buyers ("ARBs"). Among other things, the Initial Order directed APCo and Dominion to submit comments and permitted any other interested person or entity to submit comments regarding specific issues identified therein. The Commission further permitted commenters to propose specific regulations.

The following entities filed comments in response to the Initial Order: Dominion and APCo, jointly ("Joint Commenters"); the Virginia Office of the Attorney General, Division of Consumer Counsel; Walmart Inc. ("Walmart"); the Data Center Coalition ("DCC"); and the Advanced Energy Buyers Group ("AEBG"). The Joint Commenters included draft proposed regulations with their comments. On July 7, 2021, the Commission issued an Order for Additional Comment permitting additional comments in response to comments previously filed in this matter on or before July 29, 2021. Additional comments were filed by the Joint Commenters, Walmart, DCC, and AEBG.

On August 25, 2021, the Commission issued an Order for Notice and Comment ("Procedural Order") in this docket. Draft proposed Regulations Governing Accelerated Renewable Energy Buyers ("Proposed Rules" or "Rules") prepared by the Commission Staff ("Staff") were appended to the Procedural Order. The Procedural Order permitted interested persons to submit comments on or before November 5, 2021, which could include proposals and hearing requests. The Procedural Order further required Staff to file, on or before November 19, 2021, a report ("Staff Report") providing any response to comments, proposals, or requests for hearing submitted to the Commission on the Proposed Rules.

Comments concerning the Proposed Rules were filed by: Joint Commenters, Walmart, DCC, and AEBG. No requests for hearing were received. On November 19, 2021, Staff filed a Staff Report including certain revisions to the Proposed Rules proposed by Staff after reviewing the comments provided.

NOW THE COMMISSION, upon consideration of the foregoing, finds that we should adopt the Rules appended hereto as Attachment A effective February 1, 2022. As an initial matter, the Commission expresses appreciation to those who have submitted written comments for our consideration. We have carefully considered the comments and proposals filed in this matter. As experience is gained and lessons are learned, these Rules may be updated and revised. In this regard, we further note that the Rules, as adopted herein, permit requests for waiver for good cause shown.[2]

The Rules we adopt herein contain certain modifications to those that were first proposed by Staff and published in the Virginia Register of Regulations on September 27, 2021. These modifications follow our consideration of further proposed changes made by the Staff in its Staff Report and the comments filed in this proceeding. Although we will not comment on each Rule in detail, there are several issues that we will address further herein.

20 VAC 5-319-20 Definitions.

The Commission agrees the Rules should incorporate the 2021 amendments to Code § 56-585.5 G and finds Staff's proposal to modify the definition of "Bundled contract" reasonable to reflect these amendments.[3]

The Commission further finds the Joint Commenters' proposal to change the definition of "REC-only contract," as further modified by Staff, is reasonable.[4] Under the Rules, a REC-only contract is now defined as "a contract for purchase of unbundled RECs from RPS eligible resources as that term is described in § 56-585.5 C of the Code of Virginia."

20 VAC 5-319-40 Commission certification process.

Each of the commenting entities offered suggested changes to the Proposed Rules related to the provision and exchange of sensitive commercial information.[5] As adopted, the Rules strike a reasonable balance in the provision and exchange of such information. As an initial matter, we note that the Rules permit all market sensitive information to be redacted from contracts other than what is necessary to verify the information required in Schedule 2 of the ARB Certification Form, regardless of whether a potential ARB proceeds through the Commission certification process or the utility certification process.

The Joint Commenters request that Rule 40 A 2 be amended to require potential ARBs to provide copies of redacted contracts to the utility upon request as part of the Commission certification process.[6] Joint Commenters are concerned the utility will not be able to provide complete commentary on whether the customer qualifies as an ARB.[7] AEBG, on the other hand, supports the Rule as drafted, stating "it is very important to renewable energy buyers that information about private contracts be kept confidential."[8] The Commission will not require a potential ARB utilizing the Commission certification process to provide copies of redacted contracts to the applicable utility upon request. In so deciding, we recognize that certification through the Commission is a statutorily required alternative to directly certifying with the utility under Code § 56-585.5 G, and thus want to provide an avenue for potential ARBs that may not be comfortable sharing contractual information directly with the utility. We further agree with Staff that a Form Agreement to Adhere to Confidential Treatment pursuant to 5 VAC 5-20-170 of the Commission's Rules of Practice and Procedure[9] is not appropriate in this context, which is outside of a formal docketed proceeding.[10]

Finally with respect to Rule 40 and the ARB Certification Form, we will clarify in the Rules that, in lieu of resubmitting executed contract or excerpts from contracts on an annual basis, previously-certified ARBs may be recertified by providing an attestation from a corporate officer affirming that there have been no material changes to the relevant contract during the previous year.[11]

Accelerated Renewable Energy Buyers Certification Form

The Commission does not adopt the Joint Commenters' proposal to include a table with the Annual RPS Program Requirement in the ARB Certification Form, as that table is already included in Code § 56-585.5 and need not be repeated.[12]

We further agree with Joint Commenters and DCC that language should be added permitting potential ARBs to provide "a copy of the first and last page of all executed contracts along with the relevant provisions," as an alternative to providing "a copy of all executed contracts."[13]

To address the comments of Walmart and AEBG, we further find that the ARB Certification Form should be modified to clarify that an ARB include information on "the actual production from the resources sold to the ARB in megawatt-hours in the prior calendar year in the case of a bundled contract or the number of RECs sold to the ARB in the case of a REC-only contract."[14]

Accordingly, IT IS ORDERED THAT:

(1) The Regulations Governing Accelerated Renewable Energy Buyers, 20 VAC 5-319-10 et seq., as shown in Attachment A to this Order, are hereby adopted and are effective as of February 1, 2022.

(2) The Commission's Division of Information Resources shall forward a copy of this Order, with Attachment A, to the Registrar of Regulations for appropriate publication in the Virginia Register of Regulations.

(3) An electronic copy of this Order with Attachment A shall be made available on the Division of Public Utility Regulation's section of the Commission's website: scc.virginia.gov/pages/Rulemaking.

(4) Within five (5) business days of the date of this Order, APCo and Dominion shall transmit to each customer eligible to be certified as an ARB, by separate first class mailing, by electronic mail, or by bill insert, a copy of this Order including Attachment A.

(5) Within ten (10) business days of the date of this Order, APCo and Dominion shall file an affidavit of compliance with the requirement in Ordering Paragraph (4) with the Clerk of the Commission by filing electronically at scc.virginia.gov/clerk/efiling/. The affidavit shall not include the names or other identifying information of the notified customers, but each utility shall maintain a record of such information.

(6) This docket is dismissed.

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]Senate Bill 851, 2020 Va. Acts ch. 1194, and identical House Bill 1526, 2020 Va. Acts ch. 1193 (effective July 1, 2020).

[2]20 VAC 5-319-70.

[3]See Nov. 5, 2021 DCC Comments ("DCC Comments") at 5-6; Nov. 5, 2021 Joint Commenters Comments ("Joint Comments") at 7; Nov. 5, 2021 AEBG Comments ("AEBG Comments") at 2; Staff Report at 9; 2021 Va. Acts (Special Session I) ch. 140.

[4]Joint Comments at 7; Staff Report at 10.

[5]Joint Comments at 2-5; AEBG Comments at 2-3; Nov. 5, 2021 Walmart Comments ("Walmart Comments") at 1-2; DCC Comments at 2-4.

