VIRGINIA REGISTER OF REGULATIONS

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

ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

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

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

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

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

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

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

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

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

FAST-TRACK RULEMAKING PROCESS

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

EMERGENCY REGULATIONS

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

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

STATEMENT

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

CITATION TO THE *VIRGINIA REGISTER*

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

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

PUBLICATION SCHEDULE AND DEADLINES

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

February 2023 through February 2024

Volume: Issue	Material Submitted By Noon*	Will Be Published On
39:13	January 25, 2023	February 13, 2023
39:14	February 8, 2023	February 27, 2023
39:15	February 22, 2023	March 13, 2023
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40:2	August 23, 2023	September 11, 2023
40:3	September 6, 2023	September 25, 2023
40:4	September 20, 2023	October 9, 2023
40:5	October 4, 2023	October 23, 2023
40:6	October 18, 2023	November 6, 2023
40:7	November 1, 2023	November 20, 2023
40:8	November 14, 2023 **(Tuesday)**	December 4, 2023
40:9	November 29, 2023	December 18, 2023
40:10	December 13, 2023	January 1, 2024
40:11	December 27, 2023	January 15, 2024
40:12	January 10, 2024	January 29, 2024
40:13	January 24, 2024	February 12, 2024
40:14	February 7, 2024	February 26, 2024

*Filing deadlines are Wednesdays unless otherwise specified.

TITLE 2. AGRICULTURE

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of Agriculture and Consumer Services conducted a periodic review and a small business impact review of **2VAC5-195, Prevention and Control of Avian Influenza in the Live-Bird Marketing System**, and determined that this regulation should be retained as is. The department is publishing its report of findings dated September 30, 2022, to support this decision.

This regulation is necessary for the protection of public health, safety, and welfare because it prevents and controls avian influenza (AI) in the live-bird marketing system. The regulation is clearly written and easily understandable. The agency has decided that this regulation should remain in effect without change because the regulation is mandated by law. In addition, the regulation is necessary to protect the Virginia poultry industry from AI. The agency has determined that there is a continuing need for this regulation in order to protect the Virginia poultry industry, which includes many small businesses, from the spread of AI through the live-bird marketing system.

There have been no complaints from the public concerning the regulation. The regulation is not unnecessarily complex. The regulation does not specifically duplicate any federal or state law or regulations. The regulation is reviewed periodically but has not changed substantially since it was adopted in 2006. The agency has determined that no changes have occurred in the area affected by this regulation since the last periodic review that would make it necessary to amend or repeal the regulation. The agency has determined that that current version of the regulation is consistent with current industry practices and is the least burdensome and least intrusive alternative.

This regulation is expected to have a minimal impact on small businesses. There are currently three live bird markets in Virginia, along with 30 production and distribution units. The required avian influenza testing is provided to the small business owner free of charge. However, there is a minimal economic impact of selling down poultry quarterly and the downtime while disinfecting the sites between quarters.

Contact Information: Carolynn Bissett, Program Manager, Office of Veterinary Services, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-4560.

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of Agriculture and Consumer Services conducted a periodic review and a small business impact review of **2VAC5-210, Rules and Regulations Pertaining to Meat and Poultry Inspection under the Virginia Meat and Poultry Products Inspection Act**, and determined that this regulation should be retained as is. The department is publishing its report of findings dated September 6, 2022, to support this decision.

This regulation is necessary for the protection of public health, safety, and welfare because it assists in controlling outbreaks of foodborne illness originating from state inspected meat or poultry plants. The regulation is clearly written and easily understood by the regulated entities. The agency is recommending that the regulation should stay in effect without change because the regulation is necessary to maintain a state meat and poultry inspection program and is effective in its current format. There have not been any changes to agency or industry practices to necessitate any modifications.

Without this regulation, state-inspected businesses would have to obtain a federal grant of inspection in order to legally sell meat and poultry products. The agency has not received any complaints or comments regarding this regulation. The regulation is not complex. The regulation does not overlap, duplicate, or conflict with federal or state law or regulations. The agency evaluates the regulation annually to determine if changes to the area affected by the regulation have occurred.

The agency's decision minimizes the economic impact of the regulation on small businesses. Without this regulation, small businesses operating under a state grant of inspection would have to apply for a federal grant of inspection. This would increase administrative costs, require new labeling and label approval, and delay small business production due to the shortage of federal inspectors.

Contact Information: JoAnn G. Connell, Program Manager, Meat and Poultry Services, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-4569.

BOARD OF AGRICULTURE AND CONSUMER SERVICES

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board of Agriculture and Consumer Services conducted a periodic review and a small business impact review of **2VAC5-250, Rules and Regulations Relating to Grain Dealers Licensing and Bonding Law**, and determined that this regulation should be retained as is. The board is publishing its report of findings dated September 9, 2022, to support this decision.

This regulation is necessary to protect the economic welfare of Virginia's grain producers. The regulation specifies the information that must be recorded by grain dealers in grain transactions with farmers. Without the records required by this regulation, the agency would be unable to assist in ensuring that farmers receive prompt payment for grain. The records provide an accounting of amounts owed in the event of nonpayment of grain by the grain dealer. In many cases, these transactions are for large amounts of money. Therefore, this regulation helps protect farmers from the loss of income and supports their economic welfare. The regulation is clearly written and easily understood by the regulated industry. The board has determined that this regulation should remain in effect without change for the economic welfare of Virginia grain producers.

The board received one comment regarding the regulation during the public comment period, and the comment was in support of regulation. The board has determined that this regulation is not unnecessarily complex and that the complexity of this regulation is not such that it would have an economic impact on small businesses. This regulation does not overlap, duplicate, or conflict with federal or state law or regulation. The board last conducted a periodic review of the regulation in 2016, and the board has determined that no change in technology, economic conditions, or other factors has occurred that demands amendments to the regulation. The board continues to believe the current regulation is the least burdensome and intrusive alternative for the required regulation of the grain industry.

Contact Information: Olivia Wilson, Deputy Director, Commodity Services, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-2112.

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board of Agriculture and Consumer Services conducted a periodic review and a small business impact review of **2VAC5-318, Rules and Regulations for Enforcement of the Virginia Pest Law - Thousand Cankers Disease**, and determined that this regulation should be repealed. The board is publishing its report of findings dated October 3, 2022, to support this decision.

This regulation is no longer necessary for the protection of public health, safety, and welfare because Thousand Cankers Disease (TCD) has only spread minimally and has not had a major impact on walnut tree populations in Virginia since its detection in 2011.

This regulation was promulgated to help prevent the artificial spread of TCD to uninfested areas of the Commonwealth by regulating the movement of the articles that are capable of transporting the disease. As the disease is not spreading and has not had an impact on walnut trees in Virginia, the quarantine is unnecessary. The repeal of this regulation will eliminate any cost associated with compliance with the requirements established in the regulation.

Contact Information: David Gianino, Program Manager, Office of Plant Industry Services, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-3515.

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board of Agriculture and Consumer Services conducted a periodic review and a small business impact review of **2VAC5-320, Regulations for the Enforcement of the Endangered Plant and Insect Species Act**, and determined that this regulation should be retained as is. The board is publishing its report of findings dated October 3, 2022, to support this decision.

This regulation seeks to protect those plants and insects found in Virginia that are of aesthetic, ecological, educational, scientific, economic, or other value and whose global populations are imperiled. The regulation is essential for the protection of rare natural resources and therefore promotes public health, safety, and welfare. The board has determined that this regulation is clearly written, easily understandable, and not unnecessarily complex. The board has determined that this regulation's listing of a species as threatened or endangered continues to offer protection to plants and insects and, therefore, the regulation should be retained as is.

Landowners and their agents, including construction companies undertaking work at the direction of the landowner on the landowner's property, are exempt from the regulation with respect to any threatened or endangered plant or insect species occurring on or within their property. Any major construction project conducted by a public or private construction company on land that is not owned by the builder or developer is subject to this regulation. According to agency documentation, on average, developers and environmental consultants submit approximately 1,000 requests a year seeking information about the anticipated impact of various construction projects on threatened or endangered plant or insect species and less than 1.0% of the requests involve projects that are impacted by the Virginia Endangered Plant and Insect Species Act and this regulation. Small businesses are minimally impacted due to the fact that the environs where many of the listed species are located are isolated and largely on private property.

Since the board last amended this regulation in 2020, the board has not received any complaints regarding the regulation. This regulation does not conflict with federal law or state law or regulation. The board has determined that no change in the affected industry has occurred subsequent to the board's previous amendments.

Contact Information: David Gianino, Program Manager, Office of Plant Industry Services, Department of Agriculture

and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-3515.

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board of Agriculture and Consumer Services conducted a periodic review and a small business impact review of **2VAC5-321, Regulation of the Harvest and Purchase of Wild Ginseng**, and determined that this regulation should be retained as is. The board is publishing its report of findings dated October 3, 2022, to support this decision.

This regulation is necessary to ensure that current practices governing the harvest and sale of ginseng in Virginia are adequate to protect the continued survival of the species with the least possible cost and intrusiveness to the citizens and businesses of the Commonwealth. It is clearly written and easily understandable. This regulation (i) establishes an annual harvest season from September 1 through December 31 of each year for wild ginseng; (ii) allows only the harvest of wild ginseng that is five years of age or older; (iii) requires harvesters to plant the seeds of the harvested plant at the harvest site at the time of harvest; and (iv) establishes, for licensed dealers, a wild ginseng buying season of September 1 through January 14 for uncertified green wild ginseng root and September 15 through March 31 for uncertified dry wild ginseng root. Without this regulation, overharvesting could occur, which would greatly decrease the amount of ginseng available for harvest in Virginia each year. Ginseng provides a source of income for ginseng harvesters, dealers, and exporters and, as such, this regulation assists in protecting the economic welfare of this industry in Virginia. The board has determined that this regulation should remain in effect without change because it assists in ensuring the long-term survival of wild ginseng, thereby ensuring a source of income for harvesters.

The regulation requires that individuals or companies purchasing ginseng in Virginia for the purpose of reselling must first obtain a Ginseng License from the Virginia Department of Agriculture and Consumer Services. The cost of this license is $10. Currently, there are 70 entities licensed as ginseng dealers in Virginia. The requirements of this regulation have addressed U.S. Fish and Wildlife Service concerns that export of ginseng to other countries may be detrimental to the continued survivability of ginseng, thus allowing for the continued export of wild ginseng from Virginia to other countries. The prohibition of this export activity would have a significant impact on ginseng dealers and exporters. The annual value of wild ginseng exported from Virginia varies based on the market value. The value of wild ginseng exported from Virginia in 2021 was approximately $425,000.

The board has not received any complaints or comments from ginseng harvest licensees, the public, or small businesses concerning any negative economic impacts as a result of this regulation. This regulation does not duplicate or conflict with any federal or state law or regulation. The board determined that no changes have occurred since the last periodic review in 2017 that necessitate amending the regulation.

Contact Information: David Gianino, Program Manager, Office of Plant Industry Services, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-3515.

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board of Agriculture and Consumer Services conducted a periodic review and a small business impact review of **2VAC5-410, Rules and Regulations for the Enforcement of the Virginia Agricultural Liming Materials Law**, and determined that this regulation should be retained as is. The board is publishing its report of findings dated October 3, 2022, to support this decision.

The regulation assists in ensuring the quality of liming materials available for sale in the Commonwealth and, as such, is necessary for the protection of public health and the economic welfare of Virginia's agriculture industry. The regulation is clearly written and easily understood by the regulated industry. The board has determined that the regulation should stay in effect without change because it assists in preventing the sale of poor quality and improperly labeled liming materials in the Commonwealth.

The provisions of this regulation continue to be necessary. The board has not received any complaints or comments from the public concerning this regulation. The board has determined that the regulation is not unnecessarily complex and is easily understood by the regulated industry. This regulation does not overlap, duplicate, or conflict with any federal law or any other state law or regulation. Additionally, the board has determined that there are no changes to technology, economic conditions, or other factors that have occurred that necessitate amendments to this regulation. The board has determined that this regulation is the least burdensome alternative for effectively regulating participants in this industry, including small businesses.

Contact Information: David Gianino, Program Manager, Office of Plant Industry Services, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-3515.

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board of Agriculture and Consumer Services conducted a periodic review and a small business impact review of **2VAC5-425, Vapor Pressure Requirements for Gasoline Ethanol Blends**, and determined that this regulation

should be retained as is. The board is publishing its report of findings dated October 3, 2022, to support this decision.

The regulation is necessary to continue the effective and efficient supply of fuel flowing into the Commonwealth. Virginia utilizes the Colonial Gasoline Pipeline, which originates in Texas and ends in New Jersey. Without this regulation, Virginia would be the only state in the Colonial Pipeline without the 1.0 psi vapor pressure waiver established in regulation, which would necessitate the creations of a boutique fuel for Virginia. This would result in increased prices and seriously impact fuel refiners, suppliers, and consumers. As such, this regulation is necessary for the protection of public safety and economic welfare. The regulation is clearly written and easily understandable.

The board has determined that this regulation should be retained as is. The regulation provides an industry standard waiver for the vapor pressure of ethanol blended gasoline that assists industry in compliance and provides for the continued efficient flow of fuel into the Commonwealth.

The board has not received any complaints regarding the regulation, and the industry supported the promulgation of the regulation in 2017. The regulation is not overly complex. Subdivision 1 of 2VAC5-425-20 mirrors the language in NIST Handbook 130, standard adopted by the National Conference on Weights and Measures, and federal regulations; however, the regulation is necessary in order to allow Virginia to accept the vapor pressure waiver, should the National Conference on Weights and Measures or the federal government change their regulations. The regulation was first promulgated in 2017, and no changes have occurred that would necessitate any amendments to this regulation. Industry supported this regulation when first established and the regulation continues to support the motor fuel industry in the Commonwealth.

Contact Information: Gary Milton, Program Manager, Office of Weights and Measures, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-1274.

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board of Agriculture and Consumer Services conducted a periodic review and a small business impact review of **2VAC5-450, Rules and Regulations Relating to the Virginia Plants and Plant Products Inspection Law**, and determined that this regulation should be retained as is. The board is publishing its report of findings dated October 3, 2022, to support this decision.

This regulation is necessary for the protection of public health, safety, and welfare in that it prevents the spread of plant pests. The regulation is clearly written and easily understandable. The board has determined that the regulation should stay in effect without change and is effective in its current format. No changes to board or industry practices have occurred that would necessitate any modifications. The board has determined that there is a continuing need for this regulation in order to provide protection against spread of potentially harmful pests and diseases. Provisions of this regulation require inspection of certain plants, thereby minimizing the spread of plant diseases and the associated negative impact to nursery operations, many of which are small businesses.

The board has received several comments from the public concerning 2VAC5-450-40 and the ability to grow black currants in Virginia. The board, in consultation with Virginia Polytechnic Institute and State University Plant Pathologists, has determined that resistant cultivars of Ribes nigrum may still harbor White Pine Blister Rust even though the resistant cultivars may not show or exhibit symptoms of the disease.

The regulation is not unnecessarily complex. There is no overlap with federal or state law or regulations. The board has determined that no changes have occurred in the area affected by this regulation since the last periodic review that would make it necessary to amend or repeal the regulation. The board has determined that that current version of the regulation is consistent with current industry practices and is the least burdensome and least intrusive alternative.

Contact Information: David Gianino, Program Manager, Office of Plant Industry Services, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-3515.

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board of Agriculture and Consumer Services conducted a periodic review and a small business impact review of **2VAC5-600, Regulations Pertaining to Food for Human Consumption**, and determined that this regulation should be retained as is. The board is publishing its report of findings dated September 30, 2022, to support this decision.

The regulation assists in ensuring that food and dietary supplement products produced, packaged, and sold to the citizens of the Commonwealth are safe and properly labeled and, thus, the regulation is necessary for the protection of public health and welfare. Absence of this regulation could result in foods being processed or sold under conditions that would lead to a foodborne illness outbreak thus causing illness or death that could have been prevented by the presence of and adherence to this regulation. The board has determined that the regulation should stay in effect without change.

The regulation is necessary for the protection of the health and welfare of citizens in the Commonwealth. Without a specific regulation to address safety-related requirements for multiple commodities, multiple food processes, adulterants in food products, food additives, proper labeling, and sanitary requirements for food establishments, there is no reasonable

way to provide an appropriate level of food safety oversight for the various food product processes and food products that are prepared, held, or sold to consumers in Virginia. This regulation is not complex. However, the regulation does provide an appropriate level of guidance as well as the requirements necessary to ensure that consumers in Virginia purchase and consume safe food products. The one comment received recommended no amendments to the regulation.

As this regulation incorporates provisions of Title 21 of the Code of Federal Regulations, it is duplicative of existing federal regulations. However, enforceability relative to regulatory requirements for food establishments, food products, and food processes within Virginia's boundaries lies primarily with the Virginia Department of Agriculture and Consumer Services and not the federal government. Therefore, the adoption and enforcement of this regulation at a state level is appropriate and necessary to ensure a proper level of food safety within the Commonwealth. Technology and economic conditions have changed minimally since the last evaluation of this regulation. The regulation provides basic, essential requirements for food establishments, food commodities, and food processes while simultaneously minimizing the economic impact on small businesses. The board has determined that the current version of the regulation is consistent with current industry practices and is the least burdensome and least intrusive alternative.

Contact Information: Pamela Miles, Program Manager, Office of Dairy and Foods, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804)786-8910.

TITLE 4. CONSERVATION AND NATURAL RESOURCES

MARINE RESOURCES COMMISSION

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Marine Resources Commission conducted a periodic review and a small business impact review of **4VAC20-60, Pertaining to the Display of Licenses to Catch Finfish or Crabs**, and determined that this regulation should be retained as is. The commission is publishing its report of findings to support this decision.

The regulation is clearly written and easily understandable. The regulation is necessary for the protection of public health, safety, and welfare by conserving and promoting the seafood and marine resources of the Commonwealth. The decision of the agency is to retain this regulation as is. Based on the Notice of Periodic Review, the agency has received no comments and has determined that there are no recommended amendments to the regulation. The regulation does not have an adverse impact on small businesses and does not overlap, duplicate, or conflict with any known federal or state law or regulation.

Contact Information: Jennifer Farmer, Regulatory Coordinator, Marine Resources Commission, 380 Fenwick Road, Building 96, Fort Monroe, VA 23651, telephone (757) 247-2248.

TITLE 12. HEALTH

STATE BOARD OF HEALTH

Agency Notice

Pursuant to Executive Order 19 (2022) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the following regulation is undergoing a periodic review and a small business impact review: **12VAC5-221, Regulations Governing Cooperative Agreements**. The review of this regulation will be guided by the principles in Executive Order 19 (2022). The purpose of a periodic review is to determine whether this regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

Public comment period begins January 30, 2023, and ends February 20, 2023.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of both reviews will be posted on the Virginia Regulatory Town Hall and published in the Virginia Register of Regulations.

Contact Information: Kim Beazley, Director, Virginia Department of Health, James Madison Building, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7190.

Agency Notice

Pursuant to Executive Order 19 (2022) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the following regulation is undergoing a periodic review and a small business impact review: **12VAC5-520, Regulations Governing the Dental Scholarship and Loan Repayment Programs**. The review of this regulation will be guided by the principles in Executive Order 19 (2022). The purpose of a periodic review is to determine whether this regulation should be repealed, amended, or retained in its current form. Public comment is

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

Public comment period begins January 30, 2023, and ends February 20, 2023.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of both reviews will be posted on the Virginia Regulatory Town Hall and published in the Virginia Register of Regulations.

Contact Information: Sandra Serna, Director, Office of Health Equity, Virginia Department of Health, James Madison Building, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7190.

Agency Notice

Pursuant to Executive Order 19 (2022) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the following regulation is undergoing a periodic review and a small business impact review: **12VAC5-550, Board of Health Regulations Governing Vital Records**. The review of this regulation will be guided by the principles in Executive Order 19 (2022). The purpose of a periodic review is to determine whether this regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

Public comment period begins January 30, 2023, and ends February 20, 2023.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of both reviews will be posted on the Virginia Regulatory Town Hall and published in the Virginia Register of Regulations.

Contact Information: Rilee Bennett, Policy Analyst, Office of Vital Records, Virginia Department of Health, 2001 Maywill Street, Suite 101, Richmond, VA 23230, telephone (804) 662-6258.

STATE BOARD OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

Agency Notice

Pursuant to Executive Order 19 (2022) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the following regulation is undergoing a periodic review and a small business impact review: **12VAC35-230, Operation of the Individual and Family Support Program**.

The notice of intended regulatory action to amend 12VAC35-230, which is published in this issue of the Virginia Register, serves as the agency notice of announcement.

Public comment period begins January 30, 2023, and ends February 20, 2023.

Contact Information: Ruth Anne Walker, Director of Regulatory Affairs, Department of Behavioral Health and Developmental Services, Jefferson Building, 1220 Bank Street, 4th Floor, Richmond, VA 23219, telephone (804) 225-2252, FAX (804) 371-4609, TDD (804) 371-8977, or email ruthanne.walker@dbhds.virginia.gov.

TITLE 13. HOUSING

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

Agency Notice

Pursuant to Executive Order 19 (2022) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the following regulation is undergoing a periodic review and a small business impact review: **13VAC5-112, Enterprise Zone Grant Program Regulation**. The review of this regulation will be guided by the principles in Executive Order 19 (2022). The purpose of a periodic review is to determine whether this regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

Public comment period begins January 30, 2023, and ends February 20, 2023.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of both reviews will be posted

on the Virginia Regulatory Town Hall and published in the Virginia Register of Regulations.

Contact Information: Kyle Flanders, Senior Policy Analyst, Department of Housing and Community Development, Main Street Centre, 600 East Main Street, Suite 300, Richmond, VA 23219, telephone (804) 786-6761.

TITLE 23. TAXATION

DEPARTMENT OF TAXATION

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of Taxation conducted a periodic review and a small business impact review of **23VAC10-210, Retail Sales and Use Tax**, and determined that this regulation should be amended. The board is publishing its report of findings dated January 10, 2022, to support this decision.

The Department of Taxation has determined that the regulation is necessary for the administration of taxes and thus necessary for the protection of public health, safety, and welfare. The department has determined that the regulation is clearly written and easily understandable by the individuals and entities affected. Although the Department of Taxation has amended this chapter in several actions filed in 2006, 2007, 2008, 2009, 2010, and 2016 to conform the regulation to statutory changes and changes in the department's procedures and policies, the department needs to amend the regulation to conform it to statutory changes enacted in the 2017 and 2019 Sessions of the General Assembly.

The regulation provides useful guidance to taxpayers, tax practitioners, and Department of Taxation employees regarding the tax. The regulation continues to be necessary to clarify the administration of the tax. The department has received no complaints or comments from the public concerning the regulation. The regulation is not complex. The regulation does not overlap, duplicate, or conflict with federal or state law or regulation. The department is not aware of any technology, economic conditions, or other factors that have changed in the area affected by the regulation. As the regulation is concise and up-to-date, except with respect to the need to conform it to statutory changes enacted in 2017 and 2019, the regulation has no economic impact on any businesses, including small businesses.

Contact Information: Joe Mayer, Lead Policy Analyst, Department of Taxation, P.O. Box 27185, Richmond, VA 23261-7185, telephone (804) 371-2299.

NOTICES OF INTENDED REGULATORY ACTION

TITLE 9. ENVIRONMENT

STATE WATER CONTROL BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Water Control Board intends to consider amending **9VAC25-192, Virginia Pollution Abatement (VPA) Regulation and General Permit for Animal Feeding Operations and Animal Waste Management**. The purpose of the proposed action is to reissue and amend, as necessary, the existing general permit associated with the regulation. This regulation governs the pollutant management activities of animal wastes at animal feeding operations not covered by a Virginia Pollutant Discharge Elimination System Permit and animal waste utilized or stored by animal waste end-users. These animal feeding operations may operate and maintain treatment works for waste storage, treatment, or recycling and may perform land application of manure, wastewater, compost, or sludges. The general permit is the primary permit mechanism used to cover animal feeding operations that confine livestock, such as swine and dairy and beef cattle. During this action, language will be amended to update the incorporation by reference date of Title 40 of the Code of Federal Regulations references in the regulation as necessitated by changes to the federal rules.

This action is primarily to reissue the existing general permit, and significant changes are not expected. The following items will be considered in the development of a regulatory proposal: (i) groundwater monitoring technology has greatly improved over the years. These improvements have led to more robust methods and techniques for determining if groundwater contamination is occurring while enabling improved methods for determining sources of contamination. The current regulation does not provide for the use of modern groundwater monitoring technology and techniques. This regulatory action will consider the addition of language that would provide options for groundwater monitoring to include modern technology; (ii) the continuation of permit coverage language will be amended to remove the dates and to make it consistent with language in the VPA regulation and General Permit for Poultry Waste Management; and (iii) other amendments may be considered by the board based on comments received in response to this notice and discussions of the technical advisory committee.

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

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

Public Comment Deadline: March 31, 2023.

Agency Contact: Betsy Bowles, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 659-1913, FAX (804) 698-4178, or email betsy.bowles@deq.virginia.gov.

VA.R. Doc. No. R23-7432; Filed December 28, 2022, 9:02 a.m.

TITLE 12. HEALTH

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 **12VAC35-230, Operation of the Individual and Family Support Program**. The purpose of the proposed action is to facilitate compliance with the U.S. Department of Justice Settlement Agreement with Virginia (United States of America v. Commonwealth of Virginia, Civil Action No. 3:12cv059-JAG) for the development of a comprehensive and coordinated set of strategies that are designed to ensure that families who are assisting family members with developmental disabilities (DD) or individuals with DD who live independently have access to person-centered and family-centered resources, supports, services, and other assistance. The Individual and Family Support Program (IFSP) is intended to support the continued residence of any individual with DD on the waiting list for a Medicaid Home and Community-Based Services (HCBS) DD Waiver in the individual's own home or the family home, which includes the home of the principal caregiver.

Item 313 NN of Chapter 2 of the 2022 Acts of Assembly, Special Session I (the 2022 Appropriation Act) requires the Department of Behavior Health and Developmental Service to "... promulgate emergency regulations for the Individual and Family Supports Program (IFSP) to ensure an annual public input process that shall include a survey of needs and satisfaction in order to establish plans for the disbursement of IFSP funding in consultation with the IFSP State Council. Based on the Council's recommendation and information gathered during the public input period, the department will draft program guidelines to establish annual funding priorities. The department will establish program criteria for each of the required program categories and publish them as part of the Annual Funding Program Guidelines. Additionally, program guidelines shall establish eligibility criteria, the award process, appeals processes, and any other protocols necessary for ensuring the effective use of state funds. All criteria will be published prior to opening the funding opportunity. The Individual and Family Support Program (IFSP) is intended to support the continued residence of any individual with DD on the waiting list for a Medicaid Home and Community-Based Services (HCBS) DD Waiver in his own or the family home, which includes the home of the principal caregiver."

Pursuant to Item 313 NN of Chapter 2 of the 2022 Acts of Assembly, Special Session I, the proposed action would change the current distribution of annual IFSP funds from a first-come, first-served basis to one based on program categories and set criteria developed through annual public input process that includes a survey of needs and satisfaction in order to establish plans for the disbursement of IFSP funding

in consultation with the IFSP State Council. The proposed action would establish (i) eligibility criteria, (ii) the award process, (iii) the appeals processes, and (iv) other protocols necessary for ensuring the effective use of state funds.

In addition, pursuant to the Office of Regulatory Management procedures and § 2.2-4007.1 of the Code of Virginia, the agency is conducting a periodic review and small business impact review of this regulation to determine whether this regulation should be terminated, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare; (ii) minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

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 of the Code of Virginia.

Public Comment Deadline: March 1, 2023.

Agency Contact: Ruth Anne Walker, Director of Regulatory Affairs, Department of Behavioral Health and Developmental Services, Jefferson Building, 1220 Bank Street, 4th Floor, Richmond, VA 23219, telephone (804) 225-2252, FAX (804) 371-4609, TDD (804) 371-8977, or email ruthanne.walker@dbhds.virginia.gov.

VA.R. Doc. No. R23-4560; Filed January 19, 2023, 5:48 p.m.

TITLE 9. ENVIRONMENT

STATE AIR POLLUTION CONTROL BOARD

Proposed Regulation

EDITOR'S NOTE: On December 19, 2022, the Joint Commission on Administrative Rules (JCAR) voted to object to the regulatory action repealing Part VII (9VAC5-140-1060 et seq.) of Regulations for Emissions Trading (9VAC5-140).

Title of Regulation: **9VAC5-140. Regulation for Emissions Trading Programs (adding 9VAC5-140-6445; repealing 9VAC5-140-6010 through 9VAC5-140-6440).**

Statutory Authority: §§ 10.1-1308 and 10.1-1322.3 of the Code of Virginia; §§ 108, 109, 110, and 302 of the Clean Air Act; 40 CFR Part 51.

Public Hearing Information:

March 16, 2023 - 2 p.m. - Bank of America Building, 1111 East Main Street, 3rd Floor Richmond VA 23219

Public Comment Deadline: March 31, 2023.

Agency Contact: Karen G. Sabasteanski, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 659-1973, FAX (804) 698-4510, or email karen.sabasteanski@deq.virginia.gov.

Basis: Section 10.1-1308 of the Code of Virginia authorizes the State Air Pollution Control Board to promulgate regulations abating, controlling, and prohibiting air pollution in order to protect public health and welfare. Executive Order 9 (2022) directs the Director of the Department of Environmental Quality, in coordination with the Secretary of Natural and Historic Resources, to present to the State Air Pollution Control Board an amendment to repeal Part VII (9VAC5-140-6010 et seq.) of the Regulation for Emissions Trading Programs (9VAC5-140) in accordance with the board's authority pursuant to § 10.1-1308 of the Code of Virginia.

Purpose: Pursuant to Executive Order 9 (2022) (EO-9), Virginia's participation in the Regional Greenhouse Gas Initiative (RGGI) risks contributing to the increased cost of electricity for Virginia citizens. Virginia's utilities have sold over $227 million in allowances in 2021 during the RGGI auctions, doubling the initial estimates. Those utilities are allowed to pass on the costs of purchasing allowances to their ratepayers. Under the initial bill RGGI rider created for Dominion Energy customers, typical residential customer bills were increased by $2.39 a month and the typical industrial customer bill by was raised by $1,554 per month. In a filing before the State Corporation Commission, Dominion Energy stated that RGGI will cost ratepayers between $1 billion and $1.2 billion over the next four years. The benefits of RGGI have not materialized, while the costs have skyrocketed. Reevaluation of the initiative represents a meaningful step toward alleviating this financial burden on the Commonwealth's businesses and households.

This information from EO-9 describes the necessity for this regulatory change in order to protect public health, safety, and welfare.