[6]Joint Comments at 2-5.

[7]Id. at 3.

[8]AEBG Comments at 2-3.

[9]5 VAC 5-20-10 et seq.

[10]Staff Report at 11.

[11]AEBG Comments at 1-2.

[12]Joint Comments at 5; Staff Report at 12.

[13]See Joint Comments at 4-5; DCC Comments at 2-3.

[14]Walmart Comments at 2; AEBG Comments at 3-4.

Chapter 319
Regulations Governing Accelerated Renewable Energy Buyers

20VAC5-319-10. Purpose and applicability.

This chapter is promulgated pursuant to § 56-585.5 G 2 of the Code of Virginia to implement the provisions of § 56-585.5 of the Code of Virginia related to accelerated renewable energy buyers.

20VAC5-319-20. Definitions.

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

"Aggregate load" means the combined electrical load associated with selected accounts of an ARB with the same legal entity name as, or in the names of affiliated entities that control, are controlled by, or are under common control of, such legal entity or are the names of affiliated entities under a common parent.

"Bundled contract" means [(i)] a contract for the bundled capacity, energy, and RECs from solar or wind generation resources located within the PJM region and initially placed in commercial operation after January 1, 2015, including any contract with a utility for such generation resources that does not allocate to or recover from any other customer of the utility the cost of such resources [; and (ii) a subscription by a customer of a Phase II Utility, as of March 1, 2020, to a voluntary companion experimental tariff offering of the utility for the purchase of renewable attributes from renewable energy facilities that requires a renewable facilities agreement and the purchase of a minimum of 2,000 renewable attributes annually].

"Commission" means the Virginia State Corporation Commission.

"Electrical load associated with the selected accounts of an accelerated renewable energy buyer" means the aggregate demand to be determined based on the sum of the maximum non-coincident peak demand metered on the utility's distribution system for each customer account in the previous calendar year. The maximum non-coincident peak demand for each customer account is the highest average kilowatt measured during any 30-minute interval in the previous calendar year.

"Phase I Utility" has the same meaning as provided in § 56-585.1 A 1 of the Code of Virginia.

"Phase II Utility" has the same meaning as provided in § 56-585.1 A 1 of the Code of Virginia.

"REC" means renewable energy certificate.

"REC-only contract" means a contract for purchase of unbundled RECs from RPS eligible resources [as that term is described in § 56-585.5 C of the Code of Virginia].

[~~"RPS" means the renewable energy portfolio standard pursuant to § 56-585.5 of the Code of Virginia.~~]

20VAC5-319-30. Certification of accelerated renewable energy buyers.

Any potential ARB must be certified annually either (i) through the Phase I or Phase II Utility in whose certificated service territory its accounts are located through the process established by that utility or (ii) through the commission pursuant to 20VAC5-319-40.

20VAC5-319-40. Commission certification process.

A. The commission establishes the following process for certification through the commission:

1. Any potential ARB that chooses to certify directly with the commission must submit to the director of the commission's Division of Public Utility Regulation an Accelerated Renewable Energy Buyer Certification Form by March 1 for the upcoming year, starting June 1 and concluding May 31, based on load data and information from the prior calendar year.

2. Upon receipt of a completed Accelerated Renewable Energy Buyer Certification Form pursuant to subdivision A 1 of this section, commission staff shall provide the appropriate Phase I or Phase II Utility with a copy of the completed Accelerated Renewable Energy Buyer Certification Form, excluding copies of any executed contracts provided to commission staff by the potential ARB, and set a deadline by which the utility shall submit comments to commission staff. The utility's comments shall include confirmation to commission staff that the potential ARB meets the aggregate load requirements of § 56-585.5 of the Code of Virginia. The utility shall also send a copy of its comments to the potential ARB.

3. Following receipt of a completed Accelerated Renewable Energy Buyer Certification Form pursuant to subdivision A 1 of this section, based on its review and the comments received, commission staff shall determine by May 1 whether the potential ARB meets the requirements of § 56-585.5 G of the Code of Virginia and this chapter, the type of certification (i.e., REC-only contract or bundled contract), and the percentage exemption.

4. Within five business days of its certification decision, commission staff shall provide the appropriate Phase I or Phase II Utility with a list of customer accounts associated with each certified ARB, the type of certification (i.e., REC-only contract or bundled contract), and the percentage exemption. Commission staff shall also provide each Phase I Utility and Phase II Utility with the nameplate capacity of the solar and wind generation of certified ARBs with bundled contracts.

B. Any potential ARB or Phase I or Phase II Utility that contests the certification decision made by commission staff must file a formal complaint with the commission pursuant to 5VAC5-20-100 within [~~five~~ 10] business days of the certification decision. Any statutorily exempt charges incurred by the potential ARB after June 1 are subject to collection or refund, depending on the certification decision.

C. Customers certified as ARBs through this process shall be exempt from the applicable charges [, which could be a full or partial exemption,] for one year starting June 1 and concluding May 31 following certification.

D. For a potential ARB that seeks certification based on its load and renewable energy under contract for the 2020 calendar year, the ARB must submit an Accelerated Renewable Energy Buyer Certification Form by March 1, 2022, based on information for the 2020 calendar year. Customers that are certified as ARBs based on 2020 calendar year information will receive a refund of applicable charges for the period of June 1, 2021, to May 31, 2022.

[E. In lieu of resubmitting executed contracts or excerpts of such contracts on an annual basis, customers previously certified as ARBs may be recertified by providing an attestation from a corporate officer affirming that there have been no material changes to the relevant contracts during the previous year.]

20VAC5-319-50. Utility certification process.

A. Each Phase I Utility and Phase II Utility shall establish a process to certify ARBs based on receipt and review of Accelerated Renewable Energy Buyer Certification Forms submitted to the utility by potential ARBs. In reviewing the information submitted by potential ARBs required for certification, each Phase I Utility and Phase II Utility shall ensure that the appropriate internal protections are in place to protect the confidentiality of that information from those within the utility serving in marketing roles [or from unauthorized disclosure to third parties].

B. By May 1 annually, each Phase I Utility and Phase II Utility shall submit to commission staff a complete list of ARBs certified by the utility. Each Phase I Utility and Phase II Utility shall submit additional information to support its certification decisions to commission staff upon request. Any potential ARB that contests the certification decision made by a Phase I or Phase II Utility may file a formal complaint with the commission pursuant to 5VAC5-20-100 within [~~five~~ 10] business days of the certification decision. Commission staff may contest the certification decision made by a Phase I or Phase II Utility by filing a motion with the commission pursuant to 5VAC5-20-90, or, as appropriate, through other relevant proceedings before the commission. [Any statutorily exempt charges incurred by the potential ARB after June 1 are subject to collection or refund, depending on the certification decision.]

C. Customers certified as ARBs through this process shall be exempt from the applicable charges [, which could be a full or partial exemption,] for one year starting June 1 and concluding May 31 following certification.

D. For a potential ARB that seeks certification based on its load and renewable energy under contract for the 2020 calendar year, the ARB must submit an Accelerated Renewable Energy Buyer Certification Form by March 1, 2022, based on information for the 2020 calendar year. Customers that are certified as ARBs based on 2020 calendar year information will receive a refund of applicable charges for the period of June 1, 2021, to May 31, 2022.

20VAC5-319-60. Confidentiality.