Substance: The amendments repeal Part VII (9VAC5-140-6010 et seq.) of 9VAC5-140 and add a new section providing transition for affected facilities following the repeal.

Issues: The primary advantage to the public is reduced residential and commercial energy costs. The primary advantages to the Commonwealth are reduced energy costs. The Commonwealth will also benefit from greater certainty and transparency in the energy markets. There are no disadvantages to the public or the Commonwealth associated with this regulatory change.

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 19. The analysis presented represents DPB's best estimate of these economic impacts.[1]

Summary of the Proposed Amendments to Regulation. The State Air Pollution Control Board (Board) proposes to repeal all of the existing language in Part VII[2] of 9VAC5-140, Regulation for Emissions Trading, which addresses the carbon dioxide (CO_2) Budget Trading Program, and add temporary transition language in a new section so that the repeal can be implemented without disruption to affected facilities or the electricity market.

Background. The Regional Greenhouse Gas Initiative Generally: The current regulation enables Virginia's participation in the Regional Greenhouse Gas Initiative (RGGI).[3] RGGI is a cooperative effort among the states of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania,[4] Rhode Island, Vermont, and Virginia to cap and reduce power sector CO_2 emissions. Each state has allocated base budgets of CO_2 emission allowances for each year. A CO_2 allowance represents a limited authorization, issued by a participating state, for a regulated electric power plant to emit one short ton of CO_2. Regulated electric power plants (i.e., fossil-fuel-fired

electric power generators with a capacity of 25 megawatts or greater) can use a CO_2 allowance issued by any participating state to demonstrate compliance in any state. They may acquire allowances by purchasing them at quarterly RGGI auctions, or through secondary markets. The allocated base budgets of CO_2 emissions for each state are reduced every year. Hence the total amount of allowed CO_2 emissions across all of the RGGI states is reduced every year.

Virginia Revenues from RGGI: Virginia began participating in RGGI in 2021, and thus far has participated in eight quarterly auctions. Table 1 shows the number of Virginia allowances sold in each auction, the market price for those allowances, and the proceeds from the sale of those allowances.

Table 1: Virginia Allowance Auction Results[5]

Auction Date	Allowances Sold	Allowance Price	Allowance Proceeds
March 3, 2021	5,735,509	$7.60	$43,589,868
June 2, 2021	5,698,446	$7.97	$45,416,615
September 8, 2021	5,698,445	$9.30	$52,995,539
December 1, 2021	6,587,274	$13.00	$85,634,562
March 9, 2022	5,497,712	$13.50	$74,219,112
June 1, 2022	5,497,711	$13.90	$76,418,183
September 7, 2022	5,497,711	$13.45	$73,944,213
December 7, 2022	5,497,711	$12.99	$71,415,266
Total	45,710,519		$523,633,357

Section 10.1-1330 of the Code of Virginia[6] states that the proceeds are to be used for the following purposes:

1. Forty-five percent of the revenue shall be credited to the account established pursuant to the Virginia Community Flood Preparedness Fund[7] for the purpose of assisting localities and their residents affected by recurrent flooding, sea level rise, and flooding from severe weather events.

2. Fifty percent of the revenue shall be credited to an account administered by Department of Housing and Community Development (DHCD) to support low-income energy efficiency programs, including programs for eligible housing developments. …

3. Three percent of the revenue shall be used to (i) cover reasonable administrative expenses of the Department of Environmental Quality (DEQ) in the administration of the revenue allocation, carbon dioxide emissions cap and trade program, and auction and (ii) carry out statewide climate change planning and mitigation activities.

4. Two percent of the revenue shall be used by DHCD, in partnership with Department of Energy, to administer and implement low-income energy efficiency programs.

RGGI billed the Commonwealth $592,920 and $638,238 for its 2021 and 2022 administrative costs, respectively.[8] After subtracting out quarterly payments to RGGI, the distribution of funding for programs and agencies from the auction proceeds are shown in Table 2.

Table 2: Distribution of Funding

Auction Date	Flooding	Energy Efficiency	DEQ Admin.	DHCD Admin.
March 3, 2021	$19,548,737	$21,720,819	$1,303,249	$868,833
June 2, 2021	$20,379,773	$22,634,192	$1,358,052	$905,368
September 8, 2021	$23,781,289	$26,423,654	$1,585,419	$1,056,946
December 1, 2021	$38,468,849	$42,743,166	$2,564,590	$1,709,727
March 9, 2022	$33,326,799	$37,029,776	$2,221,787	$1,481,191
June 1, 2022	$34,316,381	$38,129,312	$2,287,759	$1,525,172
September 7, 2022	$33,203,094	$36,892,327	$2,213,540	$1,475,693
December 7, 2022	$32,065,068	$35,627,853	$2,137,671	$1,425,114
Total	$235,080,990	$261,201,100	$15,672,066	$10,448,044

Costs. Table 3 shows the tons of CO_2 emitted by regulated owners of electric power plants in Virginia during 2021.

Table 3: 2021 Tons of CO_2 Emitted[9]

Source Owners	CO_2 Tons in 2021	Percentage
Dominion Energy	18,265,441.65	68.4 %
Doswell LP	2,515,762.32	9.4 %
Potomac Energy Center, LLC	2,099,241.03	7.9 %
Tenaska Virginia Partners, LP	1,546,602.40	5.8 %
Old Dominion Electric Cooperative	1,260,517.00	4.7 %
Hopewell Power Generation	506,182.21	1.9 %

Buchanan Generation	225,450.08	0.8 %
Birchwood Power	104,810.07	0.4 %
Appalachian Power Company	100,316.86	0.4 %
Wolf Hills Energy	41,174.70	0.2 %
Commonwealth Chesapeake	31,389.46	0.1 %
Calpine Mid-Atlantic Generation, LLC	847.00	0.0 %
Total	26,697,734.78	100 %

The owners must purchase allowances equal to above the amount emitted. The allowances do not necessarily need to be purchased during the specific emission period; nevertheless, to estimate the total cost of paying for the allowances needed for the 2021 emissions we multiply the total emissions (26,697,734.78 tons) by the average allowance price per ton in 2021 ($9.47). This produces an estimated cost of $252,760,804 for regulated owners of electric power plants in Virginia to pay for their required allowances for 2021 CO_2 emissions.

Pursuant to § 56-585.1 A 5 e of the Code of Virginia,[10] Dominion Energy and Appalachian Power Company can fully recover from customers "the costs of allowances purchased through a market-based trading program for carbon dioxide emissions." Since these two utilities can fully pass on the cost of obtaining CO_2 allowances to their customers,[11] the incentive to reduce CO_2 emissions due to RGGI participation is reduced, as long as allowances are not in very short supply. As can be seen in Table 3, these two regulated utilities accounted for 68.8% of the CO_2 emissions in 2021, with Dominion accounting for the vast majority.

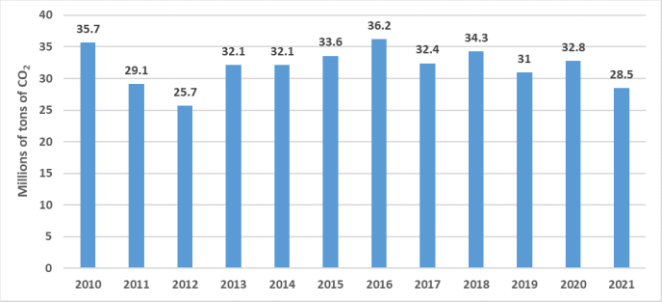
Many if not most of the other owners likely sell their energy production directly to the PJM market,[12] and do not have ratepayers to whom they can pass on cost increases. Thus, these firms would have stronger incentive to cut CO_2 emissions (due to RGGI participation or other factors) in that their cost of acquiring allowances may not be easily passed on to other entities.

Estimated Benefits and Costs. If this regulation were to be repealed and Virginia leaves RGGI, independent power plant owners would benefit in that their payments for CO_2 emission allowances would be eliminated. Customers of Dominion Energy would also substantively benefit. Under the initial State Corporation Commission-approved RGGI rider created for Dominion Energy customers, typical residential customer bills were increased by $2.39 a month and the typical industrial customer bill by was raised by $1,554 per month.[13] In a filing before the State Corporation Commission, Dominion Energy stated that RGGI will cost ratepayers between $1 billion and $1.2 billion over the next four years.[14] Such costs going forward could be avoided if Virginia were to leave RGGI.

As shown in Table 2, in 2021 and 2022 close to $500 million dollars raised through participation in RGGI was designated for: 1) the purpose of assisting localities and their residents affected by recurrent flooding, sea level rise, and flooding from severe weather events and 2) supporting low-income energy efficiency programs, including programs for eligible housing developments. To the extent that this funding is not replaced from other funding sources, the benefits from the programs would be lost if this regulation were to be repealed and Virginia leaves RGGI. Likewise, to the extent that funding is not replaced firms that supply products and services for those programs would lose business.

As can be seen in Figure 1, in the first year of Virginia's participation in RGGI (2021), total Virginia power sector CO_2 emissions declined to 28.5 million tons versus 32.8 million tons the prior year. Figure 1 also indicates that emissions fluctuate from year-to-year, and it is unclear if longer-term trends are present.

Figure 1: Historical Virginia Power Sector CO_2 Emissions[15]



It is not clear whether all or part of the decline would have happened without RGGI participation, and DPB does not have any specific information with which to assess the factors that may have contributed to this reduction. However, as a general matter it appears that the cost to generate electricity from sources with lower emissions has been declining.[16] Moreover, separate from the regulation, the Virginia Clean Economy Act[17] mandates the gradual reduction and eventual elimination of CO_2 emissions for Virginia utilities. The presence of these two factors reduces the effect of leaving RGGI on CO_2 emissions.

To the extent that RGGI participation does in fact reduce CO_2 emissions that would not have otherwise been reduced, the benefits garnered from that reduction would be lost. Those benefits include reduction in the social cost of carbon (SC-CO_2). The SC-CO_2 is a comprehensive estimate of climate change damages and includes, among other things, changes in net agricultural productivity, human health, property damages from increased flood risk, and the value of ecosystem services.[18]

Air pollutants such as sulfur dioxide (SO_2) and nitrogen oxides (NO_x) are co-produced along with CO_2 emissions from fossil-fuel power plants. SO_2 and NO_x can form particulate matter. Exposure to particulate matter can adversely affect the lungs and heart, leading to premature death in people with heart or lung disease, nonfatal heart attacks, aggravated asthma, decreased lung function, and increased respiratory symptoms, such as irritation of the airways, coughing or difficulty breathing.[19] In meeting CO_2 reduction requirements, there would be incidental reductions in SO_2 and NO_x emissions. To the extent that RGGI participation does in fact reduce CO_2 emissions that would not have otherwise been reduced, the associated benefits from reduction in SO_2 and NO_x may also be lost by exiting RGGI. However, DPB does not have any specific information with which to assess the potential for this to occur.

Businesses and Other Entities Affected. The proposed repeal of the regulation would particularly affect[20] the firms that have fossil-fuel-fired electric power facilities with a capacity of 25 megawatts or greater in the Commonwealth. Currently there are 11 such firms.[21] All entities that use electricity, including industrial and commercial firms, farms, residences, government offices, schools and colleges, etc., would be affected as well. Additionally, if the funding for the flooding and energy efficiency programs are not replaced, firms that provide products and services for those programs and localities and citizens who benefit from those programs would be particularly affected. To the extent that RGGI participation does in fact reduce CO_2 emissions that would not have otherwise been reduced, all entities and people in Virginia would potentially experience associated environmental and health impacts.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.[22] An adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, of any amount, even if the benefits exceed the costs for all entities combined. This action does not in of itself replace the funding for the flooding and energy efficiency programs that would be lost by repealing the regulation. This report analyzes the direct impacts of the proposed action and thus does not reflect what indirect effects may or may not occur outside of this action. Thus, an adverse impact is indicated since the benefits from those programs, including the revenue for businesses supplying products and services for those programs, would be eliminated.

Small Businesses[23] Affected.[24]

Types and Estimated Number of Small Businesses Affected. The proposed repeal of the regulation would affect most small businesses in the Commonwealth.

Costs and Other Effects. Small independent power plant owners[25] would substantively benefit in that their payments for CO_2 emission allowances would be eliminated. Small firms that obtain their electricity from Dominion Power, and to a lesser extent potentially from other providers, would have their electricity bills reduced. If the revenue for the flooding and energy efficiency programs is not replaced, small firms that supply products and services for those programs would lose business.

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

Localities[26] Affected.[27] If the revenue from the state for the flooding program is not replaced, localities prone to flooding would be particularly affected. Their costs would increase either from replacing the funding themselves, or from responding to flood damage that would have been mitigated by the program.

Projected Impact on Employment. The proposal would effectively eliminate the need for the owners of the regulated electric power plants to purchase allowances. This would make the independent power plant owners more profitable, which in turn may enable them to expand and increase hiring. The electricity costs for firms that obtain their electricity from Dominion Power, and to a lesser extent potentially from other providers, would be reduced, potentially making these firms more profitable as well. The difference would not likely be enough to encourage expansion and more hiring for most, but it may for some.

Conversely, if the revenue for the flooding and energy efficiency programs is not replaced, firms that supply products and services for those programs would lose business and likely reduce employment. Data are not available to determine whether the positive impact on employment would outweigh the negative impact.

Effects on the Use and Value of Private Property. The elimination of RGGI participation would reduce costs for the CO_2 emitting firms in that they would no longer need to purchase allowances. For those that cannot easily pass on those costs to other entities, their values would likely commensurately increase. Electricity costs for firms served by Dominion would decrease, which may moderately increase their value. If the revenue for the flooding and energy efficiency programs is not replaced, firms that supply products and services for those programs would lose business. The value of these firms would commensurately decrease.

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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://law.lis.virginia.gov/admincodefull/title9/agency5/chapter140/partVII/

[3]See https://www.rggi.org/

[4]Pennsylvania's RGGI regulation, and hence participation, is currently under a court injunction. Source: https://www.rggi.org/program-overview-and-design/elements

[5]Data source: RGGI

[6]See https://law.lis.virginia.gov/vacode/title10.1/chapter13/section10.1-1330/#v1/

[7]The Virginia Community Flood Preparedness Fund is administered by the Department of Conservation and Recreation. See https://law.lis.virginia.gov/vacode/10.1-603.25/

[8]Source: DEQ

[9]Data source: RGGI. Data for all of 2022 is not yet complete.

[10]See https://law.lis.virginia.gov/vacode/title56/chapter23/section56-585.1/

[11]Monopolies may not always find it profit maximizing to pass on 100 percent of their cost increases.

[12]PJM Interconnection LLC (PJM) is a regional power transmission organization. It is part of the Eastern Interconnection grid operating an electric transmission system serving all or parts of Delaware, Illinois, Indiana, Kentucky, Maryland, Michigan, New Jersey, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, West Virginia, and the District of Columbia.

[13]Source: https://www.governor.virginia.gov/media/governorvirginiagov/governor-of-virginia/pdf/eo/EO-9-RGGI.pdf

[14]Ibid

[15]The number for 2021 is somewhat higher here than shown for the total in Table 3 because Figure 1 includes non-regulated sources. Source: DEQ

[16]For example, see https://www.irena.org/publications/2022/Jul/Renewable-Power-Generation-Costs-in-2021

[17]See https://lis.virginia.gov/cgi-bin/legp604.exe?201+ful+CHAP1193

[18]See https://19january2017snapshot.epa.gov/sites/production/files/2016-12/documents/sc_co2_tsd_august_2016.pdf

[19]See https://www.epa.gov/pm-pollution/health-and-environmental-effects-particulate-matter-pm

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

[21]As shown on Table 3, in 2021 there were 12 such firms. According to DEQ, Birchwood Power has shut down; so now there are 11.

[22]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.

[23]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."

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

[25]As of the date of the publication of this report, the number of CO_2 emitters that qualified as small businesses was not available.

[26]"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.

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

Response to Economic Impact Analysis: The Department of Environmental Quality has reviewed the economic impact analysis prepared by the Department of Planning and Budget and has no comment.

Summary:

As directed by Executive Order 9 (2022), the proposed amendments begin Virginia's withdrawal from participation in the Regional Greenhouse Gas Initiative (RGGI) by (i) repealing Part VII (9VAC5-140-6010 et seq.) of Regulation for Emissions Trading Programs (9VAC5-140) and (ii) adding a new section providing transition for affected facilities following the repeal.

Part VII
CO_2 Budget Trading Program and Transition to Repeal

~~Article 1~~
~~CO_2 Budget Trading Program General Provisions~~

9VAC5-140-6010. ~~Purpose.~~ (Repealed.)

~~This part establishes the Virginia component of the CO_2 Budget Trading Program, which is designed to reduce anthropogenic emissions of CO_2, a greenhouse gas, from CO_2 budget sources in a manner that is protective of human health and the environment and is economically efficient.~~

9VAC5-140-6020. ~~Definitions.~~ (Repealed.)

~~A. As used in this part, all words or terms not defined here shall have the meanings given them in 9VAC5-10 (General Definitions), unless otherwise required by the context.~~

~~B. For the purpose of this part and any related use, the words or terms shall have the meanings given them in this section.~~

~~C. Terms defined.~~

~~"Account number" means the identification number given by the department or its agent to each COATS account.~~

~~"Acid Rain emission limitation" means, as defined in 40 CFR 72.2, a limitation on emissions of sulfur dioxide (SO_2) or nitrogen oxides (NO_x) under the Acid Rain Program under Title IV of the CAA.~~

~~"Acid Rain Program" means a multistate SO_2 and NO_x air pollution control and emission reduction program established by the administrator under Title IV of the CAA and 40 CFR Parts 72 through 78.~~

~~"Adjustment for banked allowances" means an adjustment applied to the Virginia CO_2 Budget Trading Program base budget for allocation years 2021 through 2025 to address allowances held in general and compliance accounts,~~

~~including compliance accounts established pursuant to the CO_2 Budget Trading Program, but not including accounts opened by participating states.~~

~~"Administrator" means the administrator of the U.S. Environmental Protection Agency or the administrator's authorized representative.~~

~~"Allocate" or "allocation" means the determination by the department of the number of CO_2 allowances recorded in the CO_2 allowance account of a CO_2 budget unit.~~

~~"Allocation year" means a calendar year for which the department allocates CO_2 allowances pursuant to Article 5 (9VAC5-140-6190 et seq.) of this part. The allocation year of each CO_2 allowance is reflected in the unique identification number given to the allowance pursuant to 9VAC5-140-6250 C.~~

~~"Allowance auction" or "auction" means an auction in which the department or its agent offers CO_2 allowances for sale.~~

~~"Attribute" means a characteristic associated with electricity generated using a particular renewable fuel, such as its generation date, facility geographic location, unit vintage, emissions output, fuel, state program eligibility, or other characteristic that can be identified, accounted for, and tracked.~~

~~"Attribute credit" means a credit that represents the attributes related to one megawatt hour of electricity generation.~~

~~"Automated Data Acquisition and Handling System" or "DAHS" means that component of the Continuous Emissions Monitoring System (CEMS), or other emissions monitoring system approved for use under Article 8 (9VAC5-140-6330 et seq.) of this part, designed to interpret and convert individual output signals from pollutant concentration monitors, flow monitors, diluent gas monitors, and other component parts of the monitoring system to produce a continuous record of the measured parameters in the measurement units required by Article 8 (9VAC5-140-6330 et seq.) of this part.~~

~~"Billing meter" means a measurement device used to measure electric or thermal output for commercial billing under a contract. The facility selling the electric or thermal output shall have different owners from the owners of the party purchasing the electric or thermal output.~~

~~"Boiler" means an enclosed fossil or other fuel-fired combustion device used to produce heat and to transfer heat to recirculating water, steam, or other medium.~~

~~"CO_2 allowance" means a limited authorization by the department or participating state under the CO_2 Budget Trading Program to emit up to one ton of CO_2, subject to all applicable limitations contained in this part.~~

~~"CO_2 allowance deduction" or "deduct CO_2 allowances" means the permanent withdrawal of CO_2 allowances by the department or its agent from a COATS compliance account to account for the number of tons of CO_2 emitted from a CO_2 budget source for a control period or an interim control period determined in accordance with Article 8 (9VAC5-140-6330 et seq.) of this part, or for the forfeit or retirement of CO_2 allowances as provided by this part.~~

~~"CO_2 Allowance Tracking System" or "COATS" means the system by which the department or its agent records allocations, deductions, and transfers of CO_2 allowances under the CO_2 Budget Trading Program. The tracking system may also be used to track CO_2 allowance prices and emissions from affected sources.~~

~~"CO_2 Allowance Tracking System account" means an account in COATS established by the department or its agent for purposes of recording the allocation, holding, transferring, or deducting of CO_2 allowances.~~

~~"CO_2 allowance transfer deadline" means midnight of March 1 occurring after the end of the relevant control period and each relevant interim control period, or if that March 1 is not a business day, midnight of the first business day thereafter and is the deadline by which CO_2 allowances shall be submitted for recordation in a CO_2 budget source's compliance account for the source to meet the CO_2 requirements of 9VAC5-140-6050 C for a control period and each interim control period immediately preceding such deadline.~~

~~"CO_2 allowances held" or "hold CO_2 allowances" means the CO_2 allowances recorded by the department or its agent, or submitted to the department or its agent for recordation, in accordance with Article 6 (9VAC5-140-6220 et seq.) and Article 7 (9VAC5-140-6300 et seq.) of this part, in a COATS account.~~

~~"CO_2 authorized account representative" means, for a CO_2 budget source and each CO_2 budget unit at the source, the natural person who is authorized by the owners and operators of the source and all CO_2 budget units at the source, in accordance with Article 2 (9VAC5-140-6080 et seq.) of this part, to represent and legally bind each owner and operator in matters pertaining to the CO_2 Budget Trading Program or, for a general account, the natural person who is authorized, under Article 6 (9VAC5-140-6220 et seq.) of this part, to transfer or otherwise dispose of CO_2 allowances held in the general account. If the CO_2 budget source is also subject to the Acid Rain Program, CSAPR NO_X Annual Trading Program, CSAPR NO_X Ozone Season Trading Program, CSAPR SO_2 Group 1 Trading Program, or CSAPR SO_2 Group 2 Trading Program, then for a CO_2 Budget Trading Program compliance account, this natural person shall be the same person as the designated representative as defined in the respective program.~~

~~"CO_2 authorized alternate account representative" means, for a CO_2 budget source and each CO_2 budget unit at the source, the alternate natural person who is authorized by the owners and~~

operators of the source and all CO_2 budget units at the source, in accordance with Article 2 (9VAC5-140-6080 et seq.) of this part, to represent and legally bind each owner and operator in matters pertaining to the CO_2 Budget Trading Program or, for a general account, the alternate natural person who is authorized, under Article 6 (9VAC5-140-6220 et seq.) of this part, to transfer or otherwise dispose of CO_2 allowances held in the general account. If the CO_2 budget source is also subject to the Acid Rain Program, CSAPR NO_x Annual Trading Program, CSAPR NO_x Ozone Season Trading Program, CSAPR SO_2 Group 1 Trading Program, or CSAPR SO_2 Group 2 Trading Program then, for a CO_2 Budget Trading Program compliance account, this alternate natural person shall be the same person as the alternate designated representative as defined in the respective program.

"CO_2 budget emissions limitation" means, for a CO_2 budget source, the tonnage equivalent, in CO_2 emissions in a control period or an interim control period of the CO_2 allowances available for compliance deduction for the source for a control period or an interim control period.

"CO_2 budget permit" means the portion of the legally binding permit issued by the department pursuant to 9VAC5-85 (Permits for Stationary Sources of Pollutants Subject to Regulation) to a CO_2 budget source or CO_2 budget unit that specifies the CO_2 Budget Trading Program requirements applicable to the CO_2 budget source, to each CO_2 budget unit at the CO_2 budget source, and to the owners and operators and the CO_2 authorized account representative of the CO_2 budget source and each CO_2 budget unit.

"CO_2 budget source" means a source that includes one or more CO_2 budget units.

"CO_2 Budget Trading Program" means a multistate CO_2 air pollution control and emissions reduction program established according to this part and corresponding regulations in other states as a means of reducing emissions of CO_2 from CO_2 budget sources.

"CO_2 budget unit" means a unit that is subject to the CO_2 Budget Trading Program requirements under 9VAC5-140-6040.

"CO_2 cost containment reserve allowance" or "CO_2 CCR allowance" means an allowance that has been sold at an auction for the purpose of containing the cost of CO_2 allowances. CO_2 CCR allowances offered for sale at an auction are separate from and additional to CO_2 allowances allocated from the Virginia CO_2 Budget Trading Program base and adjusted budgets. CO_2 CCR allowances are subject to all applicable limitations contained in this part.

"CO_2 cost containment reserve trigger price" or "CCR trigger price" means the minimum price at which CO_2 CCR allowances are offered for sale by the department or its agent at an auction. The CCR trigger price in calendar year 2021 shall be $13. The CCR trigger price in calendar year 2022 shall be $13.91. Each calendar year thereafter, the CCR trigger price shall be 1.07 multiplied by the CCR trigger price from the previous calendar year, rounded to the nearest whole cent, as shown in Table 140-1A.

Table 140-1A CO_2 CCR Trigger Price	
2021	$13.00
2022	$13.91
2023	$14.88
2024	$15.92
2025	$17.03
2026	$18.22
2027	$19.50
2028	$20.87
2029	$22.33
2030	$23.89

"CO_2 emissions containment reserve allowance" or "CO_2 ECR allowance" means a CO_2 allowance that is withheld from sale at an auction by the department for the purpose of additional emission reduction in the event of lower than anticipated emission reduction costs.

"CO_2 emissions containment reserve trigger price" or "ECR trigger price" means the price below which CO_2 allowances will be withheld from sale by the department or its agent at an auction. The ECR trigger price in calendar year 2021 shall be $6.00. Each calendar year thereafter, the ECR trigger price shall be 1.07 multiplied by the ECR trigger price from the previous calendar year, rounded to the nearest whole cent, as shown in Table 140-1B.

Table 140-1B CO_2 ECR Trigger Price	
2021	$ 6.00
2022	$ 6.42
2023	$ 6.87
2024	$ 7.35
2025	$ 7.86
2026	$8.41
2027	$ 9.00
2028	$ 9.63
2029	$10.30
2030	$11.02

"CO_2 offset allowance" means a CO_2 allowance that is awarded to the sponsor of a CO_2 emissions offset project by

a participating state and is subject to the relevant compliance deduction limitations of the participating state's corresponding offset regulations as a means of reducing CO_2 from CO_2 budget sources.

"Combined cycle system" means a system comprised of one or more combustion turbines, heat recovery steam generators, and steam turbines configured to improve overall efficiency of electricity generation or steam production.

"Combustion turbine" means an enclosed fossil or other fuel-fired device that is comprised of a compressor (if applicable), a combustor, and a turbine, and in which the flue gas resulting from the combustion of fuel in the combustor passes through the turbine, rotating the turbine.

"Commence commercial operation" means, with regard to a unit that serves a generator, to have begun to produce steam, gas, or other heated medium used to generate electricity for sale or use, including test generation. For a unit that is a CO_2 budget unit under 9VAC5-140-6040 on the date the unit commences commercial operation, such date shall remain the unit's date of commencement of commercial operation even if the unit is subsequently modified, reconstructed, or repowered. For a unit that is not a CO_2 budget unit under 9VAC5-140-6040 on the date the unit commences commercial operation, the date the unit becomes a CO_2 budget unit under 9VAC5-140-6040 shall be the unit's date of commencement of commercial operation.

"Commence operation" means to begin any mechanical, chemical, or electronic process, including, with regard to a unit, start-up of a unit's combustion chamber. For a unit that is a CO_2 budget unit under 9VAC5-140-6040 on the date of commencement of operation, such date shall remain the unit's date of commencement of operation even if the unit is subsequently modified, reconstructed, or repowered. For a unit that is not a CO_2 budget unit under 9VAC5-140-6040 on the date of commencement of operation, the date the unit becomes a CO_2 budget unit under 9VAC5-140-6040 shall be the unit's date of commencement of operation.

"Compliance account" means a COATS account, established by the department or its agent for a CO_2 budget source under Article 6 (9VAC5-140-6220 et seq.) of this part, in which CO_2 allowances available for use by the source for a control period and each interim control period are held for the purpose of meeting the CO_2 requirements of 9VAC5-140-6050 C.

"Continuous Emissions Monitoring System" or "CEMS" means the equipment required under Article 8 (9VAC5-140-6330 et seq.) of this part to sample, analyze, measure, and provide, by means of readings recorded at least once every 15 minutes (using an automated DAHS), a permanent record of stack gas volumetric flow rate, stack gas moisture content, and oxygen or carbon dioxide concentration (as applicable), in a manner consistent with 40 CFR Part 75 and Article 8 (9VAC5-140-6330 et seq.) of this part. The following systems are types of CEMS required under Article 8 (9VAC5-140-6330 et seq.) of this part:

a. A flow monitoring system, consisting of a stack flow rate monitor and an automated DAHS and providing a permanent, continuous record of stack gas volumetric flow rate, in standard cubic feet per hour;

b. A NO_X emissions rate (or NO_X diluent) monitoring system, consisting of a NO_X pollutant concentration monitor, a diluent gas (CO_2 or O_2) monitor, and an automated DAHS and providing a permanent, continuous record of NO_X concentration, in parts per million (ppm), diluent gas concentration, in percent CO_2 or O_2, and NO_X emissions rate, in pounds per million British thermal units (lb/MMBtu);

c. A moisture monitoring system, as defined in 40 CFR 75.11(b)(2) and providing a permanent, continuous record of the stack gas moisture content, in percent H_2O;

d. A CO_2 monitoring system, consisting of a CO_2 pollutant concentration monitor (or an O_2 monitor plus suitable mathematical equations from which the CO_2 concentration is derived) and an automated DAHS and providing a permanent, continuous record of CO_2 emissions, in percent CO_2; and

e. An O_2 monitoring system, consisting of an O_2 concentration monitor and an automated DAHS and providing a permanent, continuous record of O_2, in percent O_2.

"Control period" means a three calendar year time period. The fifth control period is from January 1, 2021, to December 31, 2023, inclusive, which is the first control period of Virginia's participation in the CO_2 Budget Trading Program. The first two calendar years of each control period are each defined as an interim control period, beginning on January 1, 2021.

"Cross State Air Pollution Rule (CSAPR) NO_X Annual Trading Program" means a multistate NO_X air pollution control and emission reduction program established in accordance with Subpart AAAAA of 40 CFR Part 97 and 40 CFR 52.38(a), including such a program that is revised in a SIP revision approved by the administrator under 40 CFR 52.38(a)(3) or (4) or that is established in a SIP revision approved by the administrator under 40 CFR 52.38(a)(5), as a means of mitigating interstate transport of fine particulates and NO_X.

"Cross State Air Pollution Rule (CSAPR) NO_X Ozone Season Trading Program" means a multistate NO_X air pollution control and emission reduction program established in accordance with Subpart BBBBB of 40 CFR Part 97 and 40 CFR 52.38(b), including such a program that is revised in a SIP revision approved by the administrator under 40 CFR 52.38(b)(3) or (4) or that is established in a SIP revision approved by the administrator under 40 CFR

52.38(b)(5), as a means of mitigating interstate transport of ozone and NO_x.

"Cross State Air Pollution Rule (CSAPR) SO_2 Group 1 Trading Program" means a multistate SO_2 air pollution control and emission reduction program established in accordance with Subpart CCCCC of 40 CFR Part 97 and 40 CFR 52.39(a), (b), (d) through (f), (j), and (k), including such a program that is revised in a SIP revision approved by the administrator under 40 CFR 52.39(d) or (e) or that is established in a SIP revision approved by the administrator under 40 CFR 52.39(f), as a means of mitigating interstate transport of fine particulates and SO_2.

"Cross State Air Pollution Rule (CSAPR) SO_2 Group 2 Trading Program" means a multistate SO_2 air pollution control and emission reduction program established in accordance with Subpart DDDDD of 40 CFR Part 97 and 40 CFR 52.39(a), (c), and (g) through (k), including such a program that is revised in a SIP revision approved by the administrator under 40 CFR 52.39(g) or (h) or that is established in a SIP revision approved by the administrator under 40 CFR 52.39(i), as a means of mitigating interstate transport of fine particulates and SO_2.

"Department" means the Virginia Department of Environmental Quality.

"Excess emissions" means any tonnage of CO_2 emitted by a CO_2 budget source during an interim control period or a control period that exceeds the CO_2 budget emissions limitation for the source.

"Excess interim emissions" means any tonnage of CO_2 emitted by a CO_2 budget source during an interim control period multiplied by 0.50 that exceeds the CO_2 budget emissions limitation for the source.

"Fossil fuel" means natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material.

"Fossil fuel-fired" means the combustion of fossil fuel, alone or in combination with any other fuel, where the fossil fuel combusted comprises, or is projected to comprise, more than 5.0% of the annual heat input on a Btu basis during any year.

"General account" means a COATS account established under Article 6 (9VAC5-140-6220 et seq.) of this part that is not a compliance account.

"Gross generation" means the electrical output in MWe at the terminals of the generator.

"Interim control period" means a one-calendar-year time period during each of the first and second calendar years of each three year control period. The first interim control period starts January 1, 2021, and ends December 31, 2021, inclusive. The second interim control period starts January 1, 2022, and ends December 31, 2022, inclusive. Each successive three-year control period will have two interim control periods, comprised of each of the first two calendar years of that control period.

"Life-of-the-unit contractual arrangement" means either:

a. A unit participation power sales agreement under which a customer reserves, or is entitled to receive, a specified amount or percentage of nameplate capacity or associated energy from any specified unit pursuant to a contract:

(1) For the life of the unit;

(2) For a cumulative term of no less than 30 years, including contracts that permit an election for early termination; or

(3) For a period equal to or greater than 25 years or 70% of the economic useful life of the unit determined as of the time the unit is built, with option rights to purchase or release some portion of the nameplate capacity and associated energy generated by the unit at the end of the period; or

b. Any energy conversion or energy tolling agreement that has a primary term of 20 years or more and pursuant to which the purchaser is required to deliver fuel to the CO_2 budget source or CO_2 budget unit and is entitled to receive all of the nameplate capacity and associated energy generated by such source or unit for the entire contractual period. Such agreements shall be subject to 9VAC5-140-6325. Such purchaser shall not be considered an "owner" as defined under this section.

"Maximum potential hourly heat input" means an hourly heat input used for reporting purposes when a unit lacks certified monitors to report heat input. If the unit intends to use Appendix D of 40 CFR Part 75 to report heat input, this value shall be calculated, in accordance with 40 CFR Part 75, using the maximum fuel flow rate and the maximum gross calorific value. If the unit intends to use a flow monitor and a diluent gas monitor, this value shall be reported, in accordance with 40 CFR Part 75, using the maximum potential flow rate and either the maximum CO_2 concentration in percent CO_2 or the minimum O_2 concentration in percent O_2.

"Minimum reserve price" means, in calendar year 2021, $2.38. Each calendar year thereafter, the minimum reserve price shall be 1.025 multiplied by the minimum reserve price from the previous calendar year, rounded to the nearest whole cent.

"Monitoring system" means any monitoring system that meets the requirements of Article 8 (9VAC5-140-6330 et seq.) of this part, including a CEMS, an excepted monitoring system, or an alternative monitoring system.

"Nameplate capacity" means the maximum electrical output in MWe that a generator can sustain over a specified period of time when not restricted by seasonal or other deratings as measured in accordance with the U.S. Department of Energy standards.

"Net-electric output" means the amount of gross generation in MWh the generators produce, including output from steam turbines, combustion turbines, and gas expanders, as measured at the generator terminals, less the electricity used to operate the plant (i.e., auxiliary loads); such uses include fuel handling equipment, pumps, fans, pollution control equipment, other electricity needs, and transformer losses as measured at the transmission side of the step-up transformer (e.g., the point of sale).

"Non-CO_2 budget unit" means a unit that does not meet the applicability criteria of 9VAC5-140-6040.

"Operator" means any person who operates, controls, or supervises a CO_2 budget unit or a CO_2 budget source and shall include any holding company, utility system, or plant manager of such a unit or source.

"Owner" means any of the following persons:

a. Any holder of any portion of the legal or equitable title in a CO_2 budget unit;

b. Any holder of a leasehold interest in a CO_2 budget unit, other than a passive lessor, or a person who has an equitable interest through such lessor, whose rental payments are not based, either directly or indirectly, upon the revenues or income from the CO_2 budget unit;

c. Any purchaser of power from a CO_2 budget unit under a life-of-the-unit contractual arrangement in which the purchaser controls the dispatch of the unit; or

d. With respect to any general account, any person who has an ownership interest with respect to the CO_2 allowances held in the general account and who is subject to the binding agreement for the CO_2 authorized account representative to represent that person's ownership interest with respect to the CO_2 allowances.

"Participating state" means a state that has established a corresponding regulation as part of the CO_2 Budget Trading Program.

"Receive" or "receipt of" means, when referring to the department or its agent, to come into possession of a document, information, or correspondence (whether sent in writing or by authorized electronic transmission) as indicated in an official correspondence log, or by a notation made on the document, information, or correspondence by the department or its agent in the regular course of business.

"Recordation," "record," or "recorded" means, with regard to CO_2 allowances, the movement of CO_2 allowances by the department or its agent from one COATS account to another for purposes of allocation, transfer, or deduction.

"Reserve price" means the minimum acceptable price for each CO_2 allowance in a specific auction. The reserve price at an auction is either the minimum reserve price or the CCR trigger price, as specified in Article 9 (9VAC5-140-6410 et seq.) of this part.

"Serial number" means, when referring to CO_2 allowances, the unique identification number assigned to each CO_2 allowance by the department or its agent under 9VAC5-140-6250 C.

"Source" means any governmental, institutional, commercial, or industrial structure, installation, plant, building, or facility that emits or has the potential to emit any air pollutant. A source, including a source with multiple units, shall be considered a single facility.

"Submit" or "serve" means to send or transmit a document, information, or correspondence to the person specified in accordance with the applicable regulation:

a. In person;

b. By United States Postal Service; or

c. By other means of dispatch or transmission and delivery.

Compliance with any "submission," "service," or "mailing" deadline shall be determined by the date of dispatch, transmission, or mailing and not the date of receipt.

"Ton" or "tonnage" means any short ton, or 2,000 pounds. For the purpose of determining compliance with the CO_2 requirements of 9VAC5-140-6050 C, total tons for an interim control period or a control period shall be calculated as the sum of all recorded hourly emissions, or the tonnage equivalent of the recorded hourly emissions rates, in accordance with Article 8 (9VAC5-140-6330 et seq.) of this part, with any remaining fraction of a ton equal to or greater than 0.50 ton deemed to equal one ton and any fraction of a ton less than 0.50 ton deemed to equal zero tons. A short ton is equal to 0.9072 metric tons.

"Total useful energy" means the sum of gross electrical generation and useful net thermal energy.

"Undistributed CO_2 allowances" means CO_2 allowances originally allocated to a set-aside account as pursuant to 9VAC5-140-6210 that were not distributed.

"Unit" means a fossil-fuel-fired stationary boiler, combustion turbine, or combined cycle system.

"Unit operating day" means a calendar day in which a unit combusts any fuel.

"Unsold CO_2 allowances" means CO_2 allowances that have been made available for sale in an auction conducted by the department or its agent, but not sold.

"Useful net thermal energy" means energy:

a. In the form of direct heat, steam, hot water, or other thermal form that is used in the production and beneficial measures for heating, cooling, humidity control, process use, or other thermal end-use energy requirements, excluding thermal energy used in the power production process (e.g., house loads and parasitic loads); and

b. For which fuel or electricity would otherwise be consumed.

"Virginia CO_2 Budget Trading Program adjusted budget" means an adjusted budget determined in accordance with 9VAC5-140-6210 and is the annual amount of CO_2 tons available in Virginia for allocation in a given allocation year, in accordance with the CO_2 Budget Trading Program. CO_2 CCR allowances offered for sale at an auction are separate from and additional to CO_2 allowances allocated from the Virginia CO_2 Budget Trading Program adjusted budget.

"Virginia CO_2 Budget Trading Program base budget" means the budget specified in 9VAC5-140-6190. CO_2 CCR allowances offered for sale at an auction are separate from and additional to CO_2 allowances allocated from the Virginia CO_2 Budget Trading Program base budget.

9VAC5-140-6030. ~~Measurements, abbreviations, and acronyms.~~ (Repealed.)

~~Measurements, abbreviations, and acronyms used in this part are defined as follows:~~

~~Btu - British thermal unit.~~

~~CAA - federal Clean Air Act.~~

~~CCR - cost containment reserve.~~

~~CEMS - Continuous Emissions Monitoring System.~~

~~COATS - CO_2 Allowance Tracking System.~~

~~CO_2 - carbon dioxide.~~

~~DAHS - Data Acquisition and Handling System.~~

~~H_2O - water.~~

~~lb - pound.~~

~~LME - low-mass emissions.~~

~~MMBtu - million British thermal units.~~

~~MW - megawatt.~~

~~MWe - megawatt electrical.~~

~~MWh - megawatt hour.~~

~~NO_X - nitrogen oxides.~~

~~O_2 - oxygen.~~

~~ORIS - Office of Regulatory Information Systems.~~

~~QA/QC - quality assurance/quality control.~~

~~ppm - parts per million.~~

~~SO_2 - sulfur dioxide.~~

9VAC5-140-6040. ~~Applicability.~~ (Repealed.)

~~A. Any fossil fuel-fired unit that serves an electricity generator with a nameplate capacity equal to or greater than 25 MWe shall be a CO_2 budget unit, and any source that includes one or more such units shall be a CO_2 budget source, subject to the requirements of this part.~~

~~B. Exempt from the requirements of this part is any fossil fuel CO_2 budget source located at or adjacent to and physically interconnected with a manufacturing facility that, prior to January 1, 2020, and in every subsequent calendar year, met either of the following requirements:~~

~~1. Supplies less than or equal to 10% of its annual net electrical generation to the electric grid; or~~

~~2. Supplies less than or equal to 15% of its annual total useful energy to any entity other than the manufacturing facility to which the CO_2 budget source is interconnected.~~

~~For the purpose of subdivision 1 of this subsection, annual net electrical generation shall be determined as follows:~~

~~(ES - EP) / EG x 100~~

~~Where:~~

~~ES = electricity sales to the grid from the CO_2 budget source~~

~~EP = electricity purchases from the grid by the CO_2 budget source and the manufacturing facility to which the CO_2 budget source is interconnected~~

~~EG = electricity generation~~

~~Such exempt CO_2 budget source shall have an operating permit containing the applicable restrictions under this subsection. An application for such operating permit shall be submitted to the department no later than January 1, 2022.~~

9VAC5-140-6050. ~~Standard requirements.~~ (Repealed.)

~~A. Permit requirements shall be as follows.~~

~~1. The CO_2 authorized account representative of each CO_2 budget source required to have an operating permit pursuant to 9VAC5-85 (Permits for Stationary Sources of Pollutants Subject to Regulation) and each CO_2 budget unit required to have an operating permit pursuant to 9VAC5-85 shall:~~

~~a. Submit to the department a complete CO_2 budget permit application under 9VAC5-140-6160 in accordance with the deadlines specified in 9VAC5-140-6150; and~~

~~b. Submit in a timely manner any supplemental information that the department determines is necessary in order to review the CO_2 budget permit application and issue or deny a CO_2 budget permit.~~

~~2. The owners and operators of each CO_2 budget source required to have an operating permit pursuant to 9VAC5-85 (Permits for Stationary Sources of Pollutants Subject to Regulation) and each CO_2 budget unit required to have an operating permit pursuant to 9VAC5-85 for the source shall have a CO_2 budget permit and operate the CO_2 budget source and the CO_2 budget unit at the source in compliance with such CO_2 budget permit.~~

~~B. Monitoring requirements shall be as follows.~~

~~1. The owners and operators and, to the extent applicable, the CO_2 authorized account representative of each CO_2 budget source and each CO_2 budget unit at the source shall~~

comply with the monitoring requirements of Article 8 (9VAC5-140-6330 et seq.) of this part.

2. The emissions measurements recorded and reported in accordance with Article 8 (9VAC5-140-6330 et seq.) of this part shall be used to determine compliance by the unit with the CO_2 requirements under subsection C of this section.

C. CO_2 requirements shall be as follows.

1. The owners and operators of each CO_2 budget source and each CO_2 budget unit at the source shall hold CO_2 allowances available for compliance deductions under 9VAC5-140-6260, as of the CO_2 allowance transfer deadline, in the source's compliance account in an amount not less than the total CO_2 emissions that have been generated as a result of combusting fossil fuel for an interim control period or control period from all CO_2 budget units at the source, less the CO_2 allowances deducted to meet the requirements of subdivision 2 of this subsection, with respect to the previous two interim control periods as determined in accordance with Article 6 (9VAC5-140-6220 et seq.) and Article 8 (9VAC5-140-6330 et seq.) of this part.

2. The owners and operators of each CO_2 budget source and each CO_2 budget unit at the source shall hold CO_2 allowances available for compliance deductions under 9VAC5-140-6260, as of the CO_2 allowance transfer deadline, in the source's compliance account in an amount not less than the total CO_2 emissions that have been generated as a result of combusting fossil fuel for the interim control period from all CO_2 budget units at the source multiplied by 0.50, as determined in accordance with Article 6 (9VAC5-140-6220 et seq.) and Article 8 (9VAC5-140-6330 et seq.) of this part.

3. Each ton of CO_2 emitted in excess of the CO_2 budget emissions limitation for a control period shall constitute a separate violation of this part and applicable state law.

4. Each ton of excess interim emissions shall constitute a separate violation of this part and applicable state law.

5. A CO_2 budget unit shall be subject to the requirements under subdivision 1 of this subsection starting on the later of January 1, 2021, or the date on which the unit commences operation.

6. CO_2 allowances shall be held in, deducted from, or transferred among COATS accounts in accordance with Article 5 (9VAC5-140-6190 et seq.), Article 6 (9VAC5-140-6220 et seq.), and Article 7 (9VAC5-140-6300 et seq.) of this part.

7. A CO_2 allowance shall not be deducted, to comply with the requirements under subdivision 1 or 2 of this subsection, for a control period that ends prior to the year for which the CO_2 allowance was allocated.

8. A CO_2 allowance under the CO_2 Budget Trading Program is a limited authorization by the department to emit one ton of CO_2 in accordance with the CO_2 Budget Trading Program. No provision of the CO_2 Budget Trading Program, the CO_2 budget permit application, or the CO_2 budget permit or any provision of law shall be construed to limit the authority of the department or a participating state to terminate or limit such authorization.

9. A CO_2 allowance under the CO_2 Budget Trading Program does not constitute a property right.

D. The owners and operators of a CO_2 budget source that has excess emissions in a control period shall:

1. Forfeit the CO_2 allowances required for deduction under 9VAC5-140-6260 D 1; and

2. Pay any fine, penalty, or assessment or comply with any other remedy imposed under 9VAC5-140-6260 D 2.

E. Recordkeeping and reporting requirements shall be as follows:

1. Unless otherwise provided, the owners and operators of the CO_2 budget source and each CO_2 budget unit at the source shall keep on site at the source each of the following documents for a period of 10 years from the date the document is created. This period may be extended for cause, at any time prior to the end of 10 years, in writing by the department.

a. The account certificate of representation for the CO_2 authorized account representative for the source and each CO_2 budget unit at the source and all documents that demonstrate the truth of the statements in the account certificate of representation, in accordance with 9VAC5-140-6110, provided that the certificate and documents shall be retained on site at the source beyond such 10-year period until such documents are superseded because of the submission of a new account certificate of representation changing the CO_2 authorized account representative.

b. All emissions monitoring information, in accordance with Article 8 (9VAC5-140-6330 et seq.) of this part and 40 CFR 75.57.

c. Copies of all reports, compliance certifications, and other submissions and all records made or required under the CO_2 Budget Trading Program.

d. Copies of all documents used to complete a CO_2 budget permit application and any other submission under the CO_2 Budget Trading Program or to demonstrate compliance with the requirements of the CO_2 Budget Trading Program.

2. The CO_2 authorized account representative of a CO_2 budget source and each CO_2 budget unit at the source shall submit the reports and compliance certifications required under the CO_2 Budget Trading Program, including those under Article 4 (9VAC5-140-6170 et seq.) of this part.

F. Liability requirements shall be as follows.

1. No permit revision shall excuse any violation of the requirements of the CO_2 Budget Trading Program that occurs prior to the date that the revision takes effect.

2. Any provision of the CO_2 Budget Trading Program that applies to a CO_2 budget source, including a provision applicable to the CO_2 authorized account representative of a CO_2 budget source, shall also apply to the owners and operators of such source and of the CO_2 budget units at the source.

3. Any provision of the CO_2 Budget Trading Program that applies to a CO_2 budget unit, including a provision applicable to the CO_2 authorized account representative of a CO_2 budget unit, shall also apply to the owners and operators of such unit.

G. No provision of the CO_2 Budget Trading Program, a CO_2 budget permit application, or a CO_2 budget permit shall be construed as exempting or excluding the owners and operators and, to the extent applicable, the CO_2 authorized account representative of the CO_2 budget source or CO_2 budget unit from compliance with any other provisions of applicable state and federal law or regulations.

9VAC5-140-6060. Computation of time. (Repealed.)

A. Unless otherwise stated, any time period scheduled, under the CO_2 Budget Trading Program, to begin on the occurrence of an act or event shall begin on the day the act or event occurs.

B. Unless otherwise stated, any time period scheduled, under the CO_2 Budget Trading Program, to begin before the occurrence of an act or event shall be computed so that the period ends the day before the act or event occurs.

C. Unless otherwise stated, if the final day of any time period, under the CO_2 Budget Trading Program, falls on a weekend or a state or federal holiday, the time period shall be extended to the next business day.

9VAC5-140-6070. Severability. (Repealed.)

If any provision of this part, or its application to any particular person or circumstances, is held invalid, the remainder of this part, and the application thereof to other persons or circumstances, shall not be affected thereby.

Article 2

CO_2 Authorized Account Representative for CO_2 Budget Sources

9VAC5-140-6080. Authorization and responsibilities of the CO2 authorized account representative. (Repealed.)

A. Except as provided under 9VAC5-140-6090, each CO_2 budget source, including all CO_2 budget units at the source, shall have one and only one CO_2 authorized account representative, with regard to all matters under the CO_2 Budget Trading Program concerning the source or any CO_2 budget unit at the source.

B. The CO_2 authorized account representative of the CO_2 budget source shall be selected by an agreement binding on the owners and operators of the source and all CO_2 budget units at the source and must act in accordance with the account certificate of representation under 9VAC5-140-6110.

C. Upon receipt by the department or its agent of a complete account certificate of representation under 9VAC5-140-6110, the CO_2 authorized account representative of the source shall represent and, by his representations, actions, inactions, or submissions, legally bind each owner and operator of the CO_2 budget source represented and each CO_2 budget unit at the source in all matters pertaining to the CO_2 Budget Trading Program, notwithstanding any agreement between the CO_2 authorized account representative and such owners and operators. The owners and operators shall be bound by any decision or order issued to the CO_2 authorized account representative by the department or a court regarding the source or unit.

D. No CO_2 budget permit shall be issued, and no COATS account shall be established for a CO_2 budget source, until the department or its agent has received a complete account certificate of representation under 9VAC5-140-6110 for a CO_2 authorized account representative of the source and the CO_2 budget units at the source.

E. Each submission under the CO_2 Budget Trading Program shall be submitted, signed, and certified by the CO_2 authorized account representative for each CO_2 budget source on behalf of which the submission is made. Each such submission shall include the following certification statement by the CO_2 authorized account representative: "I am authorized to make this submission on behalf of the owners and operators of the CO_2 budget sources or CO_2 budget units for which the submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

F. The department or its agent will accept or act on a submission made on behalf of owners or operators of a CO_2 budget source or a CO_2 budget unit only if the submission has been made, signed, and certified in accordance with subsection E of this section.

9VAC5-140-6090. ~~CO2 authorized alternate account representative.~~ (Repealed.)

~~A. An account certificate of representation may designate one and only one CO_2 authorized alternate account representative who may act on behalf of the CO_2 authorized account representative. The agreement by which the CO_2 authorized alternate account representative is selected shall include a procedure for authorizing the CO_2 authorized alternate account representative to act in lieu of the CO_2 authorized account representative.~~

~~B. Upon receipt by the department or its agent of a complete account certificate of representation under 9VAC5-140-6110, any representation, action, inaction, or submission by the CO_2 authorized alternate account representative shall be deemed to be a representation, action, inaction, or submission by the CO_2 authorized account representative.~~

~~C. Except in this section and 9VAC5-140-6080 A, 9VAC5-140-6100, 9VAC5-140-6110, and 9VAC5-140-6230, whenever the term "CO_2 authorized account representative" is used in this part, the term shall be construed to include the CO_2 authorized alternate account representative.~~

9VAC5-140-6100. ~~Changing the CO2 authorized account representatives and the CO2 authorized alternate account representative; changes in the owners and operators.~~ (Repealed.)

~~A. The CO_2 authorized account representative may be changed at any time upon receipt by the department or its agent of a superseding complete account certificate of representation under 9VAC5-140-6110. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous CO_2 authorized account representative or CO_2 authorized alternate account representative prior to the time and date when the department or its agent receives the superseding account certificate of representation shall be binding on the new CO_2 authorized account representative and the owners and operators of the CO_2 budget source and the CO_2 budget units at the source.~~

~~B. The CO_2 authorized alternate account representative may be changed at any time upon receipt by the department or its agent of a superseding complete account certificate of representation under 9VAC5-140-6110. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous CO_2 authorized alternate account representative or CO_2 authorized alternate account representative prior to the time and date when the department or its agent receives the superseding account certificate of representation shall be binding on the new CO_2 authorized alternate account representative and the owners and operators of the CO_2 budget source and the CO_2 budget units at the source.~~

~~C. Changes in the owners and operators shall be addressed as follows.~~

~~1. In the event a new owner or operator of a CO_2 budget source or a CO_2 budget unit is not included in the list of owners and operators submitted in the account certificate of representation, such new owner or operator shall be deemed to be subject to and bound by the account certificate of representation, the representations, actions, inactions, and submissions of the CO_2 authorized account representative and any CO_2 authorized alternate account representative of the source or unit, and the decisions, orders, actions, and inactions of the department, as if the new owner or operator were included in such list.~~

~~2. Within 30 days following any change in the owners and operators of a CO_2 budget source or a CO_2 budget unit, including the addition of a new owner or operator, the CO_2 authorized account representative or CO_2 authorized alternate account representative shall submit a revision to the account certificate of representation amending the list of owners and operators to include the change.~~

9VAC5-140-6110. ~~Account certificate of representation.~~ (Repealed.)

~~A. A complete account certificate of representation for a CO_2 authorized account representative or a CO_2 authorized alternate account representative shall include the following elements in a format prescribed by the department or its agent:~~

~~1. Identification of the CO_2 budget source and each CO_2 budget unit at the source for which the account certificate of representation is submitted;~~

~~2. The name, address, email address, telephone number, and facsimile transmission number of the CO_2 authorized account representative and any CO_2 authorized alternate account representative;~~

~~3. A list of the owners and operators of the CO_2 budget source and of each CO_2 budget unit at the source;~~

~~4. The following certification statement by the CO_2 authorized account representative and any CO_2 authorized alternate account representative: "I certify that I was selected as the CO_2 authorized account representative or CO_2 authorized alternate account representative, as applicable, by an agreement binding on the owners and operators of the CO_2 budget source and each CO_2 budget unit at the source. I certify that I have all the necessary authority to carry out my duties and responsibilities under the CO_2 Budget Trading Program on behalf of the owners and operators of the CO_2 budget source and of each CO_2 budget unit at the source and that each such owner and operator shall be fully bound by my representations, actions, inactions, or submissions and by any decision or order issued to me by the department or a court regarding the source or unit."; and~~

~~5. The signature of the CO_2 authorized account representative and any CO_2 authorized alternate account representative and the dates signed.~~

B. Unless otherwise required by the department or its agent, documents of agreement referred to in the account certificate of representation shall not be submitted to the department or its agent. Neither the department nor its agent shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

9VAC5-140-6120. Objections concerning the CO2 authorized account representative. (Repealed.)

A. Once a complete account certificate of representation under 9VAC5-140-6110 has been submitted and received, the department and its agent will rely on the account certificate of representation unless and until the department or its agent receives a superseding complete account certificate of representation under 9VAC5-140-6110.

B. Except as provided in 9VAC5-140-6100 A or B, no objection or other communication submitted to the department or its agent concerning the authorization, or any representation, action, inaction, or submission of the CO_2 authorized account representative shall affect any representation, action, inaction, or submission of the CO_2 authorized account representative or the finality of any decision or order by the department or its agent under the CO_2 Budget Trading Program.

C. Neither the department nor its agent will adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of any CO_2 authorized account representative, including private legal disputes concerning the proceeds of CO_2 allowance transfers.

9VAC5-140-6130. Delegation by CO2 authorized account representative and CO2 authorized alternate account representative. (Repealed.)

A. A CO_2 authorized account representative may delegate, to one or more natural persons, his authority to make an electronic submission to the department or its agent under this part.

B. A CO_2 authorized alternate account representative may delegate, to one or more natural persons, his authority to make an electronic submission to the department or its agent under this part.

C. To delegate authority to make an electronic submission to the department or its agent in accordance with subsections A and B of this section, the CO_2 authorized account representative or CO_2 authorized alternate account representative, as appropriate, shall submit to the department or its agent a notice of delegation, in a format prescribed by the department that includes the following elements:

1. The name, address, email address, telephone number, and facsimile transmission number of such CO_2 authorized account representative or CO_2 authorized alternate account representative;

2. The name, address, email address, telephone number, and facsimile transmission number of each such natural person, referred to as the "electronic submission agent";

3. For each such natural person, a list of the type of electronic submissions under subsection A or B of this section for which authority is delegated to him; and

4. The following certification statement by such CO_2 authorized account representative or CO_2 authorized alternate account representative: "I agree that any electronic submission to the department or its agent that is by a natural person identified in this notice of delegation and of a type listed for such electronic submission agent in this notice of delegation and that is made when I am a CO_2 authorized account representative or CO_2 authorized alternate account representative, as appropriate, and before this notice of delegation is superseded by another notice of delegation under 9VAC5-140-6130 D shall be deemed to be an electronic submission by me. Until this notice of delegation is superseded by another notice of delegation under 9VAC5-140-6130 D, I agree to maintain an email account and to notify the department or its agent immediately of any change in my email address unless all delegation authority by me under 9VAC5-140-6130 is terminated."

D. A notice of delegation submitted under subsection C of this section shall be effective, with regard to the CO_2 authorized account representative or CO_2 authorized alternate account representative identified in such notice, upon receipt of such notice by the department or its agent and until receipt by the department or its agent of a superseding notice of delegation by such CO_2 authorized account representative or CO_2 authorized alternate account representative as appropriate. The superseding notice of delegation may replace any previously identified electronic submission agent, add a new electronic submission agent, or eliminate entirely any delegation of authority.

E. Any electronic submission covered by the certification in subdivision C 4 of this section and made in accordance with a notice of delegation effective under subsection D of this section shall be deemed to be an electronic submission by the CO_2 authorized account representative or CO_2 authorized alternate account representative submitting such notice of delegation.

F. A CO_2 authorized account representative may delegate, to one or more natural persons, his authority to review information in the CO_2 allowance tracking system under this part.

G. A CO_2 authorized alternate account representative may delegate, to one or more natural persons, his authority to review information in the CO_2 allowance tracking system under this part.

H. To delegate authority to review information in the CO_2 allowance tracking system in accordance with subsections F

and G of this section, the CO_2 authorized account representative or CO_2 authorized alternate account representative, as appropriate, shall submit to the department or its agent a notice of delegation, in a format prescribed by the department that includes the following elements:

1. The name, address, email address, telephone number, and facsimile transmission number of such CO_2 authorized account representative or CO_2 authorized alternate account representative;

2. The name, address, email address, telephone number, and facsimile transmission number of each such natural person, referred to as the "reviewer";

3. For each such natural person, a list of the type of information under subsection F or G of this section for which authority is delegated to him; and

4. The following certification statement by such CO_2 authorized account representative or CO_2 authorized alternate account representative: "I agree that any information that is reviewed by a natural person identified in this notice of delegation and of a type listed for such information accessible by the reviewer in this notice of delegation and that is made when I am a CO_2 authorized account representative or CO_2 authorized alternate account representative, as appropriate, and before this notice of delegation is superseded by another notice of delegation under subsection I of this section shall be deemed to be a reviewer by me. Until this notice of delegation is superseded by another notice of delegation under subsection I of this section, I agree to maintain an email account and to notify the department or its agent immediately of any change in my email address unless all delegation authority by me under this section is terminated."

I. A notice of delegation submitted under subsection H of this section shall be effective, with regard to the CO_2 authorized account representative or CO_2 authorized alternate account representative identified in such notice, upon receipt of such notice by the department or its agent and until receipt by the department or its agent of a superseding notice of delegation by such CO_2 authorized account representative or CO_2 authorized alternate account representative as appropriate. The superseding notice of delegation may replace any previously identified reviewer, add a new reviewer, or eliminate entirely any delegation of authority.

Article 3
Permits

9VAC5-140-6140. CO2 budget permit requirements. (Repealed.)