Where any Accelerated Renewable Energy Buyer Certification Form or other information submitted to commission staff under this chapter, including any supporting documents, contains information that the ARB asserts is confidential, it shall be treated in accordance with 5VAC5-20-170.

20VAC5-319-70. Waiver.

The commission may waive any part or all parts of this chapter for good cause shown.

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 (20VAC5-319)

[~~Accelerated Renewable Energy Buyer Certification Form, (draft 8/2021)~~

Accelerated Renewable Energy Buyer Certification Form (eff. 2/2022)]

VA.R. Doc. No. R22-6301; Filed December 21, 2021, 8:37 p.m.

TITLE 22. SOCIAL SERVICES

DEPARTMENT FOR THE BLIND AND VISION IMPAIRED

Final 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.

Effective Date: February 16, 2022.

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.

Summary:

The 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.

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

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~~ Department for the Blind and Vision Impaired] 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 December 22, 2021, 2:53 p.m.

Final 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: § 51.5-65 of the Code of Virginia.

Effective Date: February 16, 2022.

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.

Summary:

The amendments (i) change the title of 22VAC45-70 from "Provision of Services in Rehabilitation Teaching" to "Regulations Governing the Provision of Rehabilitation Teaching and Independent Living Services" and repeal 22VAC45-80; (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.

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

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 [~~meaning~~ 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" [or "DBVI"] 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~~ 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.

[Rehabilitation Teaching/Independent Living Program Plan" or "Plan" means a written program of rehabilitation teaching services identified during the assessment for each individual determined eligible for services by the Rehabilitation Teaching/Independent Living Program.]

"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/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~~ U.S.] 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 December 22, 2021, 2:54 p.m.

TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

DEPARTMENT OF MOTOR VEHICLES

Proposed Regulation

Titles of Regulations: **24VAC20-80. Overload Permit Regulations (repealing 24VAC20-80-10 through 24VAC20-80-50).**

24VAC20-81. Hauling Permit Regulation (repealing 24VAC20-81-10 through 24VAC20-81-250).

24VAC20-82. Overload and Hauling Permits Regulation (adding 24VAC20-82-10 through 24VAC20-82-180).

Statutory Authority: § 46.2-203 of the Code of Virginia.

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: March 18, 2022.

Agency Contact: Melissa Velazquez, Legislative Services Manager, Department of Motor Vehicles, P.O. Box 27412, Richmond, VA 23269-0001, telephone (804) 367-1844, FAX (804) 367-6631, TDD (800) 272-9268, or email melissa.velazquez@dmv.virginia.gov.

Basis: Department of Motor Vehicles (DMV) regulations are promulgated under the general authority of § 46.2-203 of the Code of Virginia, which grants DMV statutory authority to promulgate regulations necessary to carry out the laws administered by the department. Section 46.2-1128 of the Code of Virginia authorizes DMV to grant an overload permit to certain vehicles that exceed statutory weight limits and specifically provides that DMV may promulgate regulations governing such permits. Section 46.2-1139 et seq. of the Code of Virginia authorizes DMV to issue permits that allow certain vehicles that exceed statutory weight or size limits to operate on the highway and authorize DMV to promulgate regulations governing such permits.

Purpose: The Overload Permit Regulations (24VAC20-80) and the Hauling Permit Regulation (24VAC20-81) last underwent comprehensive revisions in 1988 and 2007. Since that time, changes in technology and business practices and amendments to Chapter 10 (§ 46.2-1000 et seq.) of Title 46.2 of the Code of Virginia and federal regulations governing maximum vehicle size and weight have occurred. DMV has completed a general review of the existing regulations and identified changes necessary to conform the regulations to existing law, ensure consistency in the permitting process, and improve clarity and ease of use while protecting the health, safety, and welfare of the traveling public and the Commonwealth's transportation infrastructure. DMV may propose other changes it identifies as necessary during the regulatory review process.

Substance: A comprehensive regulatory review and overhaul of the regulations ensures the regulation complements existing statutes, imposes minimal burdens on permittees while protecting the traveling public and transportation infrastructure, and reflects current agency policies and procedures in the most efficient, cost-effective, clearly written and understandable manner. Changes conform the regulations to existing law, ensure consistency in the permitting process, and improve clarity.

Issues: The primary advantage to the public of the repeal of 24VAC20-80 and 24VAC20-81 and the promulgation of the new regulation proposed as 24VAC20-82 is to clarify language that was unclear, inconsistent, or inaccurate due to legislative changes and to consolidate the regulations in a single chapter for ease of reference.

The primary advantage to the agency and Commonwealth is that the proposed regulations clarify, but do not increase, DMV and the Virginia Department of Transportation responsibilities with regard to approving and issuing permits.

There are no disadvantages to the public or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Pursuant to prior periodic reviews,[1] the Department of Motor Vehicles (DMV) seeks to repeal 24VAC20-80, Overload Permit Regulations, and 24VAC20-81, Hauling Permit Regulation, in their entirety and replace them with a new chapter 24VAC20-82, Overload and Hauling Permit Regulations. Since both chapters 80 and 81 prescribe requirements for obtaining permits to operate overweight vehicles, these requirements would be combined in the new chapter 82 for consistency and ease of reference.

Background. Chapters 80 and 81 were last amended in 1988 and 2007 respectively.[2] A 2020 periodic review of both chapters found that the changes in technology and business practices, and in the Code of Virginia (specifically Chapter 10 of Title 46.2, henceforth Code) and federal regulations that had occurred in the interim had been sufficiently significant to warrant their repeal.[3] DMV proposes to create a new chapter that would contain updated definitions and requirements and conform to statute and current practices

Since DMV's permitting program has a long history, their primary objective in promulgating the new regulation is to ensure that it would continue to remain applicable and up to date for a long time to come. DMV further reports that applicants seeking oversize and hauling permits are generally aware that the most accurate and relevant information regarding requirements and fees originate in statute and often refer to manuals produced by the DMV to obtain this information.[4] These requirements and fees are primarily updated through legislation rather than the regulatory process. Thus, although chapters 80 and 81 contain statutory requirements for obtaining permits (many of which are out-of-date) as well as details regarding the application process for the permit, the proposed chapter 82 would not contain statutory requirements. Instead, it would solely provide applicants with practical details regarding the permit application process, including the required forms.

Estimated Benefits and Costs. The proposed changes are intended to improve clarity and ease of use for readers of the regulation, while conforming the regulation to statute. DMV reports that the proposed regulation would not increase either their own or the Virginia Department of Transportation's (VDOT) responsibilities with regard to approving and issuing permits. To the extent that the new chapter makes it easier to understand the requirements to apply for and obtain a permit, the proposed changes would benefit applicants for oversize-load and hauling permits.

Businesses and Other Entities Affected. The proposed amendments would affect DMV employees who issue overload and hauling permits and VDOT employees who conduct engineering analyses (if indicated as a permit requirement by statute) to the extent that they clarify what is required of them. The proposed amendments would also benefit businesses involved in transporting oversize or overweight vehicles to the extent that they ensure that permit applicants understand their responsibilities with regard to making permit applications and operating under an approved permit.

Small Businesses[5] Affected. The proposed amendments are unlikely to adversely affect any small businesses since they serve to remove obsolete requirements and clarify the permit application process under current statutory requirements. The number of small businesses involved in transport oversize or overweight vehicles is unknown.

Localities[6] Affected.[7] 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 impact the number of individuals employed in the transportation industry or by DMV or VDOT.