A. Each CO_2 budget source shall have a permit issued by the department pursuant to 9VAC5-85 (Permits for Stationary Sources of Pollutants Subject to Regulation).

B. Each CO_2 budget permit shall contain all applicable CO_2 Budget Trading Program requirements and shall be a complete and distinguishable portion of the permit under subsection A of this section.

9VAC5-140-6150. Submission of CO2 budget permit applications. (Repealed.)

For any CO_2 budget source, the CO_2 authorized account representative shall submit a complete CO_2 budget permit application under 9VAC5-140-6160 covering such CO_2 budget source to the department by the later of January 1, 2021, or 12 months before the date on which the CO_2 budget source, or a new unit at the source, commences operation.

9VAC5-140-6160. Information requirements for CO2 budget permit applications. (Repealed.)

A complete CO_2 budget permit application shall include the following elements concerning the CO_2 budget source for which the application is submitted, in a format prescribed by the department:

1. Identification of the CO_2 budget source, including plant name and the ORIS (Office of Regulatory Information Systems) or facility code assigned to the source by the Energy Information Administration of the U.S. Department of Energy if applicable;

2. Identification of each CO_2 budget unit at the CO_2 budget source; and

3. The standard requirements under 9VAC5-140-6050.

Article 4
Compliance Certification

9VAC5-140-6170. Compliance certification report. (Repealed.)

A. For each control period in which a CO_2 budget source is subject to the CO_2 requirements of 9VAC5-140-6050 C, the CO_2 authorized account representative of the source shall submit to the department by March 1 following the relevant control period, a compliance certification report. A compliance certification report is not required as part of the compliance obligation during an interim control period.

B. The CO_2 authorized account representative shall include in the compliance certification report under subsection A of this section the following elements, in a format prescribed by the department:

1. Identification of the source and each CO_2 budget unit at the source;

2. At the CO_2 authorized account representative's option, the serial numbers of the CO_2 allowances that are to be deducted from the source's compliance account under 9VAC5-140-6260 for the control period; and

3. The compliance certification under subsection C of this section.

C. In the compliance certification report under subsection A of this section, the CO_2 authorized account representative shall certify, based on reasonable inquiry of those persons with primary responsibility for operating the source and the CO_2 budget units at the source in compliance with the CO_2 Budget Trading Program, whether the source and each CO_2 budget unit at the source for which the compliance certification is submitted was operated during the calendar years covered by the report in compliance with the requirements of the CO_2 Budget Trading Program, including:

1. Whether the source was operated in compliance with the CO_2 requirements of 9VAC5-140-6050 C;

2. Whether the monitoring plan applicable to each unit at the source has been maintained to reflect the actual operation and monitoring of the unit, and contains all information necessary to attribute CO_2 emissions to the unit, in accordance with Article 8 (9VAC5-140-6330 et seq.) of this part;

3. Whether all the CO_2 emissions from the units at the source were monitored or accounted for through the missing data procedures and reported in the quarterly monitoring reports, including whether conditional data were reported in the quarterly reports in accordance with Article 8 (9VAC5-140-6330 et seq.) of this part. If conditional data were reported, the owner or operator shall indicate whether the status of all conditional data has been resolved and all necessary quarterly report resubmissions have been made;

4. Whether the facts that form the basis for certification under Article 8 (9VAC5-140-6330 et seq.) of this part of each monitor at each unit at the source, or for using an excepted monitoring method or alternative monitoring method approved under Article 8 (9VAC5-140-6330 et seq.) of this part, if any, have changed; and

5. If a change is required to be reported under subdivision 4 of this subsection, specify the nature of the change, the reason for the change, when the change occurred, and how the unit's compliance status was determined subsequent to the change, including what method was used to determine emissions when a change mandated the need for monitor recertification.

9VAC5-140-6180. Action on compliance certifications. (Repealed.)

A. The department or its agent may review and conduct independent audits concerning any compliance certification or any other submission under the CO_2 Budget Trading Program and make appropriate adjustments of the information in the compliance certifications or other submissions.

B. The department or its agent may deduct CO_2 allowances from or transfer CO_2 allowances to a source's compliance account based on the information in the compliance certifications or other submissions, as adjusted under subsection A of this section.

Article 5
CO_2 Allowance Allocations

9VAC5-140-6190. Base budgets. (Repealed.)

A. The Virginia CO_2 Budget Trading Program base budget shall be as follows:

1. For 2021, the Virginia CO_2 Budget Trading Program base budget is 27.16 million tons.

2. For 2022, the Virginia CO_2 Budget Trading Program base budget is 26.32 million tons.

3. For 2023, the Virginia CO_2 Budget Trading Program base budget is 25.48 million tons.

4. For 2024, the Virginia CO_2 Budget Trading Program base budget is 24.64 million tons.

5. For 2025, the Virginia CO_2 Budget Trading Program base budget is 23.80 million tons.

6. For 2026, the Virginia CO_2 Budget Trading Program base budget is 22.96 million tons.

7. For 2027, the Virginia CO_2 Budget Trading Program base budget is 22.12 million tons.

8. For 2028, the Virginia CO_2 Budget Trading Program base budget is 21.28 million tons.

9. For 2029, the Virginia CO_2 Budget Trading Program base budget is 20.44 million tons.

10. For 2030, the Virginia CO_2 Budget Trading Program base budget is 19.60 million tons.

B. For 2031 and each succeeding calendar year, the Virginia CO_2 Budget Trading Program base budget is 19.60 million tons unless modified as a result of a program review and future regulatory action.

9VAC5-140-6200. Undistributed and unsold conditional CO2 allowances. (Repealed.)

A. The department will retire undistributed CO_2 allowances at the end of each control period.

B. The department will retire unsold CO_2 allowances at the end of each control period.

9VAC5-140-6210. CO2 allowance allocations. (Repealed.)

A. The department will allocate the Virginia CO_2 Budget Trading Program base budget CO_2 allowances to the Virginia Auction Account.

B. For allocation years 2021 through 2030, the Virginia CO_2 Budget Trading Program adjusted budget shall be the

maximum number of allowances available for allocation in a given allocation year, except for CO_2 CCR allowances.

C. In the event that the CCR is triggered during an auction, the department will allocate CO_2 CCR allowances, separate from and additional to the Virginia CO_2 Budget Trading Program base budget set forth in 9VAC5-140-6190 to the Virginia Auction Account. The CCR allocation is for the purpose of containing the cost of CO_2 allowances. The department will allocate CO_2 CCR allowances as follows:

1. On or before January 1, 2021, and each year thereafter, the department will allocate CO_2 CCR allowances equal to the quantity in Table 140-5A.

Table 140-5A CO_2 CCR Allowances from 2021 Forward	
2021	2.716 million tons
2022	2.632 million tons
2023	2.548 million tons
2024	2.464 million tons
2025	2.380 million tons
2026	2.296 million tons
2027	2.212 million tons
2028	2.128 million tons
2029	2.044 million tons
2030 and each year thereafter	1.960 million tons

2. CCR allowances allocated for a calendar year will be automatically transferred to the Virginia Auction Account to be auctioned. Following each auction, all CO_2 CCR allowances sold at auction will be transferred to winning bidders' accounts as CO_2 CCR allowances.

3. Unsold CO_2 CCR allowances will remain in the Virginia Auction Account to be re-offered for sale at auction within the same calendar year. CO_2 CCR allowances remaining unsold at the end of the calendar year in which they were originated will be made unavailable for sale at future auctions.

D. In the event that the ECR is triggered during an auction, the department will authorize its agent to withhold CO_2 allowances as needed. The department will further authorize its agent to convert and transfer any CO_2 allowances that have been withheld from any auction into the Virginia ECR account. The ECR withholding is for the purpose of additional emission reduction in the event of lower than anticipated emission reduction costs. The department's agent will withhold CO_2 ECR allowances as follows:

1. If the condition in 9VAC5-140-6420 C 1 is met at an auction, then the maximum number of CO_2 ECR allowances that will be withheld from that auction will be equal to the quantity shown in Table 140-5B minus the total quantity of CO_2 ECR allowances that have been withheld from any prior auction in that calendar year. Any CO_2 ECR allowances withheld from an auction will be transferred into the Virginia ECR account.

Table 140-5B ECR Allowances from 2021 Forward	
2021	2.716 million tons
2022	2.632 million tons
2023	2.548 million tons
2024	2.464 million tons
2025	2.380 million tons
2026	2.296 million tons
2027	2.212 million tons
2028	2.128 million tons
2029	2.044 million tons
2030 and each year thereafter	1.960 million tons

2. Allowances that have been transferred into the Virginia ECR account shall not be withdrawn.

E. The adjustment for banked allowances will be as follows. On March 15, 2021, the department may determine the adjustment for banked allowances quantity for allocation years 2021 through 2025 through the application of the following formula:

TABA = ((TA − TAE)/5) x RS%

Where:

TABA is the adjustment for banked allowances quantity in tons.

TA, adjustment, is the total quantity of allowances of vintage years prior to 2021 held in general and compliance accounts, including compliance accounts established pursuant to the CO_2 Budget Trading Program but not including accounts opened by participating states, as reflected in the CO_2 Allowance Tracking System on March 15, 2021.

TAE, adjustment emissions, is the total quantity of 2018, 2019, and 2020 emissions from all CO_2 budget sources in all participating states, reported pursuant to CO_2 Budget Trading Program as reflected in the CO_2 Allowance Tracking System on March 15, 2021.

RS% is Virginia budget divided by the regional budget.

F. CO_2 Budget Trading Program adjusted budgets for 2021 through 2025 shall be determined as follows: on April 15, 2021, the department will determine the Virginia CO_2 Budget Trading Program adjusted budgets for the 2021 through 2025 allocation years by the following formula:

AB = BB − TABA

Where:

AB is the Virginia CO_2 Budget Trading Program adjusted budget.

BB is the Virginia CO_2 Budget Trading Program base budget.

TABA is the adjustment for banked allowances quantity in tons.

G. The department or its agent will publish the CO_2 trading program adjusted budgets for the 2021 through 2025 allocation years.

Article 6
CO_2 Allowance Tracking System

9VAC5-140-6220. ~~CO2 Allowance Tracking System accounts.~~ (Repealed.)

A. Consistent with 9VAC5-140-6230 A, the department or its agent will establish one compliance account for each CO_2 budget source. Allocations of CO_2 allowances pursuant to Article 5 (9VAC5-140-6190 et seq.) of this part and deductions or transfers of CO_2 allowances pursuant to 9VAC5-140-6180, 9VAC5-140-6260, 9VAC5-140-6280, or Article 7 (9VAC5-140-6300 et seq.) of this part will be recorded in the compliance accounts in accordance with this section.

B. Consistent with 9VAC5-140-6230 B, the department or its agent will establish, upon request, a general account for any person. Transfers of CO_2 allowances pursuant to Article 7 (9VAC5-140-6300 et seq.) of this part will be recorded in the general account in accordance with this article.

9VAC5-140-6230. ~~Establishment of accounts.~~ (Repealed.)

A. Upon receipt of a complete account certificate of representation under 9VAC5-140-6110, the department or its agent will establish an allowance account and a compliance account for each CO_2 budget source for which an account certificate of representation was submitted.

B. General accounts shall operate as follows.

1. Any person may apply to open a general account for the purpose of holding and transferring CO_2 allowances. An application for a general account may designate one and only one CO_2 authorized account representative and one and only one CO_2 authorized alternate account representative who may act on behalf of the CO_2 authorized account representative. The agreement by which the CO_2 authorized alternate account representative is selected shall include a procedure for authorizing the CO_2 authorized alternate account representative to act in lieu of the CO_2 authorized account representative. A complete application for a general account shall be submitted to the department or its agent and shall include the following elements in a format prescribed by the department or its agent:

a. Name, address, email address, telephone number, and facsimile transmission number of the CO_2 authorized account representative and any CO_2 authorized alternate account representative;

b. At the option of the CO_2 authorized account representative, organization name and type of organization;

c. A list of all persons subject to a binding agreement for the CO_2 authorized account representative or any CO_2 authorized alternate account representative to represent their ownership interest with respect to the CO_2 allowances held in the general account;

d. The following certification statement by the CO_2 authorized account representative and any CO_2 authorized alternate account representative: "I certify that I was selected as the CO_2 authorized account representative or the CO_2 authorized alternate account representative, as applicable, by an agreement that is binding on all persons who have an ownership interest with respect to CO_2 allowances held in the general account. I certify that I have all the necessary authority to carry out my duties and responsibilities under the CO_2 Budget Trading Program on behalf of such persons and that each such person shall be fully bound by my representations, actions, inactions, or submissions and by any order or decision issued to me by the department or its agent or a court regarding the general account.";

e. The signature of the CO_2 authorized account representative and any CO_2 authorized alternate account representative and the dates signed; and

f. Unless otherwise required by the department or its agent, documents of agreement referred to in the application for a general account shall not be submitted to the department or its agent. Neither the department nor its agent shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

2. Authorization of the CO_2 authorized account representative shall be as follows:

a. Upon receipt by the department or its agent of a complete application for a general account under subdivision 1 of this subsection:

(1) The department or its agent will establish a general account for the person for whom the application is submitted.

(2) The CO_2 authorized account representative and any CO_2 authorized alternate account representative for the general account shall represent and, by his representations,

actions, inactions, or submissions, legally bind each person who has an ownership interest with respect to CO_2 allowances held in the general account in all matters pertaining to the CO_2 Budget Trading Program, notwithstanding any agreement between the CO_2 authorized account representative or any CO_2 authorized alternate account representative and such person. Any such person shall be bound by any order or decision issued to the CO_2 authorized account representative or any CO_2 authorized alternate account representative by the department or its agent or a court regarding the general account.

(3) Any representation, action, inaction, or submission by any CO_2 authorized alternate account representative shall be deemed to be a representation, action, inaction, or submission by the CO_2 authorized account representative.

b. Each submission concerning the general account shall be submitted, signed, and certified by the CO_2 authorized account representative or any CO_2 authorized alternate account representative for the persons having an ownership interest with respect to CO_2 allowances held in the general account. Each such submission shall include the following certification statement by the CO_2 authorized account representative or any CO_2 authorized alternate account representative: "I am authorized to make this submission on behalf of the persons having an ownership interest with respect to the CO_2 allowances held in the general account. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

c. The department or its agent will accept or act on a submission concerning the general account only if the submission has been made, signed, and certified in accordance with subdivision 2 b of this subsection.

3. Changing CO_2 authorized account representative and CO_2 authorized alternate account representative, and changes in persons with ownership interest, shall be accomplished as follows:

a. The CO_2 authorized account representative for a general account may be changed at any time upon receipt by the department or its agent of a superseding complete application for a general account under subdivision 1 of this subsection. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous CO_2 authorized account representative, or the previous CO_2 authorized alternate account representative, prior to the time and date when the department or its agent receives the superseding application for a general account shall be binding on the new CO_2 authorized account representative and the persons with an ownership interest with respect to the CO_2 allowances in the general account.

b. The CO_2 authorized alternate account representative for a general account may be changed at any time upon receipt by the department or its agent of a superseding complete application for a general account under subdivision 1 of this subsection. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous CO_2 authorized account representative, or the previous CO_2 authorized alternate account representative, prior to the time and date when the department or its agent receives the superseding application for a general account shall be binding on the new alternate CO_2 authorized account representative and the persons with an ownership interest with respect to the CO_2 allowances in the general account.

c. In the event a new person having an ownership interest with respect to CO_2 allowances in the general account is not included in the list of such persons in the application for a general account, such new person shall be deemed to be subject to and bound by the application for a general account, the representations, actions, inactions, and submissions of the CO_2 authorized account representative and any CO_2 authorized alternate account representative, and the decisions, orders, actions, and inactions of the department or its agent, as if the new person were included in such list.

d. Within 30 days following any change in the persons having an ownership interest with respect to CO_2 allowances in the general account, including the addition or deletion of persons, the CO_2 authorized account representative or any CO_2 authorized alternate account representative shall submit a revision to the application for a general account amending the list of persons having an ownership interest with respect to the CO_2 allowances in the general account to include the change.

4. Objections concerning CO_2 authorized account representative shall be governed as follows:

a. Once a complete application for a general account under subdivision 1 of this subsection has been submitted and received, the department or its agent will rely on the application unless and until a superseding complete application for a general account under subdivision 1 of this subsection is received by the department or its agent.

b. Except as provided in subdivisions 3 a and 3 b of this subsection, no objection or other communication submitted to the department or its agent concerning the authorization, or any representation, action, inaction, or submission of the CO_2 authorized account representative or any CO_2 authorized alternate account representative for a general account shall affect any representation, action,

~~inaction, or submission of the CO_2 authorized account representative or any CO_2 authorized alternate account representative or the finality of any decision or order by the department or its agent under the CO_2 Budget Trading Program.~~

~~c. Neither the department nor its agent will adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of the CO_2 authorized account representative or any CO_2 authorized alternate account representative for a general account, including private legal disputes concerning the proceeds of CO_2 allowance transfers.~~

~~5. Delegation by CO_2 authorized account representative and CO_2 authorized alternate account representative shall be accomplished as follows:~~

~~a. A CO_2 authorized account representative may delegate, to one or more natural persons, his authority to make an electronic submission to the department or its agent provided for under this article and Article 7 (9VAC5-140-6300 et seq.) of this part.~~

~~b. A CO_2 authorized alternate account representative may delegate, to one or more natural persons, his authority to make an electronic submission to the department or its agent provided for under this article and Article 7 (9VAC5-140-6300 et seq.) of this part.~~

~~c. To delegate authority to make an electronic submission to the department or its agent in accordance with subdivisions 5 a and 5 b of this subsection, the CO_2 authorized account representative or CO_2 authorized alternate account representative, as appropriate, shall submit to the department or its agent a notice of delegation, in a format prescribed by the department that includes the following elements:~~

~~(1) The name, address, email address, telephone number, and facsimile transmission number of such CO_2 authorized account representative or CO_2 authorized alternate account representative;~~

~~(2) The name, address, email address, telephone number, and facsimile transmission number of each such natural person, referred to as "electronic submission agent";~~

~~(3) For each such natural person, a list of the type of electronic submissions under subdivision 5 c (1) or 5 c (2) of this subsection for which authority is delegated to him; and~~

~~(4) The following certification statement by such CO_2 authorized account representative or CO_2 authorized alternate account representative: "I agree that any electronic submission to the department or its agent that is by a natural person identified in this notice of delegation and of a type listed for such electronic submission agent in this notice of delegation and that is made when I am a CO_2 authorized account representative or CO_2 authorized alternate account representative, as appropriate, and before this notice of delegation is superseded by another notice of delegation under 9VAC5-140-6230 B 5 d shall be deemed to be an electronic submission by me. Until this notice of delegation is superseded by another notice of delegation under 9VAC5-140-6230 B 5 d, I agree to maintain an email account and to notify the department or its agent immediately of any change in my email address unless all delegation authority by me under 9VAC5-140-6230 B 5 is terminated."~~

~~d. A notice of delegation submitted under subdivision 5 c of this subsection shall be effective, with regard to the CO_2 authorized account representative or CO_2 authorized alternate account representative identified in such notice, upon receipt of such notice by the department or its agent and until receipt by the department or its agent of a superseding notice of delegation by such CO_2 authorized account representative or CO_2 authorized alternate account representative as appropriate. The superseding notice of delegation may replace any previously identified electronic submission agent, add a new electronic submission agent, or eliminate entirely any delegation of authority.~~

~~e. Any electronic submission covered by the certification in subdivision 5 c (4) of this subsection and made in accordance with a notice of delegation effective under subdivision 5 d of this subsection shall be deemed to be an electronic submission by the CO_2 authorized account representative or CO_2 authorized alternate account representative submitting such notice of delegation.~~

~~C. The department or its agent will assign a unique identifying number to each account established under subsection A or B of this section.~~

9VAC5-140-6240. ~~CO2 Allowance Tracking System responsibilities of CO2 authorized account representative.~~ (Repealed.)

~~Following the establishment of a COATS account, all submissions to the department or its agent pertaining to the account, including submissions concerning the deduction or transfer of CO_2 allowances in the account, shall be made only by the CO_2 authorized account representative for the account.~~

9VAC5-140-6250. ~~Recordation of CO2 allowance allocations.~~ (Repealed.)

~~A. By January 1 of each calendar year, the department or its agent will record in the following accounts:~~

~~1. In each CO_2 budget source's allowance account, the CO_2 allowances allocated to those sources by the department prior to being auctioned; and~~

~~2. In each CO_2 budget source's compliance account, the allowances purchased at auction by CO_2 budget units at the source under 9VAC5-140-6210 A.~~

B. Each year the department or its agent will record CO_2 allowances, as allocated to the unit under Article 5 (9VAC5-140-6190 et seq.) of this part, in the compliance account for the year after the last year for which CO_2 allowances were previously allocated to the compliance account. Each year, the department or its agent will also record CO_2 allowances, as allocated under Article 5 (9VAC5-140-6190 et seq.) of this part, in an allocation set-aside for the year after the last year for which CO_2 allowances were previously allocated to an allocation set-aside.

C. Serial numbers for allocated CO_2 allowances shall be managed as follows. When allocating CO_2 allowances to and recording them in an account, the department or its agent will assign each CO_2 allowance a unique identification number that will include digits identifying the year for which the CO_2 allowance is allocated.

9VAC5-140-6260. ~~Compliance.~~ (Repealed.)

A. CO_2 allowances that meet the following criteria are available to be deducted for a CO_2 budget source to comply with the CO_2 requirements of 9VAC5-140-6050 C for a control period or an interim control period.

1. The CO_2 allowances are of allocation years that fall within a prior control period, the same control period, or the same interim control period for which the allowances will be deducted.

2. The CO_2 allowances are held in the CO_2 budget source's compliance account as of the CO_2 allowance transfer deadline for that control period or interim control period or are transferred into the compliance account by a CO_2 allowance transfer correctly submitted for recordation under 9VAC5-140-6300 by the CO_2 allowance transfer deadline for that control period or interim control period.

3. For CO_2 offset allowances generated by other participating states, the number of CO_2 offset allowances that are available to be deducted in order for a CO_2 budget source to comply with the CO_2 requirements of 9VAC5-140-6050 C for a control period or an interim control period shall not exceed 3.3% of the CO_2 budget source's CO_2 emissions for that control period, or may not exceed 3.3% of 0.50 times the CO_2 budget source's CO_2 emissions for an interim control period, as determined in accordance with this article and Article 8 (9VAC5-140-6330 et seq.) of this part.

4. The CO_2 allowances are not necessary for deductions for excess emissions for a prior control period under subsection D of this section.

B. Following the recordation, in accordance with 9VAC5-140-6310, of CO_2 allowance transfers submitted for recordation in the CO_2 budget source's compliance account by the CO_2 allowance transfer deadline for a control period or an interim control period, the department or its agent will deduct CO_2 allowances available under subsection A of this section to cover the source's CO_2 emissions, as determined in accordance with Article 8 (9VAC5-140-6330 et seq.) of this part, for the control period or interim control period, as follows:

1. Until the amount of CO_2 allowances deducted equals the number of tons of total CO_2 emissions, or 0.50 times the number of tons of total CO_2 emissions for an interim control period, determined in accordance with Article 8 (9VAC5-140-6330 et seq.) of this part, from all CO_2 budget units at the CO_2 budget source for the control period or interim control period; or

2. If there are insufficient CO_2 allowances to complete the deductions in subdivision 1 of this subsection, until no more CO_2 allowances available under subsection A of this section remain in the compliance account.

C. Identification of available CO_2 allowances by serial number and default compliance deductions shall be managed as follows:

1. The CO_2 authorized account representative for a source's compliance account may request that specific CO_2 allowances, identified by serial number, in the compliance account be deducted for emissions or excess emissions for a control period or interim control period in accordance with subsection B or D of this section. Such identification shall be made in the compliance certification report submitted in accordance with 9VAC5-140-6170.

2. The department or its agent will deduct CO_2 allowances for an interim control period or a control period from the CO_2 budget source's compliance account, in the absence of an identification or in the case of a partial identification of available CO_2 allowances by serial number under subdivision 1 of this subsection, as follows: Any CO_2 allowances that are available for deduction under subdivision 1 of this subsection. CO_2 allowances shall be deducted in chronological order (i.e., CO_2 allowances from earlier allocation years shall be deducted before CO_2 allowances from later allocation years). In the event that some, but not all, CO_2 allowances from a particular allocation year are to be deducted, CO_2 allowances shall be deducted by serial number, with lower serial number allowances deducted before higher serial number allowances.

D. Deductions for excess emissions shall be managed as follows.

1. After making the deductions for compliance under subsection B of this section, the department or its agent will deduct from the CO_2 budget source's compliance account a number of CO_2 allowances equal to three times the number of the source's excess emissions. In the event that a source has insufficient CO_2 allowances to cover three times the number of the source's excess emissions, the source shall be required to immediately transfer sufficient allowances into its compliance account.

2. Any CO_2 allowance deduction required under subdivision 1 of this subsection shall not affect the liability of the owners and operators of the CO_2 budget source or the CO_2 budget units at the source for any fine, penalty, or assessment, or their obligation to comply with any other remedy, for the same violation, as ordered under applicable state law. The following guidelines will be followed in assessing fines, penalties, or other obligations:

a. For purposes of determining the number of days of violation, if a CO_2 budget source has excess emissions for a control period, each day in the control period constitutes a day in violation unless the owners and operators of the unit demonstrate that a lesser number of days should be considered.

b. Each ton of excess emissions is a separate violation.

c. For purposes of determining the number of days of violation, if a CO_2 budget source has excess interim emissions for an interim control period, each day in the interim control period constitutes a day in violation unless the owners and operators of the unit demonstrate that a lesser number of days should be considered.

d. Each ton of excess interim emissions is a separate violation.

3. The propriety of the department's determination that a CO_2 budget source had excess emissions and the concomitant deduction of CO_2 allowances from that CO_2 budget source's account may be later challenged in the context of the initial administrative enforcement, or any civil or criminal judicial action arising from or encompassing that excess emissions violation. The commencement or pendency of any administrative enforcement, or civil or criminal judicial action arising from or encompassing that excess emissions violation will not act to prevent the department or its agent from initially deducting the CO_2 allowances resulting from the department's original determination that the relevant CO_2 budget source has had excess emissions. Should the department's determination of the existence or extent of the CO_2 budget source's excess emissions be revised either by a settlement or final conclusion of any administrative or judicial action, the department will act as follows:

a. In any instance where the department's determination of the extent of excess emissions was too low, the department will take further action under subdivisions 1 and 2 of this subsection to address the expanded violation.

b. In any instance where the department's determination of the extent of excess emissions was too high, the department will distribute to the relevant CO_2 budget source a number of CO_2 allowances equaling the number of CO_2 allowances deducted which are attributable to the difference between the original and final quantity of excess emissions. Should such CO_2 budget source's compliance account no longer exist, the CO_2 allowances will be provided to a general account selected by the owner or operator of the CO_2 budget source from which they were originally deducted.

E. The department or its agent will record in the appropriate compliance account all deductions from such an account pursuant to subsections B and D of this section.

F. Action by the department on submissions shall be as follows:

1. The department may review and conduct independent audits concerning any submission under the CO_2 Budget Trading Program and make appropriate adjustments of the information in the submissions.

2. The department may deduct CO_2 allowances from or transfer CO_2 allowances to a source's compliance account based on information in the submissions, as adjusted under subdivision 1 of this subsection.

9VAC5-140-6270. ~~Banking.~~ (Repealed.)

Each CO_2 allowance that is held in a compliance account or a general account will remain in such account unless and until the CO_2 allowance is deducted or transferred under 9VAC5-140-6180, 9VAC5-140-6260, 9VAC5-140-6280, or Article 7 (9VAC5-140-6300 et seq.) of this part.

9VAC5-140-6280. ~~Account error.~~ (Repealed.)

The department or its agent may, at its sole discretion and on its own motion, correct any error in any COATS account. Within 10 business days of making such correction, the department or its agent will notify the CO_2 authorized account representative for the account.

9VAC5-140-6290. ~~Closing of general accounts.~~ (Repealed.)

A. A CO_2 authorized account representative of a general account may instruct the department or its agent to close the account by submitting a statement requesting deletion of the account from the COATS and by correctly submitting for recordation under 9VAC5-140-6300 a CO_2 allowance transfer of all CO_2 allowances in the account to one or more other COATS accounts.

B. If a general account shows no activity for a period of one year or more and does not contain any CO_2 allowances, the department or its agent may notify the CO_2 authorized account representative for the account that the account will be closed in the COATS 30 business days after the notice is sent. The account will be closed after the 30-day period unless before the end of the 30-day period the department or its agent receives a correctly submitted transfer of CO_2 allowances into the account under 9VAC5-140-6300 or a statement submitted by the CO_2 authorized account representative demonstrating to the satisfaction of the department or its agent good cause as to why the account should not be closed. The department or its agent will have sole discretion to determine if the owner or operator of the unit demonstrated that the account should not be closed.

Article 7
CO_2 Allowance Transfers

9VAC5-140-6300. Submission of CO2 allowance transfers. (Repealed.)

The CO_2 authorized account representatives seeking recordation of a CO_2 allowance transfer shall submit the transfer to the department or its agent. To be considered correctly submitted, the CO_2 allowance transfer shall include the following elements in a format specified by the department or its agent:

1. The numbers identifying both the transferor and transferee accounts;

2. A specification by serial number of each CO_2 allowance to be transferred;

3. The printed name and signature of the CO_2 authorized account representative of the transferor account and the date signed;

4. The date of the completion of the last sale or purchase transaction for the allowance, if any; and

5. The purchase or sale price of the allowance that is the subject of a sale or purchase transaction under subdivision 4 of this section.

9VAC5-140-6310. Recordation. (Repealed.)

A. Within five business days of receiving a CO_2 allowance transfer, except as provided in subsection B of this section, the department or its agent will record a CO_2 allowance transfer by moving each CO_2 allowance from the transferor account to the transferee account as specified by the request, provided that:

1. The transfer is correctly submitted under 9VAC5-140-6300; and

2. The transferor account includes each CO_2 allowance identified by serial number in the transfer.

B. A CO_2 allowance transfer into or out of a compliance account that is submitted for recordation following the CO_2 allowance transfer deadline and that includes any CO_2 allowances that are of allocation years that fall within a control period prior to or the same as the control period to which the CO_2 allowance transfer deadline applies will not be recorded until after completion of the process pursuant to 9VAC5-140-6260 B.

C. Where a CO_2 allowance transfer submitted for recordation fails to meet the requirements of subsection A of this section, the department or its agent will not record such transfer.

9VAC5-140-6320. Notification. (Repealed.)

A. Within five business days of recordation of a CO_2 allowance transfer under 9VAC5-140-6310, the department or its agent will notify each party to the transfer. Notice will be given to the CO_2 authorized account representatives of both the transferor and transferee accounts.

B. Within 10 business days of receipt of a CO_2 allowance transfer that fails to meet the requirements of 9VAC5-140-6310 A, the department or its agent will notify the CO_2 authorized account representatives of both accounts subject to the transfer of (i) a decision not to record the transfer and (ii) the reasons for such nonrecordation.

C. Nothing in this section shall preclude the submission of a CO_2 allowance transfer for recordation following notification of nonrecordation.

9VAC5-140-6325. Life-of-the-unit contractual arrangements. (Repealed.)

A. A power purchaser entered into a life-of-the-unit contractual arrangement as described in subdivision b of the definition of "life-of-the-unit contractual arrangement" with a CO_2 budget source or unit shall be responsible for acquiring and transferring all allowances to the CO_2 budget source or unit that are necessary for demonstrating compliance with the CO_2 budget trading program.

B. The CO_2 budget source or unit shall provide a copy of the energy conversion or energy tolling agreement to the department within six months of July 10, 2020. If such agreement is subject to third-party disclosure restrictions, the CO_2 budget source or unit shall provide purchaser within 10 days prior written notice of its intention to disclose the agreement to the department and request confidential treatment from the public disclosure of such agreement. The department will grant a request for confidential treatment pursuant to applicable statutory and regulatory requirements addressing confidential information.

C. The CO_2 budget source or unit shall be responsible for compliance with and otherwise be subject to all other requirements of this part and the CO_2 budget trading program.

Article 8
Monitoring, Reporting, and Recordkeeping

9VAC5-140-6330. General requirements. (Repealed.)

A. The owners and operators, and to the extent applicable, the CO_2 authorized account representative of a CO_2 budget unit shall comply with the monitoring, recordkeeping, and reporting requirements as provided in this section and all applicable sections of 40 CFR Part 75. Where referenced in this article, the monitoring requirements of 40 CFR Part 75 shall be adhered to in a manner consistent with the purpose of monitoring and reporting CO_2 mass emissions pursuant to this part. For purposes of complying with such requirements, the definitions in 9VAC5-140-6020 and in 40 CFR 72.2 shall apply, and the terms "affected unit," "designated representative," and "CEMS" in 40 CFR Part 75 shall be replaced by the terms "CO_2 budget unit," "CO_2 authorized account representative," and "CEMS," respectively, as defined

in 9VAC5-140-6020. For units not subject to an Acid Rain emissions limitation, the term "administrator" in 40 CFR Part 75 shall be replaced with "the department or its agent." Owners or operators of a CO_2 budget unit who monitor a non CO_2 budget unit pursuant to the common, multiple, or bypass stack procedures in 40 CFR 75.72(b)(2)(ii), or 40 CFR 75.16 (b)(2)(ii)(B) pursuant to 40 CFR 75.13, for purposes of complying with this part, shall monitor and report CO_2 mass emissions from such non CO_2 budget units according to the procedures for CO_2 budget units established in this article.

B. The owner or operator of each CO_2 budget unit shall meet the following general requirements for installation, certification, and data accounting.

1. Install all monitoring systems necessary to monitor CO_2 mass emissions in accordance with 40 CFR Part 75, except for equation G-1. Equation G-1 in Appendix G shall not be used to determine CO_2 emissions under this part. This may require systems to monitor CO_2 concentration, stack gas flow rate, O_2 concentration, heat input, and fuel flow rate.

2. Successfully complete all certification tests required under 9VAC5-140-6340 and meet all other requirements of this section and 40 CFR Part 75 applicable to the monitoring systems under subdivision 1 of this subsection.

3. Record, report, and quality assure the data from the monitoring systems under subdivision 1 of this subsection.

C. The owner or operator shall meet the monitoring system certification and other requirements of subsection B of this section on or before the following dates. The owner or operator shall record, report, and quality assure the data from the monitoring systems under subdivision B 1 of this section on and after the following dates:

1. The owner or operator of a CO_2 budget unit, except for a CO_2 budget unit under subdivision 2 of this subsection, shall comply with the requirements of this section by January 1, 2021.

2. The owner or operator of a CO_2 budget unit that commences commercial operation July 1, 2021, shall comply with the requirements of this section by (i) January 1, 2022, or (ii) the earlier of 90 unit operating days after the date on which the unit commences commercial operation or 180 calendar days after the date on which the unit commences commercial operation.

3. For the owner or operator of a CO_2 budget unit for which construction of a new stack or flue installation is completed after the applicable deadline under subdivision 1 or 2 of this subsection by the earlier of (i) 90 unit operating days after the date on which emissions first exit to the atmosphere through the new stack or flue or (ii) 180 calendar days after the date on which emissions first exit to the atmosphere through the new stack or flue.

D. Data shall be reported as follows:

1. Except as provided in subdivision 2 of this subsection, the owner or operator of a CO_2 budget unit that does not meet the applicable compliance date set forth in subsection C of this section for any monitoring system under subdivision B 1 of this section shall, for each such monitoring system, determine, record, and report maximum potential, or as appropriate minimum potential, values for CO_2 concentration, CO_2 emissions rate, stack gas moisture content, fuel flow rate, heat input, and any other parameter required to determine CO_2 mass emissions in accordance with 40 CFR 75.31(b)(2) or (c)(3) or Section 2.4 of Appendix D of 40 CFR Part 75 as applicable.

2. The owner or operator of a CO_2 budget unit that does not meet the applicable compliance date set forth in subdivision C 3 of this section for any monitoring system under subdivision B 1 of this section shall, for each such monitoring system, determine, record, and report substitute data using the applicable missing data procedures in Subpart D, or Appendix D of 40 CFR Part 75, in lieu of the maximum potential, or as appropriate minimum potential, values for a parameter if the owner or operator demonstrates that there is continuity between the data streams for that parameter before and after the construction or installation under subdivision C 3 of this section.

a. CO_2 budget units subject to an Acid Rain emissions limitation or CSAPR NO_X Ozone Season Trading Program that qualify for the optional SO_2, NO_X, and CO_2 (for Acid Rain) or NO_X (for CSAPR NO_X Ozone Season Trading Program) emissions calculations for low mass emissions (LME) units under 40 CFR 75.19 and report emissions for such programs using the calculations under 40 CFR 75.19, shall also use the CO_2 emissions calculations for LME units under 40 CFR 75.19 for purposes of compliance with these regulations.

b. CO_2 budget units subject to an Acid Rain emissions limitation that do not qualify for the optional SO_2, NO_X, and CO_2 (for Acid Rain) or NO_X (for CSAPR NO_X Ozone Season Trading Program) emissions calculations for LME units under 40 CFR 75.19 shall not use the CO_2 emissions calculations for LME units under 40 CFR 75.19 for purposes of compliance with these regulations.

c. CO_2 budget units not subject to an Acid Rain emissions limitation shall qualify for the optional CO_2 emissions calculation for LME units under 40 CFR 75.19, provided that they emit less than 100 tons of NO_x annually and no more than 25 tons of SO_2 annually.

3. The owner or operator of a CO_2 budget unit shall report net electric output data to the department as required by Article 5 (9VAC5-140-6190 et seq.) of this part.

E. Prohibitions shall be as follows.

1. No owner or operator of a CO_2 budget unit shall use any alternative monitoring system, alternative reference method, or any other alternative for the required CEMS without

having obtained prior written approval in accordance with 9VAC5-140-6380.

2. No owner or operator of a CO_2 budget unit shall operate the unit so as to discharge, or allow to be discharged, CO_2 emissions to the atmosphere without accounting for all such emissions in accordance with the applicable provisions of this article and 40 CFR Part 75.

3. No owner or operator of a CO_2 budget unit shall disrupt the CEMS, any portion thereof, or any other approved emissions monitoring method, and thereby avoid monitoring and recording CO_2 mass emissions discharged into the atmosphere, except for periods of recertification or periods when calibration, quality assurance testing, or maintenance is performed in accordance with the applicable provisions of this article and 40 CFR Part 75.

4. No owner or operator of a CO_2 budget unit shall retire or permanently discontinue use of the CEMS, any component thereof, or any other approved emissions monitoring system under this article, except under any one of the following circumstances:

a. The owner or operator is monitoring emissions from the unit with another certified monitoring system approved, in accordance with the applicable provisions of this article and 40 CFR Part 75, by the department for use at that unit that provides emissions data for the same pollutant or parameter as the retired or discontinued monitoring system; or

b. The CO_2 authorized account representative submits notification of the date of certification testing of a replacement monitoring system in accordance with 9VAC5-140-6340 D 3 a.

9VAC5-140-6340. ~~Initial certification and recertification procedures.~~ (Repealed.)

A. The owner or operator of a CO_2 budget unit shall be exempt from the initial certification requirements of this section for a monitoring system under 9VAC5-140-6330 B 1 if the following conditions are met:

1. The monitoring system has been previously certified in accordance with 40 CFR Part 75; and

2. The applicable quality assurance and quality control requirements of 40 CFR 75.21 and Appendix B and Appendix D of 40 CFR Part 75 are fully met for the certified monitoring system described in subdivision 1 of this subsection.

B. The recertification provisions of this section shall apply to a monitoring system under 9VAC5-140-6330 B 1 exempt from initial certification requirements under subsection A of this section.

C. Notwithstanding subsection A of this section, if the administrator has previously approved a petition under 40 CFR 75.72(b)(2)(ii), or 40 CFR 75.16(b)(2)(ii)(B) as pursuant to 40 CFR 75.13 for apportioning the CO_2 emissions rate measured in a common stack or a petition under 40 CFR 75.66 for an alternative requirement in 40 CFR Part 75, the CO_2 authorized account representative shall submit the petition to the department under 9VAC5-140-6380 A to determine whether the approval applies under this program.

D. Except as provided in subsection A of this section, the owner or operator of a CO_2 budget unit shall comply with the following initial certification and recertification procedures for a CEMS and an excepted monitoring system under Appendix D of 40 CFR Part 75 and under 9VAC5-140-6330 B 1. The owner or operator of a unit that qualifies to use the low mass emissions excepted monitoring methodology in 40 CFR 75.19 or that qualifies to use an alternative monitoring system under Subpart E of 40 CFR Part 75 shall comply with the procedures in subsection E or F of this section, respectively.

1. For initial certification, the owner or operator shall ensure that each CEMS required under 9VAC5-140-6330 B 1, which includes the automated DAHS, successfully completes all of the initial certification testing required under 40 CFR 75.20 by the applicable deadlines specified in 9VAC5-140-6330 C. In addition, whenever the owner or operator installs a monitoring system to meet the requirements of this article in a location where no such monitoring system was previously installed, initial certification in accordance with 40 CFR 75.20 is required.

2. For recertification, the following requirements shall apply.

a. Whenever the owner or operator makes a replacement, modification, or change in a certified CEMS under 9VAC5-140-6330 B 1 that the administrator or the department determines significantly affects the ability of the system to accurately measure or record CO_2 mass emissions or to meet the quality assurance and quality control requirements of 40 CFR 75.21 or Appendix B to 40 CFR Part 75, the owner or operator shall recertify the monitoring system according to 40 CFR 75.20(b).

b. For systems using stack measurements such as stack flow, stack moisture content, CO_2 or O_2 monitors, whenever the owner or operator makes a replacement, modification, or change to the flue gas handling system or the unit's operation that the administrator or the department determines to significantly change the flow or concentration profile, the owner or operator shall recertify the CEMS according to 40 CFR 75.20(b). Examples of changes that require recertification include replacement of the analyzer, change in location or orientation of the sampling probe or site, or change of flow rate monitor polynomial coefficients.

3. The approval process for initial certifications and recertification shall be as follows: subdivisions 3 a through 3 d of this subsection apply to both initial certification and

~~recertification of a monitoring system under 9VAC5-140-6330 B 1. For recertifications, replace the words "certification" and "initial certification" with the word "recertification," replace the word "certified" with "recertified," and proceed in the manner prescribed in 40 CFR 75.20(b)(5) and (g)(7) in lieu of subdivision 3 e of this subsection.~~

~~a. The CO_2 authorized account representative shall submit to the department or its agent, the appropriate EPA Regional Office and the administrator a written notice of the dates of certification in accordance with 9VAC5-140-6360.~~

~~b. The CO_2 authorized account representative shall submit to the department or its agent a certification application for each monitoring system. A complete certification application shall include the information specified in 40 CFR 75.63.~~

~~c. The provisional certification date for a monitor shall be determined in accordance with 40 CFR 75.20(a)(3). A provisionally certified monitor may be used under the CO_2 Budget Trading Program for a period not to exceed 120 days after receipt by the department of the complete certification application for the monitoring system or component thereof under subdivision 3 b of this subsection. Data measured and recorded by the provisionally certified monitoring system or component thereof, in accordance with the requirements of 40 CFR Part 75, will be considered valid quality assured data, retroactive to the date and time of provisional certification, provided that the department does not invalidate the provisional certification by issuing a notice of disapproval within 120 days of receipt of the complete certification application by the department.~~

~~d. The department will issue a written notice of approval or disapproval of the certification application to the owner or operator within 120 days of receipt of the complete certification application under subdivision 3 b of this subsection. In the event the department does not issue such a notice within such 120-day period, each monitoring system that meets the applicable performance requirements of 40 CFR Part 75 and is included in the certification application will be deemed certified for use under the CO_2 Budget Trading Program.~~

~~(1) If the certification application is complete and shows that each monitoring system meets the applicable performance requirements of 40 CFR Part 75, then the department will issue a written notice of approval of the certification application within 120 days of receipt.~~

~~(2) If the certification application is incomplete, then the department will issue a written notice of incompleteness that sets a reasonable date by which the CO_2 authorized account representative shall submit the additional information required to complete the certification application. If the CO_2 authorized account representative does not comply with the notice of incompleteness by the specified date, then the department may issue a notice of disapproval under subdivision 3 d (3) of this subsection. The 120-day review period shall not begin before receipt of a complete certification application.~~

~~(3) If the certification application shows that any monitoring system or component thereof does not meet the performance requirements of 40 CFR Part 75, or if the certification application is incomplete and the requirement for disapproval under subdivision 3 d (2) of this subsection is met, then the department will issue a written notice of disapproval of the certification application. Upon issuance of such notice of disapproval, the provisional certification is invalidated by the department and the data measured and recorded by each uncertified monitoring system or component thereof shall not be considered valid quality assured data beginning with the date and hour of provisional certification. The owner or operator shall follow the procedures for loss of certification in subdivision 3 e of this subsection for each monitoring system or component thereof, which is disapproved for initial certification.~~

~~(4) The department may issue a notice of disapproval of the certification status of a monitor in accordance with 9VAC5-140-6350 B.~~

~~e. If the department issues a notice of disapproval of a certification application under subdivision 3 d (3) of this subsection or a notice of disapproval of certification status under subdivision 3 d (3) of this subsection, then:~~

~~(1) The owner or operator shall substitute the following values for each disapproved monitoring system, for each hour of unit operation during the period of invalid data beginning with the date and hour of provisional certification and continuing until the time, date, and hour specified under 40 CFR 75.20(a)(5)(i) or 40 CFR 75.20(g)(7): (i) for units using or intending to monitor for CO_2 mass emissions using heat input or for units using the low mass emissions excepted methodology under 40 CFR 75.19, the maximum potential hourly heat input of the unit; or (ii) for units intending to monitor for CO_2 mass emissions using a CO_2 pollutant concentration monitor and a flow monitor, the maximum potential concentration of CO_2 and the maximum potential flow rate of the unit under Section 2.1 of Appendix A of 40 CFR Part 75;~~

~~(2) The CO_2 authorized account representative shall submit a notification of certification retest dates and a new certification application in accordance with subdivisions 3 a and 3 b of this subsection; and~~

~~(3) The owner or operator shall repeat all certification tests or other requirements that were failed by the monitoring system, as indicated in the department's notice of disapproval, no later than 30 unit operating days after the date of issuance of the notice of disapproval.~~

E. The owner or operator of a unit qualified to use the low mass emissions excepted methodology under 9VAC5-140-6330 D 3 shall meet the applicable certification and recertification requirements of 40 CFR 75.19(a)(2), 40 CFR 75.20(h), and this section. If the owner or operator of such a unit elects to certify a fuel flow meter system for heat input determinations, the owner or operator shall also meet the certification and recertification requirements in 40 CFR 75.20(g).

F. The CO_2 authorized account of each unit for which the owner or operator intends to use an alternative monitoring system approved by the administrator and, if applicable, the department under Subpart E of 40 CFR Part 75 shall comply with the applicable notification and application procedures of 40 CFR 75.20(f).

9VAC5-140-6350. ~~Out-of-control periods.~~ (Repealed.)

A. Whenever any monitoring system fails to meet the quality assurance/quality control (QA/QC) requirements or data validation requirements of 40 CFR Part 75, data shall be substituted using the applicable procedures in Subpart D or Appendix D of 40 CFR Part 75.

B. Whenever both an audit of a monitoring system and a review of the initial certification or recertification application reveal that any monitoring system should not have been certified or recertified because it did not meet a particular performance specification or other requirement under 9VAC5-140-6340 or the applicable provisions of 40 CFR Part 75, both at the time of the initial certification or recertification application submission and at the time of the audit, the department or administrator will issue a notice of disapproval of the certification status of such monitoring system. For the purposes of this subsection, an audit shall be either a field audit or an audit of any information submitted to the department or the administrator. By issuing the notice of disapproval, the department or administrator revokes prospectively the certification status of the monitoring system. The data measured and recorded by the monitoring system shall not be considered valid quality-assured data from the date of issuance of the notification of the revoked certification status until the date and time that the owner or operator completes subsequently approved initial certification or recertification tests for the monitoring system. The owner or operator shall follow the initial certification or recertification procedures in 9VAC5-140-6340 for each disapproved monitoring system.

9VAC5-140-6360. ~~Notifications.~~ (Repealed.)

The CO_2 authorized account representative for a CO_2 budget unit shall submit written notice to the department and the administrator in accordance with 40 CFR 75.61.

9VAC5-140-6370. ~~Recordkeeping and reporting.~~ (Repealed.)

A. The CO_2 authorized account representative shall comply with all recordkeeping and reporting requirements in this section, the applicable recordkeeping and reporting requirements under 40 CFR 75.73, and the requirements of 9VAC5-140-6080 E.

B. The owner or operator of a CO_2 budget unit shall submit a monitoring plan in the manner prescribed in 40 CFR 75.62.

C. The CO_2 authorized account representative shall submit an application to the department within 45 days after completing all CO_2 monitoring system initial certification or recertification tests required under 9VAC5-140-6340, including the information required under 40 CFR 75.63 and 40 CFR 75.53(e) and (f).

D. The CO_2 authorized account representative shall submit quarterly reports, as follows:

1. The CO_2 authorized account representative shall report the CO_2 mass emissions data for the CO_2 budget unit, in an electronic format prescribed by the department unless otherwise prescribed by the department for each calendar quarter.

2. The CO_2 authorized account representative shall submit each quarterly report to the department or its agent within 30 days following the end of the calendar quarter covered by the report. Quarterly reports shall be submitted in the manner specified in Subpart H of 40 CFR Part 75 and 40 CFR 75.64. Quarterly reports shall be submitted for each CO_2 budget unit, or group of units using a common stack, and shall include all of the data and information required in Subpart G of 40 CFR Part 75, except for opacity, heat input, NO_x, and SO_2 provisions.

3. The CO_2 authorized account representative shall submit to the department or its agent a compliance certification in support of each quarterly report based on reasonable inquiry of those persons with primary responsibility for ensuring that all of the unit's emissions are correctly and fully monitored. The certification shall state that:

a. The monitoring data submitted were recorded in accordance with the applicable requirements of this article and 40 CFR Part 75, including the quality assurance procedures and specifications;

b. For a unit with add-on CO_2 emissions controls and for all hours where data are substituted in accordance with 40 CFR 75.34(a)(1), the add-on emissions controls were operating within the range of parameters listed in the QA/QC program under Appendix B of 40 CFR Part 75 and the substitute values do not systematically underestimate CO_2 emissions; and

c. The CO_2 concentration values substituted for missing data under Subpart D of 40 CFR Part 75 do not systematically underestimate CO_2 emissions.

9VAC5-140-6380. Petitions. (Repealed.)

A. Except as provided in subsection C of this section, the CO_2 authorized account representative of a CO_2 budget unit that is subject to an Acid Rain emissions limitation may submit a petition to the administrator under 40 CFR 75.66 and to the department requesting approval to apply an alternative to any requirement of 40 CFR Part 75. Application of an alternative to any requirement of 40 CFR Part 75 is in accordance with this article only to the extent that the petition is approved in writing by the administrator, and subsequently approved in writing by the department.

B. Petitions for a CO_2 budget unit that is not subject to an Acid Rain emissions limitation shall meet the following requirements.

1. The CO_2 authorized account representative of a CO_2 budget unit that is not subject to an Acid Rain emissions limitation may submit a petition to the administrator under 40 CFR 75.66 and to the department requesting approval to apply an alternative to any requirement of 40 CFR Part 75. Application of an alternative to any requirement of 40 CFR Part 75 is in accordance with this article only to the extent that the petition is approved in writing by the administrator and subsequently approved in writing by the department.

2. In the event that the administrator declines to review a petition under subdivision 1 of this subsection, the CO_2 authorized account representative of a CO_2 budget unit that is not subject to an Acid Rain emissions limitation may submit a petition to the department requesting approval to apply an alternative to any requirement of this article. That petition shall contain all of the relevant information specified in 40 CFR 75.66. Application of an alternative to any requirement of this article is in accordance with this article only to the extent that the petition is approved in writing by the department.

C. The CO_2 authorized account representative of a CO_2 budget unit that is subject to an Acid Rain emissions limitation may submit a petition to the administrator under 40 CFR 75.66 and to the department requesting approval to apply an alternative to a requirement concerning any additional CEMS required under the common stack provisions of 40 CFR 75.72 or a CO_2 concentration CEMS used under 40 CFR 75.71(a)(2). Application of an alternative to any such requirement is in accordance with this article only to the extent the petition is approved in writing by the administrator and subsequently approved in writing by the department.

9VAC5-140-6390. [Reserved]. (Repealed.)

9VAC5-140-6400. [Reserved]. (Repealed.)

Article 9
Auction of CO_2 CCR and ECR Allowances

9VAC5-140-6410. Purpose. (Repealed.)

The following requirements shall apply to each allowance auction. The department or its agent may specify additional information in the auction notice for each auction. Such additional information may include the time and location of the auction, auction rules, registration deadlines, and any additional information deemed necessary or useful.

9VAC5-140-6420. General requirements. (Repealed.)

A. The department's agent will include the following information in the auction notice for each auction:

1. The number of CO_2 allowances offered for sale at the auction, not including any CO_2 CCR allowances;

2. The number of CO_2 CCR allowances that will be offered for sale at the auction if the condition of subdivision B 1 of this section is met;

3. The minimum reserve price for the auction;

4. The CCR trigger price for the auction;

5. The maximum number of CO_2 allowances that may be withheld from sale at the auction if the condition of subdivision D 1 of this section is met; and

6. The ECR trigger price for the auction.

B. The department's agent will follow these rules for the sale of CO_2 CCR allowances.

1. CO_2 CCR allowances shall only be sold at an auction in which total demand for allowances, above the CCR trigger price, exceeds the number of CO_2 allowances available for purchase at the auction, not including any CO_2 CCR allowances.

2. If the condition of subdivision 1 of this subsection is met at an auction, then the number of CO_2 CCR allowances offered for sale by the department or its agent at the auction shall be equal to the number of CO_2 CCR allowances in the Virginia Auction Account at the time of the auction.

3. After all of the CO_2 CCR allowances in the Virginia Auction Account have been sold in a given calendar year, no additional CO_2 CCR allowances will be sold at any auction for the remainder of that calendar year, even if the condition of subdivision 1 of this subsection is met at an auction.

4. At an auction in which CO_2 CCR allowances are sold, the reserve price for the auction shall be the CCR trigger price.

5. If the condition of subdivision 1 of this subsection is not satisfied, no CO_2 CCR allowances shall be offered for sale

~~at the auction, and the reserve price for the auction shall be equal to the minimum reserve price.~~

~~C. The department's agent shall implement the reserve price as follows: (i) no allowances shall be sold at any auction for a price below the reserve price for that auction and (ii) if the total demand for allowances at an auction is less than or equal to the total number of allowances made available for sale in that auction, then the auction clearing price for the auction shall be the reserve price.~~

~~D. The department's agent will meet the following rules for the withholding of CO_2 ECR allowances from an auction.~~

~~1. CO_2 ECR allowances shall only be withheld from an auction if the demand for allowances would result in an auction clearing price that is less than the ECR trigger price prior to the withholding from the auction of any ECR allowances.~~

~~2. If the condition in subdivision 1 of this subsection is met at an auction, then the maximum number of CO_2 ECR allowances that may be withheld from that auction will be equal to the quantity shown in Table 140-5B of 9VAC5-140-6210 E minus the total quantity of CO_2 ECR allowances that have been withheld from any prior auction in that calendar year. Any CO_2 ECR allowances withheld from an auction will be transferred into the Virginia ECR Account.~~

Article 10
Program Monitoring and Review Transition

9VAC5-140-6440. ~~Program monitoring and review. (Repealed.)~~

~~In conjunction with the CO_2 Budget Trading Program program monitoring and review process, the department will evaluate impacts of the program specific to Virginia, including economic, energy, and environmental impacts and impacts on vulnerable and environmental justice and underserved communities. The department will, in evaluating the impacts on environmental justice communities, including low income, minority, and tribal communities, develop and implement a plan to ensure increased participation of environmental justice communities in the review.~~

9VAC5-140-6445. Transition to repeal.

Notwithstanding this section, Part VII (9VAC5-140-6010 et seq.) shall be repealed effective December 31, 2023. Each affected facility shall place the allowances needed to meet its remaining compliance obligation into its compliance account in the CO_2 Allowance Tracking System (COATS) as soon as practicable but no later than March 1, 2024, in order that the allowances can be deducted from the account to meet the full control period obligation. The department shall repeal this section once every affected source has met its full compliance obligation.

VA.R. Doc. No. R23-7361; Filed January 11, 2023, 9:12 a.m.

STATE WATER CONTROL BOARD

Proposed Regulation

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

Title of Regulation: **9VAC25-193. Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Concrete Products Facilities (amending 9VAC25-193-10, 9VAC25-193-15, 9VAC25-193-40 through 9VAC25-193-70).**

Statutory Authority: § 62.1-44.15 of the Code of Virginia, 40 CFR, § 42 of the Clean Water Act, Parts 122, 123, and 124.

Public Hearing Information:

March 10, 2023 - 11 a.m. - Department of Environmental Quality, Piedmont Regional Office Training Room, 4949-A Cox Road, Glen Allen, VA 23060

Public Comment Deadline: March 31, 2023.

Agency Contact: Elleanore M. Daub, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 659-2655, FAX (804) 698-4178, or email elleanore.daub@deq.virginia.gov.

Background: Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Concrete Products Facilities (9VAC25-193) specifies requirements for concrete products facilities to discharge process wastewater and industrial stormwater to protect water quality. The regulation must be updated to reissue the permit for the next five-year term. This regulatory action is proposed to amend and reissue the existing general permit, which expires on December 31, 2023.

Summary:

Substantive proposed amendments include (i) adding new definitions for "corrective action" and "measurable storm event"; (ii) clarifying that consistency with a total

maximum daily load (TMDL) is based on an applicable TMDL that is approved prior to the term of the general permit; (iii) clarifying registration questions; (iv) adding electronic submission registration requirements for reports when these are made available by the department; and (v) in the permit requirements, clarifying dust suppression allowances and updating TMDL requirements. Additionally, proposed updates to the stormwater management requirements conform with the VPDES General Permit Regulation for Discharges of Stormwater Associated with Industrial Activity (9VAC25-151), including adding a section on corrective actions.

Chapter 193
Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Concrete Products Facilities

9VAC25-193-10. Definitions.

The words and terms used in this chapter shall have the meanings defined in § 62.1-44.2 et seq. of the Code of Virginia (State Water Control Law) and 9VAC25-31 (VPDES Permit Regulation), unless the context clearly indicates otherwise, except that for the purposes of this chapter:

"Best management practices" or "BMPs" means schedules of activities, practices, and prohibitions of practices, structures, vegetation, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants to surface waters. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

"Board" means the State Water Control Board. When used outside the context of the promulgation of regulations, including regulations to establish general permits, "board" means the Department of Environmental Quality.

"Corrective action" means any action to (i) repair, modify, or replace any stormwater control used at the facility; (ii) clean up and properly dispose of spills, releases, or other deposits at the facility; or (iii) return to compliance with permit requirements.

"Department" or "DEQ" means the Virginia Department of Environmental Quality.

"Industrial activity" means facilities or those portions of a facility where the primary purpose is classified as:

1. North American Industry Classification System (NAICS) Code 327331 - Concrete Block and Brick Manufacturing, (Executive Office of the President, Office of Management and Budget, United States, 2017) and Standard Industrial Classification (SIC) Code 3271 - Concrete Block and Brick (Office of Management and Budget (OMB) SIC Manual, 1987);

2. NAICS Code 327332 Concrete Pipe Manufacturing, NAICS Code 327390 Other Concrete Product Manufacturing, NAICS Code 327999 All Other Miscellaneous Nonmetallic Mineral Product Manufacturing (dry mix concrete manufacturing only) and SIC Code 3272 - Concrete Products, Except Block and Brick; or

3. NAICS Code 327320 Ready-Mix Concrete Manufacturing and SIC Code 3273 - Ready-Mixed Concrete, including both permanent and portable plants.

These facilities are collectively defined as "Concrete Products Facilities."

"Minimize" means reduce or eliminate to the extent achievable using control measures, including best management practices, that are technologically available and economically practicable and achievable in light of best industry practice.

"No discharge system" means process, commingled, or stormwater systems designed to operate so that there is no discharge of wastewater or pollutants, except in storm events greater than a 25-year, 24-hour storm event.

"Runoff coefficient" means the fraction of total rainfall that will appear at the conveyance as runoff.

"Significant spills" includes releases of oil or hazardous substances in excess of reportable quantities under § 311 of the Clean Water Act (see 40 CFR 110.10 and 40 CFR 117.21) or § 102 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) (42 USC § 9601 et seq.) (see 40 CFR 302.4).

"Total maximum daily load" or "TMDL" means a calculation of the maximum amount of a pollutant that a ~~waterbody~~ water body can receive and still meet water quality standards and an allocation of that amount to the pollutant's sources. A TMDL includes wasteload allocations (WLAs) for point source discharges and load allocations (LAs) for nonpoint sources or natural background, or both, and must include a margin of safety (MOS) and account for seasonal variations.

"25-year, 24-hour storm event" means the maximum 24-hour precipitation event with a probable recurrence interval of once in 25 years as established by the National Weather Service or appropriate regional or state rainfall probability information.