Effects on the Use and Value of Private Property. The proposed amendments would not affect the use or value of private property. Real estate development costs are not affected.

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[1]See https://townhall.virginia.gov/L/ViewPReview.cfm?PRid=1763 and https://townhall.virginia.gov/L/ViewPReview.cfm?PRid=1764

[2]Agency Background Document (ABD), page 2. See https://townhall.virginia.gov/l/GetFile.cfm?File=68\5626\9261\AgencyStatement_DMV_9261_v2.pdf. The changes to chapter 80 pre-date Town Hall; chapter 81 became effective in 2009 under https://townhall.virginia.gov/l/ViewAction.cfm?actionid=1675.

[3]See https://townhall.virginia.gov/l/ViewPReview.cfm?PRid=1763 and https://townhall.virginia.gov/l/ViewPReview.cfm?PRid=1764.

[4]See for example the DMV website https://www.dmv.virginia.gov/commercial/#mcs/programs/overload/index.asp, and this booklet https://www.dmv.virginia.gov/webdoc/pdf/dmv109.pdf.

[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 Department of Motor Vehicles has reviewed the economic impact analysis prepared by the Department of Planning and Budget and has no comment.

Summary:

The proposed action repeals Overload Permit Regulations (24VAC20-80) and Hauling Permit Regulation (24VAC20-81) and replaces them with a combined new regulation Overload and Hauling Permits Regulation (24VAC20-82). As a result of a periodic review, the proposed chapter (i) updates definitions and requirements, removes redundancies, and clarifies provisions; (ii) conforms regulatory requirements to statute and current practices; and (iii) provides practical details regarding the permit application process, including the required forms.

Chapter 82
Overload and Hauling Permits Regulation

Part I
General Provisions

24VAC20-82-10. Definitions.

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

"Commissioner" means the Commissioner of the Virginia Department of Motor Vehicles.

"DMV" means the Virginia Department of Motor Vehicles.

"Escort vehicle driver certificate" means a document issued by a state that signifies that the holder of the certificate has successfully completed the issuing state's requirements to escort overdimensional vehicle configurations.

"Hauling permit" means a permit issued by the Virginia Department of Motor Vehicles in accordance with § 46.2-1139 of the Code of Virginia to allow Virginia-based and foreign-

based vehicles or combinations of vehicles of a size or weight exceeding the maximum specified in Title 46.2 of the Code of Virginia to operate on a highway in Virginia.

"Off-centered load" means a transport vehicle's cargo is loaded so that there is no overhang on driver's side of the transport vehicle and there is overhang on the passenger side load that extends beyond and is not evenly distributed across the bed of the transport vehicle.

"Overload permit" means a permit issued by the Virginia Department of Motor Vehicles in accordance with § 46.2-1128 of the Code of Virginia to allow Virginia-based and foreign-based vehicles or combinations of vehicles to exceed the weight limitations otherwise applicable to such vehicles by 5.0%.

"Registered gross weight" means the weight for which a vehicle or combination of vehicles is registered or licensed.

"Trailer" means the same as the term is defined in § 46.2-100 of the Code of Virginia.

"Truck" means a motor vehicle designed to transport property on its own structure independent of any other vehicle and having a registered gross weight in excess of 7,500 pounds.

"VDOT" means the Virginia Department of Transportation.

"Vehicle configuration" means the height, weight, width, and length of a vehicle to include vehicle axle spacing.

Part II
Overload Permit Requirements

24VAC20-82-20. Overload permit requirements.

A. Overload permits are ordinarily purchased at the time of vehicle registration. The fee for an overload permit purchased at the time of a quarterly vehicle registration shall be prorated.

B. Overload permits may be transferred from one vehicle to another if the license plates associated with the permit are also being transferred. The fee to transfer an overload permit is $2.00. This fee is in addition to any fee authorized to be collected for the transfer of the license plates associated with the permit. Permit decals shall be removed from the vehicle from which the permit is being transferred and shall either accompany the application for a new overload permit or be destroyed by the permit holder.

C. Overload permits will be issued in the same name and for the same vehicle as the vehicle registration.

D. Overload permit fees are not refundable. However, an applicant for a new permit may receive credit for the fee paid for a previously issued, unexpired permit that has been removed from a vehicle. Such credit shall not exceed (i) the prorated fee for the number of months remaining on the previously issued permit, or (ii) the amount of the fee for the new permit, whichever is less. The credit shall not be applied to the $2.00 permit transfer fee.

E. In order to purchase an overload permit, the owner of a motor vehicle shall:

1. Request the permit from DMV;

2. Pay the appropriate fee; and

3. Furnish, on an application supplied by DMV, the following information for the motor vehicle:

a. Make;

b. Identification number;

c. Current license plate number;

d. Expiration date;

e. State of issue; and

f. Registered gross weight.

F. The fee for an initial permit issued on a vehicle may be prorated to the month of the expiration of the vehicle registration.

G. Overload permits may be in the form of decals, issued in duplicate. Any decals issued shall be placed on the vehicle in the following locations:

1. One decal shall be placed on the driver side of the vehicle.

2. The second decal shall be placed on the passenger side in the same approximate area as the first decal.

H. Expired decals shall be removed or destroyed.

Part III
Hauling Permit Requirements

24VAC20-82-30. Authority; permits.

The commissioner or the commissioner's designee may issue hauling permits for qualifying vehicles only when an over width configuration is not created by loading multiple items side by side, an overheight configuration is not created by stacking multiple items on top of one another, an overlength configuration is not created by loading multiple items behind one another, or an overweight configuration is not created by carrying multiple items, or when statutorily exempted by the Code of Virginia.

24VAC20-82-40. Vehicle loading and marking requirements.

In general, off-centered loads should be loaded so that the overhang is to the outside shoulder side of the roadway. If this loading condition creates an unsafe operating situation, the applicant may apply for relief, which may be granted by DMV on a case-by-case basis.

All flags used for flagging purposes shall be red or any highly fluorescent color, not less than 18 inches square, and in good condition. Flags shall be placed at the extremities of a vehicle load to identify overwidth or secured at the end of the load to identify overhang in accordance with § 46.2-1121 of the Code of Virginia.

24VAC20-82-50. Single trip permit.

Single trip permits are issued to cover one movement between two specific points. Most single trip permits are valid for a 13-day period; however, DMV may restrict any single trip permit movement to a shorter period depending on various circumstances such as weather, routes of travel, construction projects, overall dimensions of the vehicle configuration, or other unforeseen circumstances. No refunds or credits will be granted for unused or expired permits.

Single trip permits are vehicle specific and cannot be transferred between vehicles. The permit is required to be carried in the transport vehicle. This permit shall be presented to DMV, law enforcement, or VDOT officials when requested.

24VAC20-82-60. Superload single trip permit.

A. Like other single trip permits, superload single trip permits are issued to cover one movement between two specific points. Superload single trip permit requests exceed the maximum weight or size limitations ordinarily allowed on a single trip permit. Superload single trip permit requests require various levels of research and analysis and should be submitted to DMV at least 10 working days prior to the anticipated date of movement. All superload single trip permits are issued on a case-by-case basis and only after an appropriate review or VDOT engineering analysis has determined that the vehicle configuration will not harm or damage roadways, bridges, or structures on the designated routes of travel. Results of the review or engineering analysis may render the vehicle configuration ineligible for movement.