"Vehicle or equipment degreasing" means the washing or steam cleaning of engines or other drive components of a vehicle or piece of equipment in which the purpose is to degrease and clean petroleum products from the equipment for maintenance purposes. Removing sediment and concrete residue is not considered vehicle or equipment degreasing.

"Virginia Environmental Excellence Program" or "VEEP" means a voluntary program established by the department to provide public recognition and regulatory incentives to encourage higher levels of environmental performance for program participants that develop and implement environmental management systems (EMSs). The program is based on the use of EMSs that improve compliance, prevent

pollution, and utilize other measures to improve environmental performance.

9VAC25-193-15. Applicability of incorporated references based on the dates that they became effective.

Except as noted, when a regulation of the U.S. Environmental Protection Agency set forth in Title 40 of the Code of Federal Regulations is referenced or adopted in this chapter and incorporated by reference, that regulation shall be as it exists and has been published as of July 1, ~~2018~~ 2022.

9VAC25-193-40. Effective date of the permit.

This general VPDES permit will become effective on January 1, ~~2019~~ 2024, and it will expire on December 31, ~~2023~~ 2028. This general permit is effective for any covered owner upon compliance with all the provisions of 9VAC25-193-50.

9VAC25-193-50. Authorization to discharge.

A. Any owner governed by this general permit is hereby authorized to discharge process water, stormwater associated with this industrial activity, or commingled discharges of these types to surface waters of the Commonwealth of Virginia provided that:

1. The owner submits a registration statement in accordance with 9VAC25-193-60, and that registration statement is accepted by the ~~board~~ department;

2. The owner submits the required permit fee;

3. The owner complies with the applicable effluent limitations and other requirements of 9VAC25-193-70; and

4. The ~~board~~ department has not notified the owner that the discharge is not eligible for coverage in accordance with subsection B of this section.

B. The ~~board~~ department will notify an owner that the discharge is not eligible for coverage under this general permit in the event of any of the following:

1. The owner is required to obtain an individual permit in accordance with 9VAC25-31-170 B 3 ~~of the VPDES Permit Regulation~~;

2. The owner is proposing to discharge to state waters specifically named in other board regulations that prohibit such discharges;

3. The discharge would violate the antidegradation policy in the Water Quality Standards at 9VAC25-260-30; or

4. The discharge is not consistent with the assumptions and requirements of an ~~approved~~ applicable TMDL approved prior to the term of this general permit.

C. Compliance with this general permit constitutes compliance, for purposes of enforcement, with §§ 301, 302, 306, 307, 318, 403, and 405(a) through 405(b) of the federal Clean Water Act (33 USC § 1251 et seq.) and the State Water Control Law, with the exceptions stated in 9VAC25-31-60 ~~of the VPDES Permit Regulation~~. Approval for coverage under this general permit does not relieve any owner of the responsibility to comply with any other applicable federal, state, or local statute, ordinance, or regulation.

D. Continuation of permit coverage.

1. Permit coverage shall expire at the end of its term. However, expiring permit coverages are automatically continued if the owner has submitted a complete registration statement at least 60 days prior to the expiration date of the permit, or a later submittal established by the ~~board~~ department, which cannot extend beyond the expiration date of the permit. The permittee is authorized to continue to discharge until such time as the ~~board~~ department either:

a. Issues coverage to the owner under this general permit; or

b. Notifies the owner that the discharge is not eligible for coverage under this general permit.

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

a. Initiate enforcement action based upon the general permit coverage that has been continued;

b. Issue a notice of intent to deny coverage under the reissued general permit. If the general permit coverage is denied, the owner would then be required to cease the discharges authorized by the continued general permit coverage or be subject to enforcement action for discharging without a permit;

c. Issue an individual permit with appropriate conditions; or

d. Take other actions authorized by the VPDES Permit Regulation (9VAC25-31).

9VAC25-193-60. Registration statement.

A. Deadlines for submitting registration statement. Any owner seeking coverage under this general permit shall submit a complete VPDES general permit registration statement in accordance with this ~~section~~ chapter, which shall serve as a notice of intent for coverage under the general VPDES permit for concrete products facilities.

1. New facilities. Any owner proposing a new discharge shall submit a complete registration statement at least 60 days prior to the date planned for commencement of the discharge or a later submittal established by the ~~board~~ department.

2. Existing facilities.

a. Any owner covered by an individual VPDES permit that is proposing to be covered by this general permit shall submit a complete registration statement at least 240 days

prior to the expiration date of the individual VPDES permit or a later submittal established by the department.

b. Any owner that was authorized to discharge under the expiring general VPDES permit for concrete products facilities and ~~who~~ that intends to continue coverage under this general permit shall submit a complete registration statement to the ~~board~~ department at least 60 days prior to the expiration date of the existing permit or a later submittal established by the ~~board~~ department.

B. Late registration statements. Registration statements for existing facilities covered under subdivision A 2 b of this section will be accepted after the expiration date of this permit, but authorization to discharge will not be retroactive.

C. The required registration statement shall contain the following information:

1. Facility name ~~and address, owner name, mailing,~~ address, and telephone number~~, and email address~~ (if available);

2. ~~Operator or other~~ Facility, owner and permit contact name, mailing address, telephone number, and email address ~~(if available) if different from owner~~;

3. Facility's Standard Industrial Classification (SIC) Codes;

4. Nature of business at facility;

5. Indicate if the facility is proposed or existing; if the facility has a current VPDES or VPA Permit; and Permit Numbers for any current VPDES or VPA Permits;

6. Description of the wastewater treatment or reuse or recycle systems;

7. Indicate if there are any process wastewater, commingled process wastewater, and stormwater or stormwater treatment units designed to operate as "no discharge";

8. If settling basins are used for treatment and control of process wastewater or commingled process wastewater and stormwater, indicate the original date of construction, and describe the materials lining the process or commingled settling basins;

9. Indicate if there are vehicle or equipment degreasing activities performed on site. If yes, indicate if there is any process wastewater generated from these activities;

10. Description of any measures employed to reclaim, reuse, or dispose of the residual concrete materials;

11. A schematic drawing that shows the sources of water used on the property, the industrial operations contributing to or using water, the conceptual design of the methods of treatment and disposal of wastewater and solids, and the stormwater pollution prevention plan site map ~~(see~~ pursuant to 9VAC25-193-70 Part II ~~F 6 c)~~ D 2 b (2) for existing covered facilities and for new facilities if operations have commenced. See 9VAC25-193-70 Part II D 1 for due dates;

12. A USGS ~~7.5 minute~~ 7.5-minute topographic map or equivalent ~~computer generated~~ computer-generated map, extending to at least one mile beyond property boundary, which shows the property boundary, the location of each of its existing and proposed intake and discharge points, and the locations of any wells, springs, and other surface water bodies;

13. Discharge outfall information, including outfall numbers, description of wastewater discharged from each outfall, estimated flow (gallons per day), receiving water bodies, duration and frequency of each discharge (hours per day and days per week), and latitude and longitude of outfall location;

14. Indicate which stormwater outfalls ~~will be~~ could operate as substantially identical or representative outfalls (if any). ~~For stormwater outfalls that are to be represented by other outfall discharges, provide~~ Provide the following for each:

a. The locations of the outfalls;

b. Why the outfalls are expected to discharge substantially identical effluents, including, where available, evaluation of monitoring data;

c. Estimates of the size of the total (pervious and impervious within property boundaries) drainage area (in acres or square feet) for each of the outfalls; and

d. An estimate of the runoff coefficient of the drainage areas (low: under 40%; medium: 40% to 65%; high: above 65%);

15. Indicate if a ~~Stormwater Pollution Prevention Plan~~ stormwater pollution prevention plan has been prepared and the date of the plan or the most recent update or review of the plan;

16. Whether the facility will discharge to a municipal separate storm sewer system (MS4). If "yes," the facility owner shall ~~notify~~ provide evidence that the MS4 owner has been notified of the existence of the discharge ~~at the time of registration under this permit and include that notification with the registration statement~~. The notification shall include the following information: the name of the facility, a contact person and contact information (telephone number and email), the location of the discharge, the nature of the discharge, and the facility's VPDES general permit number (if assigned by DEQ);

17. For portable concrete products operations, submit a closure plan and include the requirements specified by the operation and maintenance manual in 9VAC25-193-70 Part I B 8 a (4) of the permit;

18. ~~For applicants other than a sole proprietor, the~~ State Corporation Commission entity identification number if the facility is required to obtain an entity identification number by law; and

19. The following certification: "~~I hereby grant to duly authorized agents of the Department of Environmental Quality, upon presentation of credentials, permission to enter the property where the treatment works is located for the purpose of determining compliance with or the suitability of coverage under the General Permit.~~ I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment for knowing violations."

D. The registration statement shall be signed in accordance with the requirements of 9VAC25-31-110 of the VPDES Permit Regulation.

E. Where to submit. The registration statement shall be delivered by either postal or electronic mail to the DEQ regional office serving the area where the facility is located. Following notification from the department of the start date for the required electronic submission of Notice of Intent to Discharge forms (i.e., registration statements) as provided for in 9VAC25-31-1020, such forms submitted after that date shall be electronically submitted to the department in compliance with 9VAC25-31-1020 and this section. There shall be at least a three-month notice provided between the notification from the department and the date after which such forms must be submitted electronically.

9VAC25-193-70. General permit.

Any owner whose registration statement is accepted by the ~~board~~ department will receive coverage under the following general permit and shall comply with the requirements in the general permit and be subject to all requirements of 9VAC25-31-170 ~~of the VPDES Permit Regulation~~.

General Permit No: VAG11
Effective Date: January 1, ~~2019~~ 2024
Expiration Date: December 31, ~~2023~~ 2028

GENERAL PERMIT FOR CONCRETE PRODUCTS FACILITIES AUTHORIZATION TO DISCHARGE UNDER THE VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM AND THE VIRGINIA STATE WATER CONTROL LAW

In compliance with the provisions of the Clean Water Act, as amended, and pursuant to the State Water Control Law and regulations adopted pursuant thereto, owners of concrete products facilities are authorized to discharge to surface waters within the boundaries of the Commonwealth of Virginia, except those specifically named in board regulations that prohibit such discharges.

The authorized discharge shall be in accordance with the information submitted with the registration statement, this cover page, Part I-Effluent Limitations, Monitoring Requirements, ~~and~~ Special Conditions, Part II-Stormwater Management, and Part III-Conditions Applicable to All VPDES Permits, as set forth in this permit.

Part I
Effluent Limitations, Monitoring Requirements, Special Conditions.

A. Effluent limitations and monitoring requirements.

1. Process wastewater. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge process wastewater that may contain input from vehicle wash water~~,~~ or vehicle or equipment degreasing activities, and may be commingled with stormwater associated with industrial activity, or both. Samples taken in compliance with the monitoring requirements specified ~~below~~ in the table in Part I A 1 shall be taken at outfalls:

Such discharges shall be limited and monitored by the permittee as specified ~~below~~ as follows:

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS			MONITORING REQUIREMENTS	
	Average	Maximum	Minimum	Frequency[3]	Sample Type
Flow (MGD)	NL	NL	NA	1/3 Months	Estimate
Total Suspended Solids (mg/l)	30	60	NA	1/3 Months	Grab
pH (standard units)	NA	9.0[1]	6.0[1]	1/3 Months	Grab
Total Petroleum Hydrocarbons[2] (mg/l)	NA	15	NA	1/3 Months	Grab
NL = No limitation, monitoring required					

NA = Not applicable

(1)Where the Water Quality Standards (9VAC25-260) establish alternate standards for pH in the waters receiving the discharge, those standards shall be the maximum and minimum effluent limitations.

(2)Total Petroleum Hydrocarbons limitation and monitoring are only required where a discharge contains process wastewater generated from the vehicle or equipment degreasing activities. Total Petroleum Hydrocarbons shall be analyzed using EPA SW-846 Method 8015 B (1996), 8015C (2000), 8015C (2007), 8015 D (2003) for diesel range organics or EPA 40 CFR Part 136.

(3)1/3 months means one sample collected per calendar quarter with reports due to the DEQ regional office no later than the 10th day of April, July, October, and January.

2. Stormwater associated with industrial activity from concrete products facilities. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge stormwater associated with industrial activity that does not combine with other process wastewaters prior to discharge. Samples taken in compliance with the monitoring requirements specified ~~below~~ in the table in Part I A 2 shall be taken at outfalls:

Such discharges shall be limited and monitored by the permittee as specified ~~below~~ as follows:

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS BENCHMARK MONITORING		MONITORING REQUIREMENTS(3), (5)	
	Maximum	Minimum	Frequency(4)	Sample Type
Flow (MG)	NL	NA	1/Year	Estimate(1)
Total Suspended Solids (mg/l)	NL(2)	NA	1/Year	Grab(2)
pH (standard units)	NL(2)	NL(2)	1/Year	Grab(2)

NL = No limitation, monitoring required

NA = Not applicable

(1)Estimate of the total volume of the discharge during the storm event ~~in accordance with the operation and maintenance manual~~.

(2) If the benchmark monitoring for total suspended solids (TSS) exceeds 100 mg/l maximum or the pH falls outside of the range of 6.0-9.0 standard units, the permittee shall evaluate the overall effectiveness of the stormwater pollution prevention plan (SWPPP) in controlling the discharge of pollutants to receiving waters. Benchmark concentration values are not effluent limitations. Exceedance of a benchmark concentration does not constitute a violation of this permit and does not indicate that violation of a water quality standard has occurred; however, it does signal that modifications to the SWPPP are necessary, unless justification is provided in the routine facility inspection.

(3)Specific storm event data shall be reported with the Discharge Monitoring Report (DMR) in accordance with Part II A.

(4)1/year means one sample taken per calendar year with the annual DMR due to the DEQ regional office no later than the 10th day of January of each year.

(5)Quarterly visual monitoring shall be performed and recorded in accordance with Part II C.

B. Special conditions.

1. There shall be no discharge of floating solids or visible foam in other than trace amounts. There shall be no solids deposition or oil sheen from petroleum products in surface water as a result of the industrial activity in the vicinity of the outfall.

2. Except as expressly authorized by this permit, no product, materials, industrial wastes, or other wastes resulting from the purchase, sale, mining, extraction, transport, preparation, or storage of raw or intermediate materials, final product, byproduct, or wastes shall be handled, disposed of, or stored so as to permit a discharge of such product, materials, industrial wastes, or other wastes to surface waters.

3. Vehicles and equipment utilized during the industrial activity on a site must be operated and maintained in such a manner as to minimize the potential or actual point source pollution of surface waters. Fuels, lubricants, coolants, and hydraulic fluids, or any other petroleum products, shall not be disposed of by discharging on the ground or into surface waters. Spent fluids shall be disposed of in a manner so as not to enter the surface or ground waters of the state and in accordance with the applicable state and federal disposal regulations. Any spilled fluids shall be cleaned up and disposed of in a manner so as not to allow their entry into the surface or ground waters of the state.

4. All washdown and washout of trucks, mixers, transport buckets, forms, or other equipment shall be conducted within designated washdown and washout areas. All washdown and washout water shall be collected for recycle or collected and treated to meet the limits in Part I A prior to discharge to the receiving stream.

5. Any waste concrete and any dredged solids from the settling basins shall be managed within a designated area, and any wastewaters, including stormwater generated from these activities, shall be collected for recycle or treated prior to discharge.

6. Wastewater should be reused or recycled whenever feasible.

7. No sewage discharges to surface waters are permitted under this general permit.

8. Operation and maintenance (O&M) manual.

a. Within 180 days after the date of coverage under this general permit, the permittee shall develop or review and update, as appropriate, an O&M manual for the permitted facility. The O&M manual shall include procedures and practices for the mitigation of pollutant discharges for the protection of state waters from the facility's operations and to ensure compliance with the requirements of the permit. The manual shall address, at a minimum:

(1) O&M practices for the process wastewater treatment units, if applicable, and chemical and material storage areas;

(2) Methods for estimating process wastewater flows, if applicable;

(3) Management and disposal procedures of process wastewater solids, if applicable;

(4) Temporary and long-term facility closure plans that shall include (i) treatment, removal, and final disposition of residual wastewater, if applicable, contaminated stormwater held at the facility, and solids; (ii) fate of structures; (iii) a removal plan for all exposed industrial materials; and (iv) description of the stabilization of land in which they were stored or placed;

(5) Testing requirements and procedures;

(6) Recordkeeping and reporting requirements; and

(7) Duties and roles of responsible officials.

b. The permittee shall operate the treatment works in accordance with the O&M manual. The O&M manual shall be reviewed and updated at least annually and shall be signed and certified in accordance with Part III K of this permit. The O&M manual shall be made available for review by department personnel upon request.

c. For facilities that do not operate process wastewater treatment units, O&M requirements included in Part I B 8 a (4) through 8 a (7) shall be included in either the O&M manual or the ~~SWPPP~~ stormwater pollution prevention plan.

9. If the concrete products facility discharges through a municipal separate storm sewer system to surface waters, the permittee shall notify the owner of the municipal separate storm sewer system of the existence of the discharge and include that notification with the registration statement. The notification shall include the following information: the name of the facility, a contact person and contact information (telephone and email), the location of the discharge, the nature of the discharge, and the facility's VPDES general permit number.

10. The permittee shall ensure that all process wastewater basins and lagoons maintain a minimum freeboard of one foot at all times except during a 72-hour transition period after a ~~measurable~~ rainfall event that results in a discharge from the site. During the 72-hour transition period, no discharge from the basins and lagoons shall occur unless it is in accordance with this permit. Within 72 hours after a ~~measurable~~ rainfall event that results in a discharge from the site, the freeboard in all basins and lagoons shall be returned to the minimum freeboard of one foot. Where basins are operated in a series mode of operation, the one-foot freeboard requirement for the upper basins may be waived provided the final basin will maintain the freeboard requirements of this special condition. A description of how the permittee will manage the facility to adhere to one foot of freeboard shall be included in the O&M manual required in Part I B 8 a (1). Should the one-foot freeboard not be restored by the end of the 72-hour transition period, the permittee shall take measures to correct the problem before the next rain event. In addition, the permittee shall immediately begin to monitor and document the freeboard on a daily basis until the freeboard is returned to the minimum of one foot.

11. Process wastewater, commingled process wastewater, and stormwater or stormwater treatment units designed to operate as "no discharge" shall have no discharge of wastewater or pollutants except in storm events greater than a 25-year, 24-hour storm event. In the event of such a discharge, the permittee shall report an unusual or extraordinary discharge per Part III H of this permit. No

sampling or DMR is required for these discharges as they are considered to be discharging in emergency discharge conditions. All other conditions in Part I B, Part II, and Part III apply. Any other discharge from this type of system is prohibited and shall be reported as an unauthorized discharge per Part III G of this permit. The operation of these systems shall not contravene the Water Quality Standards (9VAC25-260)~~, as adopted and amended by the board,~~ or any provision of the State Water Control Law.

12. The permittee shall notify the department as soon as ~~he~~ the permittee knows or has reason to believe:

a. That any activity has occurred or will occur that would result in the discharge, on a routine or frequent basis, of any toxic pollutant that is not limited in this permit if that discharge will exceed the highest of the following notification levels:

(1) One hundred micrograms per liter (100 µg/l) of the toxic pollutant;

(2) Two hundred micrograms per liter (200 µg/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 µg/l) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;

(3) Five times the maximum concentration value reported for that pollutant in the permit application; or

(4) The level established by the ~~board~~ department in accordance with 9VAC25-31-220 F.

b. That any activity has occurred or will occur ~~which~~ that would result in any discharge, on a nonroutine or infrequent basis, of a toxic pollutant ~~which~~ that is not limited in this permit if that discharge will exceed the highest of the following notification levels:

(1) Five hundred micrograms per liter (500 µg/l) of the toxic pollutant;

(2) One milligram per liter (1 mg/l) for antimony;

(3) Ten times the maximum concentration value reported for that pollutant in the permit application; or

(4) The level established by the ~~board~~ department in accordance with 9VAC25-31-220 F.

13. All settling basins used for treatment and control of process wastewater or process wastewater commingled with stormwater that were constructed on or after February 2, 1998, shall be lined with concrete or any other impermeable materials. Regardless of date of construction, all settling basins used for treatment and control of process wastewater or process wastewater commingled with stormwater that are expanded or dewatered for major structural repairs shall be lined with concrete or any other impermeable materials.

14. ~~Settled wastewater may be used on site for the purposes of dust suppression or for spraying stockpiles.~~ Dust suppression shall be carried out as a best management practice but not as a wastewater disposal method ~~provided that ponding or direct run-off from the site does not occur during or immediately following its application~~. Water used for dust suppression may be discharged provided that it has been filtered, settled, or similarly treated. Settled wastewater may be used on site for the purpose of dust suppression or for spraying stockpiles. Dust suppression shall not occur during a ~~"measurable" rain event (a~~ storm event that results in an actual discharge from the site~~)~~.

15. Compliance reporting under Part I A.

a. The quantification levels (QL) shall be less than or equal to the following concentrations:

Effluent Characteristic	Quantification Level
TSS	1.0 mg/l
TPH	5.0 mg/l

The QL is defined as the lowest concentration used to calibrate a measurement system in accordance with the procedures published for the test method.

b. Reporting.

(1) Monthly average. Compliance with the monthly average limitations or reporting requirements for the parameters listed in Part I A shall be determined as follows: All concentration data below the QL listed in subdivision 15 a of this subsection shall be treated as zero. All concentration data equal to or above the QL listed shall be treated as it is reported. An arithmetic average shall be calculated using all reported data, including the defined zeros, for the month. This arithmetic average shall be reported on the DMR as calculated. If all data are below the QL then the average shall be reported as "<QL." If reporting for quantity is required on the DMR and the calculated concentration is <QL then report "<QL" for the quantity, otherwise use the calculated concentration.

(2) Daily maximum. Compliance with the daily maximum limitations or reporting requirements for the parameters listed in Part I A shall be determined as follows: All concentration data below the QL listed in subdivision 15 a of this subsection shall be treated as zero. All concentration data equal to or above the QL shall be treated as reported. An arithmetic average of the values shall be calculated using all reported data, including the defined zeros, collected for each day during the reporting month. The maximum value of these daily averages thus determined shall be reported on the DMR as the daily maximum. If all data are below the QL then the average shall be reported as "<QL." If reporting for quantity is required on the DMR and the calculated concentration is <QL then report "<QL" for the quantity, otherwise use the calculated concentration.

(3) Any single datum required shall be reported as "<QL" if it is less than the QL listed in subdivision 15 a of this

subsection. Otherwise the numerical value shall be reported. The QL must be less than or equal to the QL in subdivision 15 a of this subsection.

(4) The permittee shall report at least two significant digits for a given parameter. Regardless of the rounding convention used (i.e., five always rounding up or to the nearest even number) by the permittee, the permittee shall use the convention consistently and shall ensure that consulting laboratories employed by the permittee use the same convention.

16. Discharges to waters with an approved total maximum daily load (TMDL). Owners of facilities that are a source of the specified pollutant of concern to waters where ~~an approved TMDL has been established~~ a TMDL has been approved prior to the term of this permit shall implement measures and controls that are consistent with the assumptions and requirements of the TMDL. The department will provide written notification to the owner that a facility is subject to the TMDL requirements. If the TMDL establishes a numeric wasteload allocation that applies to discharges from the facility, the owner shall perform monitoring for the pollutant of concern in accordance with the monitoring frequencies in Part I A and implement measures necessary to meet that allocation. At permit reissuance, the permittee shall submit a demonstration with the registration statement to show the wasteload allocation is being met.

17. Adding or deleting outfalls. The permittee may add new or delete existing outfalls at the facility as necessary and appropriate. The permittee shall update the O&M manual and stormwater pollution prevention plan (SWPPP) and notify the department of all outfall changes within 60 days of the change. The permittee shall submit an updated registration statement including an updated SWPPP site map.

18. Notice of termination.

a. The owner may terminate coverage under this general permit by filing a complete notice of termination with the department. The notice of termination may be filed after one or more of the following conditions have been met:

(1) Operations have ceased at the facility, and there are no longer discharges of process wastewater or stormwater associated with the industrial activity;

(2) A new owner has assumed responsibility for the facility. A notice of termination does not have to be submitted if a VPDES Change of Ownership Agreement form has been submitted;

(3) All discharges associated with this facility have been covered by an individual VPDES permit or an alternative VPDES permit; or

(4) Termination of coverage is being requested for another reason, provided the ~~board~~ department agrees that coverage under this general permit is no longer needed.

b. The notice of termination shall contain the following information:

(1) Owner's name, mailing address, telephone number, and email address (if available);

(2) Facility name and location;

(3) VPDES general permit registration number for the facility; and

(4) The basis for submitting the notice of termination, including:

(a) A statement indicating that a new owner has assumed responsibility for the facility;

(b) A statement indicating that operations have ceased at the facility, a closure plan has been implemented according to the O&M manual, and there are no longer discharges from the facility;

(c) A statement indicating that all discharges have been covered by an individual VPDES permit; or

(d) A statement indicating that termination of coverage is being requested for another reason (state the reason).

c. The following certification: "I certify under penalty of law that all concrete products ~~waste water~~ wastewater and stormwater discharges from the identified facility that are authorized by this VPDES general permit have been eliminated, or covered under a VPDES individual or alternative permit, or that I am no longer the owner of the facility, or permit coverage should be terminated for another reason listed above. I understand that by submitting this notice of termination, that I am no longer authorized to discharge concrete products ~~waste water~~ wastewater or stormwater in accordance with the general permit, and that discharging pollutants to surface waters is unlawful where the discharge is not authorized by a VPDES permit. I also understand that the submittal of this notice of termination does not release an owner from liability for any violations of this permit or the Clean Water Act."

d. The notice of termination shall be signed in accordance with Part III K.

e. The notice of termination shall be submitted to the DEQ regional office serving the area where the concrete products facility discharge is located.

19. Temporary closure at inactive and unstaffed sites waiver.

a. A waiver of the effluent monitoring, benchmark monitoring, visual monitoring, and routine facility inspections may be granted by the ~~board~~ department at a facility that is both inactive and unstaffed and there are no industrial materials or activities exposed to stormwater. The waiver request shall be submitted to the ~~board~~ department for approval and shall include the information

in the temporary closure plan specified in Part I B 8 a (4)~~,~~; the facility's VPDES general permit registration number; a contact person, telephone number, and email address (if available); the reason for the request; the date the facility became or will become inactive and unstaffed; and the date the closure plan will be completed. The waiver shall be signed and certified in accordance with Part III K. If this waiver is granted, the permittee must retain a copy of the request and the ~~board's~~ department's written approval of the waiver in the SWPPP. The permittee is required to conduct an annual routine facility inspection in accordance with Part II ~~F 6 f (5)~~ D 2 e. A stormwater discharge is not required at the time of this annual routine facility inspection.

b. To reactivate the site the permittee must notify the department within 30 days of reopening the facility and commencing any point source discharges of either treated process wastewater or stormwater runoff associated with industrial activities. Upon reactivation all effluent monitoring, benchmark monitoring, visual monitoring, and routine facility inspections shall resume immediately. This notification must be submitted to the department, signed in accordance with Part III K, and retained on site at the facility covered by this permit in accordance with Part III B.

c. The ~~board~~ department retains the right to revoke this waiver when it is determined that the discharge is causing, has a reasonable potential to cause, or contributes to a water quality standards violation.

20. The discharges authorized by this permit shall be controlled as necessary to meet applicable water quality standards.

21. Approval for coverage under this general permit does not relieve any owner of the responsibility to comply with any other applicable federal, state, or local statute, ordinance, or regulation.

Part II
Stormwater Management.

A. Monitoring ~~instructions~~ requirements.

1. Quarterly visual monitoring. The permittee shall perform and document visual monitoring of stormwater discharges associated with industrial activity from each outfall, except discharges waived in Part II A 1 d. The visual monitoring must be made during normal working hours, at least once in each of the following three-month periods: January through March, April through June, July through September, and October through December.

a. Samples shall be collected in accordance with Part II A 3. No analytical tests are required to be performed on the samples.

b. Samples will be in a clean, colorless glass or plastic container and examined in a well-lit area.

c. The examination shall observe color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and other obvious indicators of stormwater pollution.

d. If no storm event resulted in discharge from the facility during a monitoring quarter, the permittee is excused from visual monitoring for that quarter provided that documentation is included with the monitoring records.

e. When adverse weather conditions prevent the collection of samples, a substitute sample may be taken during a storm event that results in a discharge from the site in the next monitoring period. Adverse weather conditions are those that are dangerous or create inaccessibility for personnel and may include such things as local flooding, high winds, electrical storms, or situations that otherwise make sampling impracticable, such as drought or extended frozen conditions. Narrative documentation of conditions necessitating the use of the waiver shall be kept with the stormwater pollution prevention plan (SWPPP).

f. Visual monitoring documentation shall be maintained on site with the SWPPP and shall include:

(1) Outfall location;

(2) Monitoring date and time;

(3) Monitoring personnel;

(4) Nature of the discharge (i.e., runoff or snow melt);

(5) Visual quality of the stormwater discharge, including observations of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and other obvious indicators of stormwater pollution; and

(6) Probable sources of any observed stormwater contamination.

2. Benchmark monitoring. If the benchmark monitoring for total suspended solids exceeds 100 mg/l maximum or the pH falls outside of the range of 6.0 to 9.0 standard units, the permittee shall evaluate the overall effectiveness of the SWPPP in controlling the discharge of pollutants to receiving waters. Benchmark concentration values are not effluent limitations. Exceedance of a benchmark concentration does not constitute a violation of this permit and does not indicate that violation of a water quality standard has occurred; however, it does signal that modifications to the SWPPP are necessary, unless justification is provided in a routine facility inspection.

3. Monitoring instructions.

~~1.~~ a. Collection and analysis of samples. Sampling requirements shall be assessed on an outfall by outfall basis. Samples shall be collected and analyzed in accordance with the requirements of Part III A.

~~2.~~ b. When and how to sample. A minimum of one grab sample shall be taken resulting from a storm event that results in an actual discharge from the site ~~(defined as a "measureable storm event")~~, providing the interval from

the preceding ~~measurable~~ storm event discharge is at least 72 hours. The 72-hour storm interval is waived if the permittee is able to document with the DMR that less than a 72-hour interval is representative for local storm events during the sampling period. The grab sample shall be taken during the first 30 minutes of the discharge. If it is not practicable to take the sample during the first 30 minutes, the sample may be taken during the first three hours of discharge provided that the permittee explains with the SWPPP why a grab sample during the first 30 minutes was impractical.

~~3.~~ c. Recording of results. For each discharge measurement or sample taken pursuant to the storm event monitoring requirements of this permit, the permittee shall record and report with the DMR the following information:

~~a.~~ (1) Date ~~and duration (in hours)~~ of the storm events sampled;

~~b.~~ (2) Rainfall measurements or estimates (in inches) of the storm event that generated the sampled discharge; and

~~c. Duration~~ (3) Interval between the storm event sampled and the end of the previous ~~measurable~~ storm event that resulted in a discharge from the site.