Superload single trip permits are vehicle specific and cannot be transferred between vehicles. The permit is required to be carried in the transport vehicle. This permit shall be presented to DMV, law enforcement, or VDOT officials when requested.

B. Requirements for superload single trip permits exceeding certain parameters are described in this subsection. Movements that exceed any of the following parameters: 18 feet in width, 250,000 pounds in weight, 200 feet in length, or 16 feet in height may be required to submit a detailed travel plan, depending on the time of travel and the routes of travel. The plan should include the following:

1. Name and description of the item being moved;

2. Overall loaded dimensions for the vehicle configuration to include height, width, length, and gross weight;

3. Explanation of why the load cannot be reduced;

4. Explanation of why the load cannot be transported by air, rail, or water;

5. Origin and destination specific to Virginia, including mileage and specific intersecting routes (e.g., Route 65 - one mile south of Route 2 in Campbell County);

6. Preferred routes of travel;

7. Point of contact within the company who can speak to the requested movement in case additional information is needed;

8. A description of how to facilitate the movement of emergency vehicles responding to emergencies, locations where the overdimensional configuration will pull over to allow movement of traffic (traffic shall not be detained for more than 10 minutes if at all possible), and layover locations;

9. Written authorization from local law-enforcement personnel agreeing to escort the overdimensional configuration through their jurisdiction. The authorization shall include the name, phone number, and email address of the primary point of contact. The hauling permit staff will contact the point of contact to confirm their escorting role prior to DMV issuing the superload single trip permit;

10. Written authorization from affected utility, cable, and telephone companies, agreeing to accompany the overdimensional configuration to lift overhead wires. The authorization shall include the name, phone number, and email address of the primary point of contact. The hauling permit staff will contact the point of contact to confirm their role in the move prior to DMV issuing the hauling permit; and

11. Written authorization from VDOT for the removal or adjustment of any ancillary highway structures or roadway appurtenances maintained by VDOT. The authorization shall include the name, phone number, and email address of the primary point of contact. The hauling permit staff will contact the point of contact to confirm their role in the move prior to DMV issuing the hauling permit.

C. If the applicant intends to layover on private property, the applicant must have written authorization from the property owner or the public facility giving permission to layover on the private property until able to proceed in accordance with the permit. The authorization shall include the name, phone number, and email address of the primary point of contact. The hauling permit staff may contact the point of contact to confirm the layover privileges on the property prior to DMV issuing the superload single trip permit. The authorization must be carried in the transport vehicle and presented to DMV, law enforcement, or VDOT officials when requested.

24VAC20-82-70. Additional analysis requirements for exceptional or unusual loads.

A. For loads with gross vehicle weights over 400,000 pounds, a schematic of the vehicle providing detail of the loading the vehicle will impose must be submitted with the permit application for VDOT's use. The schematic must include the longitudinal spacing between all axles and the transverse dimensions of all tires and all spacing between each tire along the axle. For vehicles with different tire configurations on multiple axles, all unique axle configurations must be included.

An example vehicle schematic is available in the Virginia Hauling Permits Manual available from DMV.

B. The requirement for additional analysis may also be extended to vehicles with gross weights less than 400,000 pounds for unusual vehicle or structure characteristics as determined by VDOT in its sole discretion.

C. For loads with gross vehicle weights over 750,000 pounds, VDOT will require the permit applicant to retain an engineer licensed in the Commonwealth of Virginia to complete an engineering analysis of all structures to be crossed by the vehicle on the permitted route. This requirement may apply for loads with gross vehicle weights between 500,000 and 750,000 pounds at VDOT's sole discretion. This requirement may also be extended to vehicles with smaller gross weights as needed (i) for unusual vehicle or structure characteristics as determined by VDOT, or (ii) in cases where multiple routes and or vehicles are requested to be evaluated for the same load.

D. The permit applicant's engineer must execute and submit a Critical Infrastructure Information / Sensitive Security Information (CII/SSI) nondisclosure form before VDOT will release the safety inspection reports and bridge plans necessary to complete the analysis. A meeting with VDOT's engineers before beginning the analysis is strongly encouraged.

E. VDOT in its sole discretion may require that pre-travel and post-travel inspections be completed for any structures along the permitted route to assess for and capture any damage to VDOT's inventory. When inspections are determined to be required, VDOT will also require a surety bond to be posted. The value of the surety, as determined solely by VDOT, will be commensurate with the cost to perform major repairs or replace affected portions of VDOT's inventory along the permitted route.

F. VDOT review and approval of any independent analysis is required before DMV will issue any permit. VDOT's determination is final.

G. The amount of time required to process a permit will be commensurate with the volume and complexity of the analysis required.

24VAC20-82-80. Annual multi-trip permit.

Annual multi-trip permits allow multiple movements on designated or unrestricted routes in Virginia. Annual multi-trip permits are issued on a case-by-case basis and may be purchased for either one or two years.

The permit is required to be carried in the transport vehicle. This permit shall be presented to DMV, law enforcement, or VDOT officials when requested.

Annual multi-trip permits are issued through the DMV's headquarters office, and all requests shall be made at least 10 business days prior to the anticipated movement date.

24VAC20-82-90. Superload multi-trip permits.

When the vehicle configuration exceeds the size or weight parameters allowed for the annual multi-trip permits issued under 24VAC20-82-80, the applicant may apply for a superload multi-trip permit. These permits are issued on a case-by-case basis. They may be issued for a period of one year or, depending upon the characteristics of the load or route of travel, may be limited to three months.

The superload multi-trip permit allows multiple movements within a specified time period statewide or on specific routes. Requests for the superload multi-trip permit must be submitted to DMV at least 10 business days in advance of the anticipated movement date. These permits are vehicle specific. Superload multi-trip permits are issued only after the appropriate reviews or VDOT engineering analysis have been completed to ensure that the vehicle configuration will not harm or damage roadways, bridges, structures, or other state inventory on the routes of travel. Results of the reviews or engineering analysis may render the vehicle configuration ineligible to move under the authority of a superload multi-trip permit.

The permit is required to be carried in the transport vehicle. This permit shall be presented to DMV, law enforcement, or VDOT officials when requested.

24VAC20-82-100. Exempted multi-trip permits; eligibility requirements.

In addition to other permits provided in this chapter, the Commonwealth of Virginia issues a number of exempt permits under Article 18 (§ 46.2-1139 et seq.) of Chapter 10 of Title 46.2 of the Code of Virginia. Most exempt multi-trip permit loads are reducible but have been granted statutory authority to operate on the state highway system. The applicant must adhere to specific statutory criteria in order to qualify for these permits.

Vehicles or equipment registered in the name of the United States government or state or local agencies shall receive without cost an overdimensional or overweight permit to move overdimensional or overweight items. Contractors moving items on behalf of the United States government or state or local agencies are not eligible to receive this permit at no cost.

Part IV
Travel Guidelines

24VAC20-82-110. Travel restrictions; holiday travel; days and times of travel; speed limits.

A. Permitted vehicle configurations are not allowed to travel on the following state observed holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day. On the holidays listed in this subsection, permits will not be valid from noon the preceding weekday through the holiday. If the observed holiday falls on a Monday, the permit will not be valid from noon on the preceding Friday through Monday.

B. Normal times of travel for permitted loads are sunrise to sunset. Some superload vehicle configurations may be required to travel during the hours of darkness. No permitted travel is allowed within the corporate limits of cities or towns between the hours of 7 a.m. to 9 a.m. and 4 p.m. to 6 p.m., except for configurations that are overweight or overlength (not exceeding 85 feet, including rear overhang) only.

C. In addition to the day and time of travel restrictions set out in subsections A and B of this section, DMV may further restrict days and times of travel if it is deemed necessary giving primary consideration to the safety and well-being of the traveling public.

D. When road conditions, visibility, or unfavorable weather conditions make traveling hazardous to the operator or to the traveling public, permitted vehicles are not authorized to operate unless responding to an emergency. Law enforcement judgment shall prevail in all circumstances.

Part V
Escort Vehicles and Equipment Requirements; Escort Vehicle Driver Certification; and General Escorting Guidelines

24VAC20-82-120. Escort vehicles and equipment requirements.

A. The escort vehicle shall be a truck not less than one-quarter-ton-rated load capacity but not more than 17,000 pounds gross vehicle weight rating (GVWR) or a passenger vehicle of not less than 2,000 pounds gross weight. Escort vehicles shall not resemble nor be confused with law-enforcement or safety-assistance vehicles. Escort vehicles shall be in compliance with all state and local registration processes required by the state in which the vehicle is registered. Except when in compliance with subsection C of this section, escort vehicles shall not be overdimensional or overweight while in use performing escorting duties. They are not permitted to pull a trailer of any kind while performing escorting duties and shall have an unobstructed view through the rear window.

B. All escort vehicles shall be equipped with a two-way communication system to maintain communications between the permitted vehicle driver and all escort vehicles in the group.

C. Front or lead escort vehicles are required to have a height pole when required by permit. While performing escorting duties the pole shall be extended at least three inches above the specified height of the vehicle configuration being escorted.

D. Escort vehicle headlights shall be on at all times while escorting overdimensional or overweight vehicles.

E. All escort vehicles shall have at least one light, rotating or flashing, positioned on top of the escort vehicle. The light must be visible for a distance of at least 500 feet in all directions by approaching vehicles.

F. Paddles shall be at least 18 inches by 18 inches with six-inch high lettering. For greater visibility, a high-intensity flashing stop/slow paddle may be used.

G. All flags used for flagging purposes shall be red or any highly fluorescent color, not less than 18 inches square and in good condition. Individuals performing flagging activities shall wear a hard hat and approved ANSI Class II or Class III safety vest.

H. Escort vehicles shall have signs, descriptive of the load being escorted (i.e., "Wide Load" or "Oversize Load" or "Overweight Load"). At a minimum, the signs shall be displayed in black eight-inch high letters with a minimum of 1-1/4 inch brush strokes on a yellow banner. The banner shall be mounted on the front and rear bumper of the escort vehicle. If displayed on the roof of the escort vehicle, other drivers must be able to read the signs when approaching or following the escort vehicle.

I. A minimum of one Underwriters Laboratories (UL) or Factory Mutual Laboratories (FM) approved, five pounds or greater, Type "BC" or "ABC" fire extinguisher shall be carried in the escort vehicle or escort vehicles.

J. Reflective triangles or road flares shall be used to warn oncoming or approaching vehicles of a breakdown.

24VAC20-82-130. General escorting guidelines.

A. All escort vehicle operators are required to be certified prior to performing the duties of an oversize or overweight load escort vehicle operator in Virginia. General guidelines as to when escorts are required include the following:

1. One front and one rear escort is required on noninterstate routes when the permitted load exceeds 12 feet in width.

2. One rear escort is required on interstate routes when the permitted load exceeds 12 feet in width.

3. Two front and one rear escorts are required on noninterstate routes when the permitted load exceeds 14 feet in width.

4. One front and one rear escort is required on interstate routes when the permitted load exceeds 14 feet in width.

5. Two front and two rear escorts are required on noninterstate routes when the permitted load exceeds 16 feet in width.

6. One front and two rear escorts are required on interstate routes when the permitted load exceeds 16 feet in width.

7. One front escort is required when an off-centered load exceeds three feet six inches on the passenger side of the vehicle configuration.

8. One front escort and one rear escort is required when an off-centered load exceeds five feet on the passenger side of the vehicle configuration.

9. One front escort equipped with a height pole, adjusted three inches above the load height, is required on all routes when the permitted load exceeds 14 feet five inches in height.

10. One rear escort is required on noninterstate routes when the permitted load exceeds 90 feet in length.

11. One rear escort is required on interstate routes when the permitted load exceeds 120 feet in length.

12. One front and one rear escort is required on all routes when the permitted load exceeds 150 feet in length.

13. One front escort is required on all routes when the permitted load has a front overhang that exceeds 10 feet (measured from the bumper).

14. One rear escort is required on all routes when the permitted load has a rear overhang that exceeds 15 feet (measured from the bumper).

15. Permit loads that exceed 18 feet wide or 200 feet long will be handled on a case-by-case basis.

B. Escort requirements are subject to change with individual consideration of weight, width, length, height, geographical location, or route of travel as determined by DMV.

24VAC20-82-140. Fees.

The fee to reissue or issue a duplicate escort vehicle driver certificate is $15.

Part VI
Emergency and National Defense Moves

24VAC20-82-150. Emergency moves.

Multi-trip permit holders may request "emergency travel regulations" when ordering permits if there is a possibility that the equipment or commodity permitted will be required in support of an emergency defined as "a calamity, existing or imminent, caused by fire, flood, riot, windstorm, explosion, act of God, or other similar situation which requires immediate remedial action to protect life or property." Having emergency travel regulations in the permit may allow response to the emergency using the multi-trip permit if that permit covers the routes used to respond to the emergency. However, the permittee must contact VDOT's Emergency Operations Center and give them vital travel information that will be passed on to the Virginia State Police, all applicable law-enforcement jurisdictions, and DMV weigh stations.

Part VII
Responsibilities

24VAC20-82-160. Compliance with state laws and permit requirements.

A. The acceptance and use of a hauling permit by the applicant or an applicant's designee is the applicant's agreement that the applicant will proof the permit for accuracy prior to traveling on Virginia's highways. If the document is incorrect, the permittee will immediately contact DMV to obtain the proper permit prior to traveling over Virginia's highways. The permittee accepts full responsibility and the consequences associated with having a permit containing erroneous or incorrect information.

B. The acceptance and use of a hauling permit by the applicant is the applicant's agreement to pay for all damages and cost involved to persons or property as a result of the permitted movement.

C. The acceptance and use of a hauling permit by the applicant is the applicant's agreement that the applicant will comply with all the terms and conditions as specified within the permit.

D. A permittee who has been issued a hauling permit, an agent of the permittee, or any member of the permittee's company shall notify DMV within three business days if the permitted vehicle is involved in any accident. Failure to notify DMV of involvement in an accident may result in suspension or denial of permitting privileges as specified in 24VAC20-82-180.

24VAC20-82-170. Injury or damage.

The permittee assumes all responsibility for an injury to persons or damage to public or private property caused directly or indirectly by the transportation of vehicles and loads moving under the authority of a state-issued overload or hauling permit. Furthermore, the permittee agrees to hold the Commonwealth of Virginia, DMV and its employees, and other state agencies and their employees harmless from all suits, claims, damages, or proceedings of any kind, as a direct or indirect result of the transportation of the permitted vehicle.

Part VIII
Denial; Revocation; Refusal To Renew; Appeal; Invalidation

24VAC20-82-180. Denial; revocation; refusal to renew; appeal; invalidation.