4. Corrective actions. The permittee shall review the SWPPP and modify it as necessary to address any deficiencies noted in Part II A 4 a and 4 b. Revisions to the SWPPP shall be completed within 60 days following the discovery of the deficiency. When control measures need to be modified or added, implementation shall be completed before the next anticipated storm event if possible, but no later than 60 days after the deficiency is discovered, or as otherwise provided or approved by the department. In cases where construction is necessary to implement control measures, the permittee shall include a schedule in the SWPPP that provides for the completion of the control measures as expeditiously as practicable, but no later than three years after the deficiency is discovered. Where a construction compliance schedule is included in the SWPPP, the SWPPP shall include appropriate nonstructural and temporary controls to be implemented in the affected portion of the facility prior to completion of the permanent control measure. The amount of time taken to modify a control measure or implement additional control measures shall be documented in the SWPPP. The permittee shall take corrective action whenever:

a. Benchmark monitoring; routine facility inspections; inspections by local, state, or federal officials; or any other process, observation, or event result in a determination that modifications to the stormwater control measures are necessary to meet the permit requirements; or

b. The department determines or the permittee becomes aware that the stormwater control measures are not stringent enough for the discharge to meet applicable water quality standards.

Any corrective actions taken shall be documented and retained with the SWPPP.

B. Representative outfalls - substantially identical outfalls. If a facility has two or more exclusively stormwater outfalls that discharge substantially identical effluents, based on similarities of the industrial activities, significant materials, size of drainage areas, and stormwater management practices occurring within the drainage areas of the outfalls, frequency of discharges, and stormwater management practices occurring within the drainage areas of the outfalls, the permittee may monitor the ~~effluent~~ stormwater of just one of the outfalls and report that the observations also apply to the substantially identical outfall. ~~Representative outfalls must be identified in the registration statement submitted for coverage under this permit.~~ Substantially identical outfall monitoring can apply to quarterly visual and benchmark monitoring. The permittee must include the following information in the SWPPP:

1. The locations of the outfalls;

2. ~~Why~~ An evaluation, including available monitoring data, indicating the outfalls are expected to discharge substantially identical effluents~~, including evaluation of monitoring data where available~~;

3. Estimates of the size of the drainage area (in square feet) for each of the outfalls; and

4. An estimate of the runoff coefficient of the drainage areas (low: under 40%; medium: 40% to 65%; high: above 65%).

~~C. Quarterly visual monitoring of stormwater quality. The permittee shall perform and document visual monitoring of stormwater discharges associated with industrial activity from each outfall, except discharges waived in Part II C 4 . The visual monitoring must be made during normal working hours, at least once in each of the following three month periods: January through March, April through June, July through September, and October through December.~~

~~1. Samples will be in a clean, colorless glass or plastic container and examined in a well-lit area.~~

~~2. Samples will be collected within the first 30 minutes (or as soon thereafter as practical, but not to exceed three hours, provided that the permittee explains in the SWPPP why an examination during the first 30 minutes was impractical) of when the runoff or snowmelt begins discharging. All such samples shall be collected from the discharge resulting from a storm event that results in an actual discharge from the site (defined as a "measurable storm event") providing the interval from the preceding measurable storm event is at least 72 hours. The required 72-hour storm event interval is waived where the preceding measurable storm event did not result in a measurable discharge from the facility. The 72-hour storm event interval may also be waived where the~~

~~permittee documents that less than a 72-hour interval is representative for local storm events during the season when sampling is being conducted.~~

~~3. The examination shall observe color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and other obvious indicators of stormwater pollution.~~

~~4. If no qualifying storm event resulted in discharge from the facility during a monitoring period, or adverse weather conditions create dangerous conditions for personnel during each measurable storm event during a monitoring period, visual monitoring is exempted provided this is documented in the SWPPP.~~

~~5. Visual monitoring reports shall be maintained onsite with the SWPPP. The report shall include the outfall location, the monitoring date and time, monitoring personnel, the nature of the discharge (i.e., runoff or snow melt), visual quality of the stormwater discharge (including observations of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and other obvious indicators of stormwater pollution), and probable sources of any observed stormwater contamination.~~

~~6. Whenever the visual monitoring shows obvious indicators of stormwater pollution, the SWPPP and stormwater controls shall be updated per Part II F.~~

~~D. Allowable nonstormwater discharges. The following nonstormwater discharges are authorized by this permit.~~

~~1. Discharges from emergency firefighting activities;~~

~~2. Fire hydrant flushings;~~

~~3. Potable water including water line flushings;~~

~~4. Uncontaminated condensate from air conditioners, coolers, and other compressors and from the outside storage of refrigerated gases or liquids;~~

~~5. Irrigation drainage;~~

~~6. Landscape watering provided all pesticides, herbicides, and fertilizer have been applied in accordance with the approved labeling;~~

~~7. Pavement wash waters where no detergents or hazardous cleaning products are used and no spills or leaks of toxic or hazardous materials have occurred (unless all spilled material has been removed). Pavement wash waters shall be managed to prevent the discharge of pollutants;~~

~~8. Routine external building washdown that does not use detergents or hazardous cleaning products;~~

~~9. Uncontaminated ground water or spring water;~~

~~10. Foundation or footing drains where flows are not contaminated with process materials; and~~

~~11. Incidental windblown mist from cooling towers that collects on rooftops or adjacent portions of the facility, but not intentional discharges from the cooling tower (e.g., "piped" cooling tower blowdown or drains).~~

~~E.~~ C. Releases of hazardous substances or oil in excess of reportable quantities. The discharge of hazardous substances or oil in the stormwater discharges from this facility shall be prevented or minimized in accordance with the SWPPP for the facility. This permit does not authorize the discharge of hazardous substances or oil resulting from an ~~onsite~~ on-site spill. This permit does not relieve the permittee of the reporting requirements of 40 CFR Part 110, 40 CFR Part 117, and 40 CFR Part 302 or § 62.1-44.34:19 of the Code of Virginia.

Where a release containing a hazardous substance or oil in an amount equal to or in excess of a reportable quantity established under either 40 CFR Part 110, 40 CFR Part 117, or 40 CFR Part 302 occurs during a 24-hour period:

1. The permittee is required to notify the department in accordance with the requirements of Part III G as soon as ~~he~~ the permittee has knowledge of the discharge;

2. Where a release enters a municipal separate storm sewer system (MS4), the permittee shall also notify the owner of the MS4; and

3. The SWPPP required by this permit shall be reviewed to identify measures to prevent the reoccurrence of such releases and to respond to such releases, and the plan must be modified where appropriate.

~~F.~~ D. Stormwater pollution prevention plans (SWPPP). ~~A~~ An SWPPP shall be developed and implemented for the facility covered by this permit. ~~The SWPPP shall include best management practices (BMPs) that are reasonable, economically practicable, and appropriate in light of current industry practices. The BMPs shall be selected, designed, installed, implemented, and maintained in accordance with good engineering practices to eliminate or reduce the pollutants in all stormwater discharges from the facility. The SWPPP shall also include any control measures necessary for the stormwater discharges to meet applicable water quality standards.~~ The SWPPP is intended to document the selection, design, and installation of control measures, including BMPs, to minimize the pollutants in all stormwater discharges from the facility and to meet applicable effluent limitations and water quality standards.

The SWPPP requirements of this general permit may be fulfilled, in part, by incorporating by reference other plans or documents, such as an erosion and sediment control plan, a spill prevention control and countermeasure (SPCC) plan developed for the facility under § 311 of the Clean Water Act, or BMP programs otherwise required for the facility provided that the incorporated plan meets or exceeds the SWPPP requirements of Part II ~~F 6 (Contents of SWPPP)~~ D 2. All plans incorporated by reference into the SWPPP become enforceable

under this permit. If a plan incorporated by reference does not contain all the requirements of Part II ~~F 6~~ D 2, the permittee shall develop the missing SWPPP elements and include them in the required plan.

1. Deadlines for SWPPP preparation and compliance.

a. Owners of existing facilities that ~~were covered under the 2013 Concrete Products General Permit who~~ are continuing coverage under this general permit shall update and implement any revisions to the SWPPP within 60 days of the ~~board~~ department granting coverage under this permit.

b. Owners of new facilities, facilities previously covered by an expiring individual permit, and existing facilities not currently covered by a VPDES permit ~~who~~ that elect to be covered under this general permit shall prepare the SWPPP 60 days prior to commencing operations and implement the SWPPP prior to ~~commencing operations~~ a stormwater discharge.

c. Where the owner of an existing facility that is covered by this permit changes, the new owner of the facility shall update and implement any revisions to the SWPPP within 60 days of the ownership change.

d. Upon a showing of good cause, the director may establish a later date in writing for the preparation and compliance with the SWPPP.

~~2. Signature and SWPPP review.~~

~~a. The SWPPP shall be signed in accordance with Part III K and be retained on site at the facility covered by this permit in accordance with Part III B. For inactive sites, the SWPPP may be kept at the nearest office of the permittee.~~

~~b. The permittee shall make the SWPPP or other information available to the department upon request.~~

~~c. The director, or his designee, may notify the permittee in writing at any time that the SWPPP, BMPs, or other components of the facility's stormwater program do not meet one or more of the requirements of this part. Such notification shall identify specific provisions of the permit that are not being met and may include required modifications to the stormwater program, additional monitoring requirements, and special reporting requirements. Within 60 days of such notification from the director, or as otherwise provided by the director, the permittee shall make the required changes to the SWPPP and shall submit to the department a written certification that the requested changes have been made.~~

~~3. Maintaining an updated SWPPP. The permittee shall review and amend the SWPPP as appropriate whenever:~~

~~a. There is construction or a change in design, operation, or maintenance that has a significant effect on the discharge or the potential for the discharge of pollutants to surface waters;~~

~~b. Routine inspections or visual monitoring determine that there are deficiencies in the BMPs;~~

~~c. Inspections by local, state, or federal officials determine that modifications to the SWPPP are necessary;~~

~~d. There is a spill, leak, or other release at the facility; or~~

~~e. There is an unauthorized discharge from the facility.~~

~~4. SWPPP modifications shall be made within 60 calendar days after discovery, observation, or event requiring a SWPPP modification. Implementation of new or modified BMPs (distinct from regular preventive maintenance of existing BMPs described in Part II F 7) shall be initiated before the next storm event if possible, but no later than 60 days after discovery, or as otherwise provided or approved by the director. The amount of time taken to modify a BMP or implement additional BMPs shall be documented in the SWPPP.~~

~~5. If the SWPPP modification is based on a release or unauthorized discharge, include a description and date of the release, the circumstances leading to the release, actions taken in response to the release, and measures to prevent the recurrence of such releases. Unauthorized releases and discharges are subject to the reporting requirements of Part III G of this permit.~~

~~6.~~ 2. Contents of SWPPP. The SWPPP shall include, at a minimum, the following items:

a. Pollution prevention team. Each SWPPP shall identify the staff individuals by name or title that comprise the facility's stormwater pollution prevention team. The pollution prevention team is responsible for assisting the facility or plant manager in developing, implementing, maintaining, revising, and ensuring compliance with the facility's SWPPP. Specific responsibilities of each staff individual on the team shall be identified and listed.

b. Site description. The site description shall include the following:

(1) A description of the industrial activities at the facility.

(2) A site map identifying the following:

(a) Boundaries of the property and the size of the property in acres;

(b) Location and extent of significant structures and impervious surfaces;

(c) Locations of all stormwater conveyances, including ditches, pipes, swales, and inlets, and the directions of stormwater flow using arrows to indicate which direction stormwater will flow;

(d) Locations of stormwater control measures, including BMPs;

(e) Locations of all surface water bodies, including wetlands;

(f) Locations of identified potential pollutant sources identified in Part II D 2 c;

(g) Locations where significant spills or leaks identified under Part II D 2 c (3) have occurred;

(h) Locations of stormwater outfalls, monitoring locations, an approximate outline of the area draining to each outfall, the drainage area of each outfall in acres, the longitude and latitude of each outfall, the location of any municipal separate storm system (MS4) conveyance receiving discharge from the facility, and each outfall identified with a unique numerical identification code. For example: Outfall number 001, Outfall Number 002;

(i) Location and description of all nonstormwater discharges;

(j) Location of any storage piles containing salt;

(k) Location and source of suspected run-on to the site from an adjacent property if the run-on is suspected of containing significant quantities of pollutants; and

(l) Locations of fueling stations, vehicle or equipment degreasing activities, maintenance areas, loading or unloading areas, vehicle washdown areas, vehicle washout areas, bag house or other dust control device, recycle ponds, sedimentation ponds, or clarifiers or other devices used for the treatment of process wastewater (and the areas that drain to the treatment device).

c. Summary of potential pollutant sources. The ~~plan~~ SWPPP shall identify each separate area at the facility where industrial materials or activities ~~at the facility~~ are exposed to stormwater. Industrial materials or activities include~~:~~ material handling equipment or activities, industrial machinery, raw materials, industrial production and processes, intermediate products, byproducts, final products, and waste products. Material handling activities include~~:~~ the storage, loading and unloading, transportation, disposal, or conveyance of any raw material, intermediate product, final product, or waste product. The description shall include:

(1) Activities in area. A list of the industrial activities ~~(e.g., material storage, equipment fueling and cleaning, cutting steel beams); and~~ exposed to stormwater.

(2) Pollutants. A list of the ~~associated~~ pollutants, pollutant constituents, or industrial chemicals for each industrial activity that could potentially be exposed to stormwater. The pollutant list shall include all significant materials handled, treated, stored, or disposed that have been exposed to stormwater in the three years prior to the date this SWPPP was prepared or amended. This list shall include any hazardous substances or oil at the facility.

~~c. Site map. The site map shall document:~~

~~(1) An outline of the drainage area of each stormwater outfall that are within the facility boundaries;~~

~~(2) Each existing structural control measure to reduce pollutants in stormwater runoff;~~

~~(3) Surface water bodies;~~

~~(4) Locations where materials are exposed to precipitation;~~

~~(5) Locations where major spills or leaks identified under Part II F 6 d have occurred;~~

~~(6) Locations of fueling stations, vehicle or equipment degreasing activities, maintenance areas, loading or unloading areas, vehicle wash down areas, vehicle wash out areas, bag house or other dust control device, recycle ponds, sedimentation ponds, or clarifiers or other devices used for the treatment of process wastewater (and the areas that drain to the treatment device);~~

~~(7) Locations used for the storage or disposal of wastes; liquid storage tanks; processing areas; and storage areas;~~

~~(8) Outfall locations, designation (e.g., 001) and the types of discharges contained in the drainage areas of the outfalls;~~

~~(9) For each area of the facility that generates stormwater discharges associated with industrial activity with a potential for containing significant amounts of pollutants, locations of stormwater conveyances including ditches, pipes, swales, and inlets, and the directions of stormwater flow and an identification of the types of pollutants that are likely to be present in stormwater discharges associated with industrial activity. Factors to consider include the toxicity of the chemicals; quantity of chemicals used, produced, or discharged; the likelihood of contact with stormwater; and history of leaks or spills of toxic or hazardous pollutants; and~~

~~(10) Flows with a potential for causing erosion shall be identified.~~

~~d.~~ (3) Spills and leaks. ~~A~~ The SWPPP shall clearly identify areas where potential spills and leaks that can contribute pollutants to stormwater discharges can occur and their corresponding outfalls. The SWPPP shall include a list of significant spills and leaks of toxic or hazardous pollutants that actually occurred at exposed areas or that ~~are exposed to precipitation or that otherwise drain to a stormwater conveyance at the facility after the date of three years prior to the date of coverage under this general permit. Such list shall be updated as appropriate during the term of the permit~~ drained to a stormwater conveyance during the three-year period prior to the date this SWPPP was prepared or amended. The list shall be updated within 60 days of the incident if significant spills or leaks occur in exposed areas of the facility during the term of the permit.

~~e.~~ (4) Sampling data. The ~~plan~~ SWPPP shall include ~~a summary of existing~~ stormwater discharge sampling data ~~taken at the facility. The summary shall include, at a minimum, any data~~ collected during the previous three years.

~~f.~~ d. Stormwater controls.

(1) ~~BMPs~~ Control measures shall be implemented for all areas identified in Part II ~~F 6 b~~ D 2 c to prevent or control

pollutants in stormwater discharges from the facility. ~~All reasonable steps shall be taken to control or address the quality of discharges from the site that may not originate at the facility~~ If applicable, regulated stormwater discharges from the facility include stormwater run-on that commingles with stormwater discharges associated with industrial activity at the facility. The SWPPP shall describe the type, location, and implementation of ~~all BMPs~~ control measures for each area where industrial materials or activities are exposed to stormwater. Selection of control measures shall take into consideration:

(a) That preventing stormwater from coming into contact with polluting materials is generally more effective and less costly than trying to remove pollutants from stormwater;

(b) Control measures generally must be used in combination with each other for most effective water quality protection;

(c) Assessing the type and quantity of pollutants, including their potential to impact receiving water quality, is critical to designing effective control measures;

(d) That minimizing impervious areas at the facility can reduce runoff and improve groundwater recharge and stream base flows in local streams; however, care must be taken to avoid groundwater contamination;

(e) Flow attenuation by use of open vegetated swales and natural depressions can reduce instream impacts of erosive flows;

(f) Conservation or restoration of riparian buffers will help protect streams from stormwater runoff and improve water quality; and

(g) Treatment interceptors (e.g., swirl separators and sand filters) may be appropriate in some instances to minimize the discharge of pollutants.

(2) Good housekeeping measures. ~~Good housekeeping requires the clean and orderly maintenance of areas that may contribute pollutants to stormwater discharges.~~ The permittee shall keep clean all exposed areas of the facility that are potential sources of pollutants in stormwater. ~~Particular attention should be paid to areas where raw materials are stockpiled, material handling areas, storage areas, liquid storage tanks, vehicle fueling and maintenance areas, and loading or unloading areas. The SWPPP shall describe procedures performed to prevent~~ The permittee shall perform the following good housekeeping measures to minimize pollutant discharges:

(a) Include a schedule for regular pickup and disposal of waste materials, along with routine inspections for leaks and conditions of drums, tanks, and containers;

(b) Sweep or vacuum as feasible;

(c) Store materials in containers constructed of appropriate materials;

(d) Manage all waste containers to prevent a discharge of pollutants;

(e) Minimize the potential for waste, garbage, and floatable debris to be discharged by keeping areas exposed to stormwater free of such materials or by intercepting such materials prior to discharge; and

(f) Prevent or minimize the discharge of~~:~~ spilled cement, aggregate ~~(~~, including sand and gravel~~)~~, kiln dust, fly ash, settled dust, or other significant material in stormwater from paved portions of the site that are exposed to stormwater. Sweep or vacuum paved surfaces of the site that are exposed to stormwater at regular intervals or use other equivalent measures to minimize the potential discharge of these materials in stormwater. Indicate in the SWPPP the frequency of sweeping, vacuuming, or other equivalent measures (e.g., wash down the area and collect or treat and properly dispose of the washdown water). Determine the frequency based on the amount of industrial activity occurring in the area and the frequency of precipitation, but sweeping, vacuuming, or other equivalent measures shall be performed at least once a week in areas where cement, aggregate, kiln dust, fly ash, or settled dust are being handled or processed. Prevent the exposure of fine granular solids ~~(~~, including cement, fly ash, and kiln dust~~)~~, to stormwater, where practicable, by storing these materials in enclosed silos, hoppers, or buildings or under other covering. The generation of dust and off-site vehicle tracking of raw, final, or waste materials, or sediments shall be minimized.

(3) Preventive maintenance. A preventive maintenance program shall involve regular inspection, testing, maintenance, and repairing of all industrial equipment and systems to avoid breakdowns or failures that could result in leaks, spills, and other releases. This program is in addition to the specific BMP maintenance required under Part II ~~F 7 (Maintenance of BMPs)~~ E.

(4) Spill prevention and response procedures. The SWPPP shall describe the procedures that will be followed for preventing and responding to spills and leaks~~.~~, including:

(a) Preventive measures ~~include~~, such as barriers between material storage and traffic areas, secondary containment provisions, and procedures for material storage and handling;

(b) Response procedures ~~shall include (i)~~, including notification of appropriate facility personnel, emergency agencies, and regulatory agencies and ~~(ii)~~ procedures for stopping, containing, and cleaning up spills. Measures for cleaning up hazardous material spills or leaks shall be consistent with applicable ~~RCRA~~ Resource Conservation and Recovery Act regulations at 40 CFR Part 264 and 40 CFR Part 265. Employees who may cause, detect, or respond to a spill or leak shall be trained in these procedures and have necessary spill response equipment

available. If possible, one of these individuals shall be a member of the pollution prevention team;

(c) Procedures for plainly labeling containers (e.g., "used oil," "spent solvents," "fertilizers and pesticides,"~~ etc.~~) that could be susceptible to spillage or leakage to encourage proper handling and facilitate rapid response if spills or leaks occur; and

(d) Contact information for individuals and agencies that must be notified in the event of a spill shall be included in the SWPPP and in other locations where it will be readily available.

~~(5) Routine facility inspections.~~

~~(a) During normal facility operating hours inspections of areas of the facility covered by the requirements in this permit must be conducted and shall include observations of the following:~~

~~(i) Areas where industrial materials or activities are exposed to stormwater, including material handling areas, above ground storage tanks, hoppers or silos, dust collection or containment systems, and truck wash down or equipment cleaning areas;~~

~~(ii) Discharge points; and~~

~~(iii) Best management practices.~~

~~(b) Inspections shall be conducted at least quarterly. At least once each calendar year, the routine facility inspection should be conducted during a period when a stormwater discharge is occurring.~~

~~(c) Inspections shall be performed by personnel who possess the knowledge and skills to assess conditions and activities that could impact stormwater quality at the facility and who can also evaluate the effectiveness of BMPs. At least one member of the stormwater pollution prevention team shall participate.~~

~~(d) Routine facility inspections shall be documented and maintained with the SWPPP. Document all findings including:~~

~~(i) Inspection date;~~

~~(ii) Names of the inspectors; and~~

~~(iii) Observations of any discharges; the physical condition of and around all outfalls (e.g., concrete product in the stream or turbidity); leaks or spills from industrial equipment, drums, tanks or other containers; offsite tracking of industrial materials or sediment; any additional best management practices that need to be repaired, maintained, or added; and any incidents of noncompliance.~~

~~(e) A set of tracking or followup procedures shall be used to ensure that appropriate actions are taken in response to the inspections. Records of inspections shall be maintained with the SWPPP. Any deficiencies in the implementation of the SWPPP that are found shall be corrected as soon as practicable, but not later than within 60 days of the inspection, unless permission for a later date is granted in writing by the director. The results of the inspections shall be documented in the SWPPP, along with the dates and descriptions of any corrective actions that were taken in response to any deficiencies or opportunities for improvement that were identified.~~

~~(f) The requirement for routine facility inspections is waived for facilities that have maintained an active VEEP E3/E4 status.~~

(5) Eliminating and minimizing exposure. To the extent practicable, manufacturing, processing, and material storage areas, including loading and unloading, storage, disposal, cleaning, maintenance, and fueling operations, shall be located inside or protected by a storm-resistant covering to prevent exposure to rain, snow, snowmelt, and runoff. Unless infeasible, facilities shall implement the following:

(a) Use grading, berming, or curbing to prevent runoff of contaminated flows and divert run-on away from potential sources of pollutants;

(b) Locate materials, equipment, and activities so that potential leaks and spills are contained or able to be contained or diverted before discharge;

(c) Clean up spills and leaks immediately upon discovery of the spills or leaks, using dry methods (e.g., adsorbents) to prevent the discharge of pollutants;

(d) Store leaking vehicles and equipment indoors, or if leaking vehicles and equipment must be stored outdoors, use drip pans and adsorbents;

(e) Utilize appropriate spill or overflow protections equipment;

(f) Perform all vehicle maintenance or equipment maintenance or equipment cleaning operations indoors, under cover, or in bermed areas that prevent runoff and run-on and also capture any overspray; and

(g) Drain fluids from equipment and vehicles that will be decommissioned, and for any equipment and vehicles that remain unused for extended periods of time, inspect at least monthly for leaks.

(6) Employee training. The permittee shall implement a stormwater employee training program for the facility. The SWPPP shall include a schedule for all types of necessary training and shall document all training sessions and the employees who received the training. Training shall be provided at least annually for all employees who work in areas where industrial materials or activities are exposed to stormwater and for employees who are responsible for implementing activities identified in the SWPPP (e.g., inspectors, maintenance personnel~~, etc.~~). The training shall cover the components and goals of the SWPPP and include such topics as spill response, good housekeeping, material management practices, BMP

operation, and maintenance~~, etc~~. The SWPPP shall include a summary of any training performed.

(7) Sediment and erosion control. The SWPPP shall identify areas at the facility that, due to topography, land disturbance (e.g., construction, landscaping, sit grading), or other factors, have a potential for soil erosion. The permittee shall identify and implement structural, vegetative, or stabilization ~~BMPs~~ control measures to prevent or control on-site and off-site erosion and sedimentation. Flow velocity dissipation devices shall be placed at discharge locations and along the length of any outfall channel if the flows would otherwise create erosive conditions.

(8) Management of runoff. The SWPPP shall describe the stormwater run-off management practices (i.e., permanent structural ~~BMPs~~ control measures) for the facility. These types of BMPs ~~are typically~~ control measures shall be used to divert, infiltrate, reuse, or otherwise reduce pollutants in stormwater discharges from the site. ~~Appropriate measures may include: vegetative swales and practices, reuse of collected stormwater (such as for a process or as an irrigation source), inlet controls (such as oil/water separators), snow management activities, infiltration devices, wet detention/retention devices; or other equivalent measures. Some structural BMPs~~ Structural control measures may require a separate permit under § 404 of the Clean Water Act and the Virginia Water Protection Permit Program Regulation (9VAC25-210) before installation begins.

~~7.~~ e. Routine facility inspections. Personnel who possess the knowledge and skills to assess conditions and activities that could impact stormwater quality at the facility and who can also evaluate the effectiveness of control measures shall regularly inspect all areas of the facility where industrial materials or activities are exposed to stormwater. At least one member of the stormwater pollution prevention team shall participate.

(1) Inspections include areas where industrial materials or activities are exposed to stormwater, including material handling areas, aboveground storage tanks, hoppers or silos, dust collection or containment systems, and truck washdown or equipment cleaning areas, discharge points, and control measures.

(2) Inspections shall be conducted at least quarterly during normal facility operating hours. At least once each calendar year, the routine facility inspection should be conducted during a period when a stormwater discharge is occurring.

(3) The inspections shall include at a minimum:

(a) Inspection date;

(b) Names of the inspectors; and

(c) Observations of any discharges; the physical condition of and around all outfalls (e.g., concrete product in the stream or turbidity); leaks or spills from industrial equipment, drums, tanks or other containers; off-site tracking of industrial materials or sediment; any additional best management practices that need to be repaired, maintained, or added; and any incidents of noncompliance.

(4) A set of tracking or follow-up procedures shall be used to ensure that appropriate actions are taken in response to the inspections. Records of inspections shall be maintained with the SWPPP. Any deficiencies in the implementation of the SWPPP that are found shall be corrected as soon as practicable, but not later than within 60 days of the inspection, unless permission for a later date is granted in writing by the director. The results of the inspections shall be documented in the SWPPP, along with the dates and descriptions of any corrective actions that were taken in response to any deficiencies or opportunities for improvement that were identified.

(5) The requirement for routine facility inspections is waived for facilities that have maintained an active Virginia Environmental Excellence Program E3 or E4 status.

E. Maintenance ~~of BMPs. All BMPs identified in the SWPPP shall be maintained in effective operating condition. Stormwater BMPs identified in the SWPPP shall be observed during active operation where feasible (i.e., during a stormwater runoff event) to ensure that they are functioning correctly. Where discharge locations are inaccessible, nearby downstream locations shall be observed. The observations shall be documented in the SWPPP~~.

1. The SWPPP shall include a description of procedures and a regular schedule for preventive maintenance of all ~~BMPs~~ control measures and shall include a description of the back-up practices that are in place should a runoff event occur while a ~~BMP~~ control measure is ~~off-line~~ off-line. The effectiveness of nonstructural BMPs shall also be maintained by appropriate means (e.g., spill response supplies available and personnel trained~~, etc.~~).

2. All control measures identified in the SWPPP shall be maintained in effective operating condition and shall be observed at least annually when a stormwater discharge is occurring to ensure that they are functioning correctly. Where discharge locations are inaccessible, nearby downstream locations shall be observed. The observations shall be documented in the SWPPP.

3. If ~~site~~ routine facility inspections required by Part II ~~F 6 f (5) (Routine facility inspections)~~ D 2 d identify ~~BMPs~~ control measures that are not operating effectively, repairs or maintenance shall be performed before the next anticipated storm event. If maintenance prior to the next anticipated storm event is not possible, maintenance shall be scheduled and accomplished as soon as practicable. In the interim, back-up measures shall be employed and

documented in the SWPPP until repairs or maintenance is complete. Documentation shall be kept with the SWPPP of maintenance and repairs of BMPs, including the dates of regular maintenance, dates of discovery of areas in need of repair or replacement, and for repairs, dates that the BMPs returned to full function, and the justification for any extended maintenance or repair schedules.

~~8.~~ F. Nonstormwater discharges.

~~a. Except for flows from emergency firefighting activities, the SWPPP must include:~~

~~(1) Identification of each allowable nonstormwater source;~~

~~(2) The location where it is likely to be discharged; and~~

~~(3) Descriptions of appropriate BMPs for each source.~~

~~b. Documentation that all outfalls have been evaluated annually for the presence of unauthorized discharges (i.e., discharges other than stormwater, the authorized nonstormwater discharges described in Part II D, or discharges covered under a separate VPDES permit or this permit).~~

1. Discharges of certain sources of nonstormwater listed in Part II F 3 are allowable discharges under this permit. All other nonstormwater discharges are not authorized and shall be either eliminated or covered under a separate VPDES permit.

2. Annual outfall evaluation for unauthorized discharges. The SWPPP shall include documentation that all stormwater outfalls associated with industrial activity have been evaluated annually for the presence of unauthorized discharges. The documentation shall include:

~~(1)~~ a. The date of the evaluation;

~~(2)~~ b. A description of the evaluation criteria used;

~~(3)~~ c. A list of the outfalls or ~~onsite~~ on-site drainage points that were directly observed during the evaluation;

~~(4)~~ d. A description of the results of the evaluation for the presence of unauthorized discharges; and

~~(5)~~ e. The actions taken to eliminate identified unauthorized discharges.