A. A hauling permit may be revoked by DMV upon written findings that the permittee violated the terms of the permit. Terms of the permit include adherence to this chapter and state and local laws and ordinances regulating the operation of overweight or oversized vehicles. Repeated violations may result in a permanent denial of the right to use the state highway system or roads for transportation of overweight and oversized vehicle configurations. A permit may also be revoked for misrepresentation of the information on the application, fraudulently obtaining a permit, alteration of a permit, or unauthorized use of a permit.

B. A hauling permit may be denied to any applicant or company, or both, for a period not to exceed one year when the applicant or company or both has been notified in writing by DMV that violations existed under a previously issued permit. Customers who are delinquent in payment to other DMV

functions will be denied a hauling permit until their delinquent account or accounts are satisfied.

C. No permit application request shall be denied or revoked, or permit application renewal refused, until a written notice of the violation of the issued permit has been furnished to the applicant. The permittee may appeal in writing to the Assistant Commissioner of Motor Carrier Services or the assistant commissioner's designee within 10 working days of receipt of written notification of denial or revocation setting forth the grounds for making an appeal. Upon receipt of the appeal, the Assistant Commissioner for Motor Carrier Services or the assistant commissioner's designee will conduct an informal fact-finding process conforming to the requirements of the Code of Virginia and will issue a case decision that will be the final administrative step. Judicial review of such decision shall be available pursuant to § 2.2-4025 of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia). Upon revocation of the permit, it must be surrendered without consideration for refund or credit of fees. Upon restoration of permit privileges a new permit must be obtained prior to movement on the state highway system.

D. Law-enforcement officials or weight-enforcement officials may invalidate or confiscate a hauling permit if the permitted vehicle or vehicle combination is operating off the route listed on the permit; if the vehicle has fewer axles than required by the permit; if the vehicle has less axle spacing than required by the permit when measured longitudinally from the center of the axle to the center of the next axle with any fraction of a foot rounded to the next highest foot; or if the vehicle is transporting multiple items not allowed by the permit.

Law-enforcement officials or weight-enforcement officials may direct the vehicle to a safe location, at the permittee's expense, and detain the vehicle configuration until it meets all the requirements of the hauling permit or until a new hauling permit is issued if the vehicle is not traveling with escorts as required by the permit; if the vehicle is traveling outside the hours specified within the permit; if the driver does not have the entire permit in the vehicle; if the hauling permit has been invalidated or confiscated due to one of the conditions listed in this section; if the vehicle is over the permitted weight; or if law enforcement deems the vehicle to be violating any safety requirement.

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

FORMS (24VAC20-82)

Size, Weight and Equipment Requirements, DMV 109 (eff. 7/2018)

Superload Single Trip Hauling Permit Application, HP 400 (eff. 10/2020)

Multi-trip Hauling Permit Application, HP 401 (eff. 10/2020)

Exempt Multi-trip Hauling Permit Application, HP 402 (eff. 10/2020)

Hauling Permit Addendum Additional Axle Form, HP 403 (eff. 10/2020)

Escort Vehicle Driver Certification Application, HP 404 (eff. 7/2020)

Escort Vehicle Driver's Manual, HP 405 (eff. 1/2014)

Overload Permit Application, VSA 145 (eff. 1/2013)

Critical Infrastructure Information/Sensitive Security Information Nondisclosure Form, CII/SSI (filed 1/2022)

VA.R. Doc. No. R21-6542; Filed December 27, 2021, 8:41 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

Titles of Documents: Rehabilitative Services Policy and Procedure Manual - Transition Services.

Pre-Employment Transition Services Manual.

Public Comment Deadline: February 16, 2022.

Effective Date: February 17, 2022.

Agency Contact: Leah Mills, Policy Analyst, Department for Aging and Rehabilitative Services, 8004 Franklin Farms Drive, Henrico, VA 23229, telephone (804) 662-7610, or email leah.mills@dars.virginia.gov.

STATE BOARD OF EDUCATION

Title of Document: Virginia Licensure Renewal Manual.

Public Comment Deadline: February 16, 2022.

Effective Date: February 17, 2022.

Agency Contact: Emily V. Webb, Director of Board Relations, Department of Education, James Monroe Building, 101 North 14th Street, 25th Floor, Richmond, VA 23219, telephone (804) 225-2924, or email emily.webb@doe.virginia.gov.

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Title of Document: 2021-2022 Board of Education Approved Industry Certifications, Occupational Competency Assessments, and Professional Licenses.

Public Comment Deadline: February 16, 2022.

Effective Date: February 17, 2022.

Agency Contact: Jim Chapman, Regulatory and Legal Coordinator, Department of Education, James Monroe Building, 101 North 14th Street, 25th Floor, Richmond, VA 23219, telephone (804) 225-2540, or email jim.chapman@doe.virginia.gov.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Draft Chapter II Provider Manual Update

The draft Chapter II of the Local Education Agency is now available on the Department of Medical Assistance Services website at https://www.dmas.virginia.gov/for-providers/general-information/medicaid-provider-manual-drafts/. The changes made will be effective for Chapter II of all provider manuals.

Contact Information: Meredith Lee, Policy, Regulations, and Manuals Supervisor, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-0552, FAX (804) 786-1680, or email meredith.lee@dmas.virginia.gov.

Draft Opioid Treatment Services Supplement

The draft Opioid Treatment Services Supplement Provider Manual is now available on the Department of Medical Assistance Services website at https://dmas.virginia.gov/for-providers/general-information/medicaid-provider-manual-drafts/.

Contact Information: Meredith Lee, Policy, Regulations, and Manuals Supervisor, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-0552, FAX (804) 786-1680, or email meredith.lee@dmas.virginia.gov.

STATE WATER CONTROL BOARD

Proposed Enforcement Action for Accomack County

An enforcement action has been proposed for Accomack County for violations of State Water Control Law at the Accomack County Sand Street nonmetallic mineral mine. 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 will accept comments by email, fax, or postal mail from January 17, 2022, to February 16, 2022.

Contact Information: John Brandt, Enforcement Manager, 5636 Southern Boulevard, Virginia Beach, VA 23462, FAX (804) 698-4178, or email john.brandt@deq.virginia.gov.

Proposed Enforcement Action for Brookhill Apartments LLC

An enforcement action has been proposed for Brookhill Apartments LLC for violations at the Brookhill Apartments development in Albemarle County, Virginia. The State Water Control Board proposes to issue a consent order with penalty to Brookhill Apartments LLC to address noncompliance with State Water Control Law. A description of the proposed action is available at the Department of Environmental Quality office listed or online at www.deq.virginia.gov. The staff contact will accept comments by email, fax or postal mail from January 17, 2022, to February 16, 2022.

Contact Information: Eric Millard, Enforcement Specialist, Department of Environmental Quality, Valley Regional Office, 4411 Early Road, P.O. Box 3000, Harrisonburg, VA 22801, FAX (804) 698-4178, or email eric.millard@deq.virginia.gov.

Announcement of Public Meeting and Comment Period: Mountain Run, Muddy Run, and Lower Hazel River Total Maximum Daily Load Implementation Plan

The Department of Environmental Quality (DEQ) seeks written and oral comments from interested persons on the development of a cleanup plan, also known as a total maximum daily load (TMDL) implementation plan. The plan was developed for the following streams located in Culpeper County, Virginia: Flat Branch, Indian Run, the (lower) Hazel River, Jonas Run, Mountain Run, Mountain Run Reservoir, Muddy Run, an unnamed tributary to Jonas Run, and Waterford Run. These streams are listed on the § 303(d) TMDL Priority List and Report as impaired due to violations of the Commonwealth's water quality standards for bacteria.

Section 303(d) of the Clean Water Act and § 62.1-44.19:7 C of the State Water Control Law require DEQ to develop TMDLs for pollutants responsible for each impaired water contained in Virginia's § 303(d) TMDL Priority List and Report, and Virginia state law requires implementation plans for areas with TMDLs.

The first public meeting for this project was held on October 28, 2020; workgroup meetings were conducted from January to May of 2021, and a steering committee meeting to review the initial draft report was held on October 15, 2021.

The final public meeting on the development of the implementation plan to address the bacteria impairment for these segments will be held:

Thursday, February 3, 2022, from 6 p.m. until 7:30 p.m.

Location: Lenn Park Pavilion, 19206 Edwin Way, Culpeper, VA 22701

Seating in the pavilion meeting room will be set up to allow for social distancing. DEQ also expects meeting participants to wear a mask during the meeting. In the event of inclement weather, this meeting will be held at the same time and location on Thursday, February 10, 2022.

Public Comment Period: February 4, 2022, to March 7, 2022. Throughout the 30-day public comment period, the draft implementation plan can be found at

https://www.deq.virginia.gov/water/water-quality/implementation/implementation-plans-under-development.

How to Submit a Comment: Comments must be submitted in writing to the DEQ contact person by postal mail or email. Please note, all written comments should include the name, address, and telephone number of the person submitting the comments.

Information on the development of the plan is available upon request. Questions or information requests should be addressed to the DEQ contact person.

Contact Information: David Evans, Nonpoint Source Coordinator, Department of Environmental Quality, 13901 Crown Court, Woodbridge, VA 22193, telephone (703) 583-3835, or email david.evans@deq.virginia.gov.

Virginia Department of Environmental Quality announces the availability of the 2020 Fish Tissue Monitoring Data

Background: The Virginia Department of Environmental Quality (DEQ) conducts routine studies of fish tissue and sediment samples in state waters to assess the human health risks for individuals who may consume fish from state waters and to identify impaired aquatic ecosystems. Results are made available to the public each year on the agency's website.

In 2020, DEQ collected fish tissue samples from sites located in the watersheds of the Dan and Roanoke Rivers, Shenandoah River, Tennessee River (Cinch, Powell, and Holston), Chesapeake Bay mainstem and tributaries (Mobjack and Pocomoke Rivers), tidal Rappahannock River, and the Maury River. Samples were analyzed for polychlorinated biphenyls and a suite of 17 metals, including mercury.

2020 monitoring results are available on the agency's website at https://www.deq.virginia.gov/water/water-quality/monitoring/fish-tissue-monitoring.

Additional Information: The Virginia Department of Health (VDH) uses the data generated by DEQ's fish tissue monitoring program to determine the need for fish consumption advisories. More information on VDH fish consumption advisories is available at https://www.vdh.virginia.gov/environmental-health/public-health-toxicology/fish-consumption-advisory/.

Questions on DEQ's fish tissue monitoring program can be directed to Rick Browder at richard.browder@deq.virginia.gov or Gabriel Darkwah at gabriel.darkwah@deq.virginia.gov. Additional information is also available on the DEQ Water Quality Monitoring website at https://www.deq.virginia.gov/water/water-quality/monitoring.

Contact Information: Gabriel Darkwah, Water Quality Monitoring Specialist, Department of Environmental Quality, 1111 East Main Street, Suite 1400, Richmond, VA 23218, telephone (804) 698-4127, or email gabriel.darkwah@deq.virginia.gov.

Request for Citizen Nomination of State Surface Waters for Inclusion in Virginia Department of Environmental Quality's Annual Water Quality Monitoring Plan

In accordance with § 62.1-44.19:5 F of the Code of Virginia, Water Quality Monitoring Information and Restoration Act, any person may request that a specific body of water be included in the Department of Environmental Quality's annual water quality monitoring plan. Such requests shall include, at a minimum, (i) a geographical description of the water body recommended for monitoring, (ii) the reason the monitoring is requested, and (iii) any water quality data that the petitioner may have collected or compiled. Each request received by April 30 shall be reviewed when the Department of Environmental Quality (DEQ) develops the annual water quality monitoring plan for the following calendar year. DEQ will respond in writing on its approval or denial of each nomination by August 31.

The nominating form is included at the end of this notice. Use of the nomination form is preferred, however, all nominations with the minimum of information as outlined will be accepted for review. Some waterbodies, such as private ponds, private lakes, and others may be ineligible. Please contact the contact person listed at the end of this notice for further information.

Nominations can be submitted by email, postal mail, or hand delivered to the receptionist's desk at the Central Office at 1111 East Main Street, Richmond, Virginia, email: charles.torbeck@deq.virginia.gov.

Mailing address: Stuart Torbeck, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218.

Street address (FedEx): Stuart Torbeck, Department of Environmental Quality, 1111 East Main Street, Richmond, VA 23219.

REQUEST TO INCLUDE A WATER SEGMENT IN DEQ'S ANNUAL MONITORING PLAN FORM

Name:	Date:	
Mailing Address:		
Street:		
City:	State:	Zip:
E-mail address:		
Home telephone:	Business telephone:	

(1) Name of the water body or water bodies proposed for monitoring:

(2) Please provide a description of the upstream and downstream boundaries of the water bodies that show specifically where monitoring is proposed. Please describe the monitoring site locations as thoroughly as possible. A site map (photocopy, or screenshot of an online map) is preferred. Latitude/longitude coordinates and descriptions of identifiable landmarks such as road crossings are also very helpful.

(3) Monitoring objective. Please give the reason for requesting the monitoring and, if possible, list the types of measurements or sampling that you are requesting.

(4) Attach any water quality data that you have collected or compiled. Include the name of the organization/entity that generated the data.

Contact Information: Stuart Torbeck, Water Quality Monitoring Specialist, 1111 East Main Street, Suite 1400, Richmond, Virginia 23219, telephone (804) 698-4461, or email charles.torbeck@deq.virginia.gov.

VIRGINIA CODE COMMISSION

Notice to State Agencies

Contact Information: *Mailing Address:* Virginia Code Commission, Pocahontas Building, 900 East Main Street, 8th Floor, Richmond, VA 23219; *Telephone:* (804) 698-1810; *Email:* varegs@dls.virginia.gov.

Meeting Notices: Section 2.2-3707 C of the Code of Virginia requires state agencies to post meeting notices on their websites and on the Commonwealth Calendar at https://commonwealthcalendar.virginia.gov.

Cumulative Table of Virginia Administrative Code Sections Adopted, Amended, or Repealed: A table listing regulation sections that have been amended, added, or repealed in the *Virginia Register of Regulations* since the regulations were originally published or last supplemented in the print version of the Virginia Administrative Code is available at http://register.dls.virginia.gov/documents/cumultab.pdf.

Filing Material for Publication in the *Virginia Register of Regulations:* Agencies use the Regulation Information System (RIS) to file regulations and related items for publication in the *Virginia Register of Regulations*. The Registrar's office works closely with the Department of Planning and Budget (DPB) to coordinate the system with the Virginia Regulatory Town Hall. RIS and Town Hall complement and enhance one another by sharing pertinent regulatory information.