3. The following nonstormwater discharges are authorized by this permit:

a. Discharges from emergency firefighting activities;

b. Fire hydrant flushing, managed in a manner to avoid an instream impact;

c. Potable water, including water line flushing, managed in a manner to avoid an instream impact;

d. Uncontaminated condensate from air conditioners, coolers, and other compressors and from the outside storage of refrigerated gases or liquids;

e. Irrigation drainage;

f. Landscape watering; provided all pesticides, herbicides, and fertilizers have been applied in accordance with the approved labeling;

g. Pavement wash waters where no detergents or hazardous cleaning products are used and no spills or leaks of toxic or hazardous materials have occurred, unless all spilled material has been removed. Pavement wash waters shall be managed in a manner to avoid an instream impact;

h. Routine external building washdown that does not use detergents or hazardous cleaning products;

i. Uncontaminated groundwater or spring water;

j. Foundation or footing drains where flows are not contaminated with process materials; and

k. Incidental windblown mist from cooling towers that collects on rooftops or adjacent portions of the facility, but not intentional discharges from the cooling tower (e.g., "piped" cooling tower blowdown or drains).

G. Signature and SWPPP review.

1. Signature and location. The SWPPP, including any revisions to the SWPPP to document any corrective actions taken as required by Part II A 4, shall be signed in accordance with Part III K, dated, and retained on site at the facility covered by this permit. All other changes to the SWPPP, and other permit compliance documentation, must be signed and dated by the person preparing the change or documentation. For inactive or unstaffed facilities, the plan may be kept at the nearest office of the permittee.

2. Availability. The permittee shall retain a copy of the current SWPPP required by this permit at the facility, and it shall be immediately available to the department, EPA, or the operator of an MS4 receiving discharges from the site at the time of an on-site inspection or upon request.

3. Required modifications. The permittee shall modify the SWPPP whenever necessary to address all corrective actions required by Part II A 4. Changes to the SWPPP shall be made in accordance with the corrective action deadlines in Part II A 4 and shall be signed and dated in accordance with Part III K. The director may notify the permittee at any time the SWPPP, control measures, or other components of the facility's stormwater program do not meet one or more of the requirements of this permit. The notification shall identify specific provisions of the permit that are not being met and may include required modifications to the stormwater program, additional monitoring requirements, and special reporting requirements. The permittee shall make any required changes to the SWPPP within 60 days of receipt of such notification, unless permission for a later date is granted in writing by the director, and shall submit a written certification to the director that the requested changes have been made.

H. Maintaining an updated SWPPP.

1. The permittee shall review and amend the SWPPP as appropriate whenever:

a. There is construction or a change in design, operation, or maintenance at the facility that has an effect on the discharge, or the potential for the discharge, of pollutants from the facility;

b. Routine inspections or visual monitoring determine that there are deficiencies in the control measures, including BMPs;

c. Inspections by local, state, or federal officials determine that modifications to the SWPPP are necessary;

d. There is a significant spill, leak, or other release at the facility;

e. There is an unauthorized discharge from the facility; or

f. The department notifies the permittee that a TMDL has been developed and applies to the permitted facility, consistent with Part I B 16.

2. SWPPP modifications shall be made within 60 calendar days after the discovery, observation, or event requiring an SWPPP modification. Implementation of new or modified control measures shall be initiated before the next storm event if possible but no later than 60 days after discovery or as otherwise provided or approved by the director. The amount of time taken to modify a control measure or implement additional control measures shall be documented in the SWPPP.

3. If the SWPPP modification is based on a significant spill, leak, release, or unauthorized discharge, a description and date of the incident, the circumstances leading to the incident, actions taken in response to the incident, and measures to prevent the recurrence of such releases must be included. Unauthorized discharges are subject to the reporting requirements of Part III G of this permit.

Part III

Conditions Applicable to All VPDES Permits.

A. Monitoring.

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

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

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

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

B. Records.

1. Records of monitoring information shall include:

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

b. The individuals who performed the sampling or measurements;

c. The dates and times analyses were performed;

d. The individuals who performed the analyses;

e. The analytical techniques or methods used; and

f. The results of such analyses.

2. The permittee shall retain (i) records of all monitoring information including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, (ii) copies of all reports required by this permit, and (iii) records of all data used to complete the registration statement for this permit for a period of at least three years from the date that coverage under this permit expires or is terminated. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to the permittee, or as requested by the ~~board~~ department.

C. Reporting monitoring results.

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

2. Monitoring results shall be reported on a ~~Discharge Monitoring Report (DMR)~~ DMR or on forms provided, approved, or specified by the department. Following notification from the department of the start date for the required electronic submission of monitoring reports, as provided for in 9VAC25-31-1020, such forms and reports submitted after that date shall be electronically submitted to the department in compliance with 9VAC25-31-1020 and this section. There shall be at least a three-month notice provided between the notification from the department and the date after which such forms and reports must be submitted electronically.

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

submitted in the DMR or reporting form specified by the department.

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

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

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

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

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

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

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

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

2. The cause of the discharge;

3. The date on which the discharge occurred;

4. The length of time that the discharge continued;

5. The volume of the discharge;

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

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

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

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

H. Reports of unusual or extraordinary discharges. If any unusual or extraordinary discharge including a bypass or upset should occur from a treatment works and the discharge enters or could be expected to enter state waters, the permittee shall promptly notify (see Part III I 3), in no case later than 24 hours, the department ~~by telephone~~ after the discovery of the discharge. This notification shall provide all available details of the incident, including any adverse effects on aquatic life and the known number of fish killed. The permittee shall reduce the report to writing and shall submit it to the department within five days of discovery of the discharge in accordance with Part III I 1 b. Unusual and extraordinary discharges include any discharge resulting from:

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

2. Breakdown of processing or accessory equipment;

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

4. Flooding or other acts of nature.

I. Reports of noncompliance.

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

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

(1) Any unanticipated bypass; and

(2) Any upset that causes a discharge to surface waters.

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

(1) A description of the noncompliance and its cause;

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

(3) Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

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

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

~~NOTE:~~ 3. The immediate (within 24 hours) reports required in Part III G, H, and I ~~may~~ shall be made to the department's regional office ~~by telephone, FAX, or online at http://www.deq.virginia.gov/Programs/PollutionResponsePreparedness/MakingaReport.aspx~~. Reports maybe made by telephone, FAX, or online at https://www.deq.virginia.gov/get-involved/pollution-response (online reporting preferred). For reports outside normal working hours, ~~leave a message and this shall fulfill the immediate reporting requirement~~ the online portal shall be used. For emergencies, call the Virginia Department of Emergency ~~Services maintains a 24 hour telephone service~~ Management's Emergency Operations Center (24-hours) at 1-800-468-8892.

~~3.~~ 4. Where the permittee becomes aware that it failed to submit any relevant facts in a permit registration statement~~,~~ or submitted incorrect information in a permit registration statement or in any report to the department, it shall promptly submit such facts or information.

J. Notice of planned changes.

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

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

(1) After promulgation of standards of performance under § 306 of Clean Water Act that are applicable to such source; or

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

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

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

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

K. Signatory requirements.

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

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

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

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

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

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

b. The authorization specifies either an individual or a position having responsibility for the overall operation of

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

c. The written authorization is submitted to the department.

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

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

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

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

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

M. Duty to reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee shall apply for and obtain coverage under a new permit. All permittees with currently effective permit coverage shall submit a new application at least 60 days before the expiration date of the existing permit, unless permission for a later date has been granted by the ~~board~~ department. The ~~board~~ department shall not grant permission for applications to be submitted later than the expiration date of the existing permit.

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

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

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

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

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

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

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

U. Bypass.

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

2. Notice.

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

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

3. Prohibition of bypass.

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

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

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

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

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

V. Upset.

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

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

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

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

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

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

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

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

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

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

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

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

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

X. Permit actions. Permit coverage may be terminated for cause. The filing of a request by the permittee for a permit termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

Y. Transfer of permit coverage.

1. Permits are not transferable to any person except after notice to the department.

2. Coverage under this permit may be automatically transferred to a new permittee if:

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

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

c. The ~~board~~ department does not notify the existing permittee and the proposed new permittee of its intent to deny the new permittee coverage under the permit. If this

notice is not received, the transfer is effective on the date specified in the agreement mentioned in Part III Y 2 b.

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

VA.R. Doc. No. R22-6952; Filed December 28, 2022, 11:49 a.m.

TITLE 12. HEALTH

STATE BOARD OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

Emergency Regulation

Title of Regulation: **12VAC35-230. Operation of the Individual and Family Support Program (amending 12VAC35-230-10, 12VAC35-230-20, 12VAC35-230-90, 12VAC35-230-100, 12VAC35-230-110; adding 12VAC35-230-31, 12VAC35-230-35, 12VAC35-230-45, 12VAC35-230-55, 12VAC35-230-65, 12VAC35-230-75, 12VAC35-230-85; repealing 12VAC35-230-30 through 12VAC35-230-80).**

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

Effective Dates: January 19, 2023, through July 18, 2024.

Agency Contact: Ruth Anne Walker, Director of Regulatory Affairs, Department of Behavioral Health and Developmental Services, Jefferson Building, 1220 Bank Street, 4th Floor, Richmond, VA 23219, telephone (804) 225-2252, FAX (804) 371-4609, TDD (804) 371-8977, or email ruthanne.walker@dbhds.virginia.gov.

Background: To facilitate compliance with the U.S. Department of Justice Settlement Agreement with Virginia (United States of America v. Commonwealth of Virginia, Civil Action No. 3:12cv059-JAG) for the development of a comprehensive and coordinated set of strategies that are designed to ensure that families who are assisting family members with developmental disabilities (DD) or individuals with DD who live independently have access to person-centered and family-centered resources, supports, services, and other assistance, Item 313 NN of Chapter 2 of the 2022 Acts of Assembly, Special Session I (the 2022 Appropriation Act) requires the Department of Behavior Health and Developmental Service to "... promulgate emergency regulations for the Individual and Family Supports Program (IFSP) to ensure an annual public input process that shall include a survey of needs and satisfaction in order to establish plans for the disbursement of IFSP funding in consultation with the IFSP State Council. Based on the Council's recommendation and information gathered during the public input period, the department will draft program guidelines to establish annual funding priorities. The department will establish program criteria for each of the required program categories and publish them as part of the Annual Funding Program Guidelines. Additionally, program guidelines shall establish eligibility criteria, the award process, appeals processes, and any other protocols necessary for ensuring the effective use of state funds. All criteria will be published prior to opening the funding opportunity. The Individual and Family Support Program (IFSP) is intended to support the continued residence of any individual with DD on the waiting list for a Medicaid Home and Community-Based Services (HCBS) DD Waiver in his own or the family home, which includes the home of the principal caregiver."

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.

Pursuant to Item 313 NN of Chapter 2 of the 2022 Acts of Assembly, Special Session I, the amendments change the current distribution of annual Individual and Family Support Program (IFSP) funds from a first-come, first-served basis to one based on program categories and set criteria developed through annual public input process that includes a survey of needs and satisfaction in order to establish plans for the disbursement of IFSP funding in consultation with the IFSP State Council. The amendments establish (i) eligibility criteria, (ii) the award process, (iii) the appeals processes, and (iv) other protocols necessary for ensuring the effective use of state funds.

12VAC35-230-10. 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 Department of Behavioral Health and Developmental Services.

"Custodial family member" means a family member who has primary authority to make all major decisions affecting the individual and with whom the individual primarily resides.

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

"Developmental disability" or "DD" means a severe, chronic disability of an individual that:

1. Is attributable to a mental or physical impairment or combination of mental and physical impairments, other than a sole diagnosis of mental illness;

2. Is manifested before the individual ~~attains age~~ reaches 22 years of age;

3. Is likely to continue indefinitely;

4. Results in substantial functional limitations in three or more of the following areas of major life activity: (i) self-care; (ii) receptive and expressive language; (iii) learning; (iv) mobility; (v) self-direction; (vi) capacity for independent living; ~~and~~ or (vii) economic self-sufficiency; and

5. Reflects the individual's need for a combination and sequence of special, interdisciplinary or generic services, individualized supports, or other forms of assistance that are of lifelong or extended duration and are individually planned and coordinated. ~~(42 USC § 15002)~~

An individual from birth to age nine years, inclusive, who has a substantial developmental delay or specific congenital or acquired condition may be considered to have a developmental disability without meeting three or more of the criteria described in subdivisions 1 through 5 of this definition if the individual, without services and supports, has a high probability of meeting those criteria later in life.

"Family member" means an immediate family member of an individual receiving services or the principal caregiver of that individual. A principal caregiver is a person who acts in the place of an immediate family member, including other relatives and foster care providers, but does not have a proprietary interest in the care of the individual receiving services. (§ 37.2-100 of the Code of Virginia)

~~"Individual and Family Support" means an array of individualized items and services that are intended to support the continued residence of an individual with intellectual or developmental disabilities (ID/DD) in his own or the family home.~~

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

"IFSP Guidelines" means "The Department of Behavioral Health and Developmental Services Individual and Family Support Program Guidelines," DD 07, Version January 9, 2023, as incorporated by reference into this chapter.

"Individual and Family Support Program" or "IFSP" means an array of individualized person-centered and family-centered resources, supports, items, services, and other assistance approved by the department that are intended to support the continued residence of an individual with developmental disabilities who is on the waiting list for a Medicaid Home and Community-Based Services DD Waiver in the individual's own home or the family home, which includes the home of the principal caregiver.

"Individual and Family Support Program State Council" or "IFSP State Council" means an advisory group of stakeholders selected by the department that shall provide consultation to the department on creating a family support program intended to increase the resources for individuals and families and promote community engagement and coordination. The IFSP State Council shall include individuals with DD and family members of individuals with DD.

12VAC35-230-20. Program description.

A. The Individual and Family Support Program assists individuals with ~~intellectual disability or~~ developmental disabilities and their family members to access needed person-centered and family-centered resources, supports, services, and other assistance ~~as approved by the department. As such, Individual and Family Support Program funds shall be distributed directly to the requesting individual or family member or a third party designated by the individual or family member.~~ ~~B.~~ The overall objective of the Individual and Family Support Program is to support the continued residence of an individual with ~~intellectual or~~ developmental disabilities in ~~his~~ that individual's own home or the family home, which ~~include~~ includes the home of a principal caregiver.

B. The department shall operate the IFSP directly or through a third party designated by the department to administer all or part of the IFSP, based on guidelines developed collaboratively by the department and the department's IFSP State Council.

C. ~~Individual and Family Support Program~~ IFSP funds shall be distributed directly to the requesting individual or custodial family member or a third party designated by the individual or custodial family member. IFSP funds shall not supplant or in any way limit the availability of services provided through a Medicaid Home and Community-Based DD Waiver~~,~~; Early and Periodic Screening, Diagnosis, and Treatment~~,~~; or similar programs.

12VAC35-230-30. ~~Program eligibility requirements.~~ (Repealed.)

~~Eligibility for Individual and Family Support Program funds shall be limited to individuals who are living in their own or a family home and are on the statewide waiting list for the Intellectual Disability (ID) Medicaid Waiver or the Individual and Family Developmental Disabilities Support (IFDDS) Medicaid Waiver and family members who are assisting those individuals.~~

12VAC35-230-31. Community coordination.

The department shall:

1. Ensure an annual public input process that encourages the continued residence of individuals on the waiting list for a Medicaid Home and Community-Based DD Waiver in community settings.

2. Establish the IFSP State Council.

3. Develop, in coordination with the IFSP State Council, a strategic plan that is consistent with this chapter and the purpose of the IFSP and that is updated as necessary as determined by the department.

4. Provide technical assistance to individuals or family members to facilitate an individual's or a family member's access to covered services and supports listed in 12VAC35-230-55 that are intended to enhance or improve the individual's or family member's quality of life and promote the independence and continued residence of an individual with DD in the individual's own home or the family home, which includes the home of a principal caregiver.

12VAC35-230-35. Program eligibility requirements and policies.

A. Eligibility for IFSP funds shall be limited to individuals who are living in their own home or a family home and are on the statewide waiting list for a Medicaid Home and Community-Based DD Waiver and their custodial family members who are assisting those individuals.

B. The department, based on information gathered through public input and in collaboration with the IFSP State Council, shall establish eligibility criteria as published in the IFSP Guidelines, the award process, the appeals process, and any other protocols necessary for ensuring the effective use of state funds. All procedures shall be published annually in the IFSP Guidelines prior to opening the funding opportunity.

C. For each funding period, the department shall develop and publish the following information on the IFSP:

1. Criteria for prioritized funding categories;

2. A summary of allowable expenditures;

3. Application deadlines; and

4. Award notification schedules.

D. The IFSP Guidelines shall be reviewed and updated annually.

12VAC35-230-40. ~~Program implementation.~~ (Repealed.)

~~A. Individual and Family Support Program funds shall be limited by the amount of funds allocated to the program by the General Assembly. Department approval of funding requests shall not exceed the funding available for the fiscal year.~~

~~B. Based on funding availability, the department shall establish an annual individual financial support limit, which is the maximum annual amount of funding that can be provided to support an eligible individual during the applicable fiscal year.~~

~~C. Individual and Family Support Program funds may be provided to individuals or family members in varying amounts, as requested and approved by the department, up to the established annual individual financial support limit.~~

~~D. On an annual basis, the department shall announce Individual and Family Support Program total funding availability and the annual individual financial support limit for the applicable fiscal year. This announcement shall include a summary of covered services, the application, and the application review criteria.~~

~~E. Individuals and family members may submit applications for Individual and Family Support Program funding as needs arise throughout the year. Applications shall be considered by the department on a first come, first served basis until the annual allocation appropriated to the program by the General Assembly for the applicable fiscal year has been expended.~~

~~F. Individuals and their family members may apply for Individual and Family Support Program funding each year and may submit more than one application in a single year; however, the total amount approved during the year shall not exceed the annual individual financial support limit.~~

12VAC35-230-45. Program implementation.

A. IFSP funds shall be limited by the amount of funds allocated to the IFSP by the General Assembly. The department approval of funding requests shall not exceed the funding available for the fiscal year. Based on information gathered through relevant data and public input, and in collaboration with the IFSP State Council, the department shall establish annual funding categories.

B. IFSP funds may be provided to individuals or custodial family members in varying amounts, as determined by the department's prioritized funding categories.

12VAC35-230-50. ~~Covered services and supports.~~ (Repealed.)

~~Services and items funded through the Individual and Family Support Program are intended to support the continued residence of an individual in his own or the family home and may include:~~

~~1. Professionally provided services and supports, such as respite, transportation services, behavioral consultation, and behavior management;~~

~~2. Assistive technology and home modifications, goods, or products that directly support the individual;~~

~~3. Temporary rental assistance or deposits;~~

~~4. Fees for summer camp and other recreation services;~~

~~5. Temporary assistance with utilities or deposits;~~

~~6. Dental or medical expenses of the individual;~~

~~7. Family education, information, and training;~~

~~8. Peer mentoring and family-to-family supports;~~

~~9. Emergency assistance and crisis support; or~~

~~10. Other direct support services as approved by the department.~~

12VAC35-230-55. Covered services and supports.

Services and items funded through the IFSP as published in the IFSP Guidelines are intended to support the continued residence of an individual in that individual's own home or the family home and may include (i) safe community living, (ii) improved health outcomes, and (iii) community integration. No services or items shall be funded by the IFSP if not listed in the IFSP Guidelines or if covered by another entity.

12VAC35-230-60. ~~Application for funding.~~ (Repealed.)

~~A. Eligible individuals or family members who choose to apply for Individual and Family Support Program funds shall submit a completed application to the department.~~

~~B. Completed applications shall include the following information:~~

~~1. A detailed description of the services or items for which funding is requested;~~

~~2. Documentation that the requested services or items are needed to support the continued residence of the individual with ID/DD in his own or the family home and no other public funding sources are available;~~

~~3. The requested funding amount and frequency of payment; and~~

~~4. A statement in which the individual or family member:~~

~~a. Agrees to provide the department with documentation to establish that the requested funds were used to purchase only approved services or items; and~~

~~b. Acknowledges that failure to provide documentation that the requested funds were used to purchase only approved services or items may result in recovery of such funds and denial of subsequent funding requests.~~

~~C. The application shall be signed by the individual or family member requesting the funding.~~

12VAC35-230-65. Application for funding.

A. Eligible individuals or custodial family members who choose to apply for IFSP funds shall submit a completed application to the department.

B. Completed applications shall include the following information:

1. A description of the services or items for which funding is requested;

2. Acknowledgment that the requested services or items are needed to support the continued residence of the individual with DD in that individual's own home or the family home and no other public funding sources are available;

3. The requested funding amount; and

4. A statement in which the individual or custodial family member:

a. Agrees to provide to the department, if requested, documentation that the requested funds were used to purchase only services or items described in the application and approved by the department; and

b. Acknowledges that failure to provide documentation, when requested, that the funds applied for were used to purchase only services or items described in the application and approved by the department may result in recovery of such funds and denial of subsequent funding requests.

C. The application shall be signed by the individual or custodial family member requesting the funding.

12VAC35-230-70. ~~Application review criteria.~~ (Repealed.)

~~Upon receipt of a completed application, the department shall:~~

~~1. Verify that the individual is on the statewide ID or IFDDS Medicaid Waiver waiting list;~~

~~2. Confirm that the services or items for which funding is requested are eligible for funding in accordance with 12VAC35-230-50;~~

~~3. Determine that the services or items for which funding is requested are needed to support the continued residence of the individual with ID/DD in his own or the family home;~~

~~4. Determine that other public funding sources have been fully explored and utilized and are not available to purchase or provide the requested services or items;~~

~~5. Evaluate the cost of the requested services or items; and~~

~~6. Consider past performance of the individual and family members regarding compliance with this chapter.~~

12VAC35-230-75. Reporting.

A. For each funding period, the department shall develop and publish a summary that details the total dollar amount of funded awards, a summary of expenditure requests, the number of applications received, and the number of applications and individuals approved for receipt of IFSP funds.

B. The department, with input from the IFSP State Council, shall develop an annual summary of accomplishments toward meeting the goals of the Virginia State Plan to Increase Individual and Family Supports.

12VAC35-230-80. ~~Funding decision-making process.~~ (Repealed.)

~~A. Applications may be approved at a reduced amount when the amount requested exceeds a reasonable amount as determined by department staff as being necessary to purchase the services or items.~~

~~B. Applications shall be denied if the department determines that:~~

~~1. The service or item for which funding is requested is not eligible for funding in accordance with 12VAC35-230-50;~~

~~2. The request exceeds the maximum annual individual financial support limit for the applicable fiscal year;~~

~~3. Other viable public funding sources have not been fully explored or utilized;~~

~~4. The requesting individual or family member has not used previously received Individual and Family Support Program funds in accordance with the department's written notice approving the request or has failed to comply with these regulations; or~~

~~5. The total annual Individual and Family Support Program funding appropriated by the General Assembly has been expended for the applicable fiscal year.~~

~~C. The department shall provide a written notice to the individual or family member who submitted the application indicating the funding decision.~~

~~1. Approval notices shall include:~~

~~a. The services, supports, or other items for which funding is approved;~~

~~b. The amount and time frame of the financial allocation;~~

~~c. The expected date that the funds should be released; and~~

~~d. Financial expenditure documentation requirements, and the date or dates by which this documentation shall be provided to the department.~~

~~2. For applications where funding is denied or approved at a reduced amount, the department's notice shall state the reason or reasons why the requested services, supports, or other items were denied or were approved at a reduced amount and the process for requesting the department to reconsider its funding decision.~~

12VAC35-230-85. Funding decision-making process.

A. Applications shall be denied if the department determines that the service or item for which funding is requested is not eligible for funding in accordance with 12VAC35-230-55, other public funding sources are available, or the total annual IFSP funding appropriated by the General Assembly has been expended for the applicable fiscal year.

B. Additionally, potential grounds for denial shall include if the requesting individual or custodial family member has not used previously received IFSP funds in accordance with the department's written notice approving the request or has failed to comply with this chapter.

C. The department shall provide a written notice to the individual or custodial family member who submitted the application indicating the funding decision, including the reason for denial of funding, if applicable.

12VAC35-230-90. Requests for reconsideration.

A. Individuals or custodial family members who disagree with the determination of the department may submit a written request for reconsideration to the commissioner~~,~~ or ~~his~~ the commissioner's designee~~,~~ within 30 days of the date of the written notice of denial or approval at a reduced amount.

B. The commissioner~~,~~ or ~~his~~ the commissioner's designee~~,~~ shall provide an opportunity for the person requesting reconsideration to submit for review any additional information or reasons why the funding should be approved as originally requested.

C. The commissioner~~,~~ or ~~his~~ the commissioner's designee, after reviewing all submitted materials shall render a written decision on the request for reconsideration within 30 calendar days of the receipt of the request and shall notify all involved parties in writing. The commissioner's decision shall be binding.

D. Applicants may obtain further review of the decision in accordance with the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

12VAC35-230-100. Post-funding review.

A. Utilization review of documentation or verification of funds expended may be undertaken by department staff. Reviews may include home visits to view items purchased or services delivered.

B. Individuals and family members receiving ~~Individual and Family Support Program~~ IFSP funds shall permit the department representatives to conduct utilization reviews, including home visits.

C. Individuals and family members receiving ~~Individual and Family Support Program~~ IFSP funds shall fully cooperate with such reviews and provide all information requested by the department.

D. Failure to use funds in accordance with the ~~department's written notice~~ IFSP Guidelines or provide documentation, if requested, that the funds were used to purchase only approved services or items as described in the application and approved by the department may result in recovery of such by the department.

12VAC35-230-110. Termination of funding for services, supports, or other assistance.

Funding through the ~~Individual and Family Support Program~~ IFSP shall be terminated when the individual is enrolled in ~~the ID or IFDDS~~ a Medicaid Home and Community-Based (HCBS) DD Waiver, if the individual is found to be no longer eligible to be on a waiting list for a Medicaid HCBS DD Waiver in accordance with 12VAC30-122-90 and any appeal has been exhausted, or if approved funds are used for purposes not approved by the department in its written notice. Any funds approved, but not released, will be forfeited in such circumstances.

DOCUMENTS INCORPORATED BY REFERENCE (12VAC35-230)

Department of Behavioral Health and Developmental Services, Individual and Family Support Program Guidelines, DD 07, Version January 9, 2023

VA.R. Doc. No. R23-4560; Filed January 19, 2023, 5:48 p.m.

TITLE 14. INSURANCE

STATE CORPORATION COMMISSION

Proposed 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: **14VAC5-410. Rules Governing Multiple Employer Welfare Arrangements (amending 14VAC5-410-20, 14VAC5-410-30, 14VAC5-410-40, 14VAC5-410-70).**

14VAC5-415. Rules Governing Self-Funded Multiple Employer Welfare Arrangements (adding 14VAC5-415-10 through 14VAC5-415-130).

Statutory Authority: §§ 12.1-13, 38.2-223, and 38.2-3420 of the Code of Virginia.

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

Public Comment Deadline: March 1, 2023.

Agency Contact: Daryl Hepler, Manager, Bureau of Insurance, State Corporation Commission, P.O. Box 1157, Richmond, VA 23218, telephone (804) 371-9999, or email daryl.hepler@scc.virginia.gov.

Summary:

Pursuant to Chapters 404 and 405 of the 2022 Acts of Assembly, the proposed amendments provide for licensure of self-funded multiple employer welfare arrangements (MEWAs), including (i) limiting Chapter 410 to applicability to fully insured MEWAs; and (ii) establishing a new chapter, Chapter 415, which includes the requirements for licensure as a self-funded MEWA, including an MEWA's financial condition, solvency requirements, insolvency plan, and exclusion from the Virginia Life, Accident and Sickness Insurance Guaranty Association.

AT RICHMOND, DECEMBER 28, 2022

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. INS-2022-00190

Ex Parte: In the matter of amending Rules
Governing Multiple Employer Welfare
Arrangements and Adopting Rules Governing
Self-Funded Multiple Employer Welfare Arrangements

ORDER TO TAKE NOTICE

Section 12.1-13 of the Code of Virginia ("Code") provides that "[i]n the administration and enforcement of all laws within its jurisdiction, the [State Corporation Commission ("Commission")] shall have the power to promulgate rules and regulations[.]" Section 38.2-223 of the Code provides that after notice and opportunity for all interested parties to be heard, the Commission may issue any rules and regulations necessary or appropriate for the administration and enforcement of Title 38.2 of the Code. Section 38.2-3420 B 4 of the Code provides that the Commission may adopt regulations applicable to self-funded multiple employer welfare arrangements ("MEWAs").[1]

The rules and regulations issued by the Commission pursuant to § 38.2-223 of the Code are set forth in Title 14 of the Virginia Administrative Code. A copy may be found at: law.lis.virginia.gov/admincode/title14/agency5/.

The Bureau of Insurance ("Bureau") has submitted to the Commission a proposal to: (1) amend the Rules in Chapter 410 of Title 14 of the Virginia Administrative Code entitled "Rules Governing Multiple Employer Welfare Arrangements," which are set out at 14VAC5-410-10 through 14VAC5-410-80 ("Chapter 410"); and (2) adopt new Chapter 415 of Title 14 of the Virginia Administrative Code entitled "Rules Governing Self-Funded Multiple Employer Welfare Arrangements," which sets forth new Rules at 14VAC5-415-10 through 14VAC5-415-130 ("Chapter 415").

The amendment of Chapter 410 and the adoption of Chapter 415 are necessary to effectuate recent amendments to Chapter 34 of Title 38.2 of the Code providing for the licensure of self-funded MEWAs by the Commission.[2] The proposed amendments to Chapter 410 limit that chapter's applicability to fully insured MEWAs.[3] New Chapter 415 establishes the

requirements for licensure as a self-funded MEWA, and "address[es] the self-funded MEWA's financial condition, solvency requirements, and insolvency plan and its exclusion, pursuant to § 59.1-592, from the Virginia Life, Accident and Sickness Insurance Guaranty Association established under Chapter 17 (§ 38.2-1700 et seq.)".[4]

NOW THE COMMISSION, having considered the Bureau's proposal and the applicable law, is of the opinion and finds that reasonable notice of the proposal to amend Chapter 410 and adopt Chapter 415 should be given, interested parties should be afforded an opportunity to be heard in accordance with the Commission's Rules of Practice and Procedure, 5 VAC 5-20-10 et seq., and the proposal to amend Chapter 410 and adopt Chapter 415 should be considered for adoption with a proposed effective date of May 1, 2023.

Accordingly, IT IS ORDERED THAT:

(1) The proposal to amend Rules at Chapter 410 entitled "Rules Governing Multiple Employer Welfare Arrangements" and to adopt new Rules designated as Chapter 415 entitled "Rules Governing Self-Funded Multiple Employer Welfare Arrangements" are attached hereto and made a part hereof.

(2) All interested persons who desire to comment in support of or in opposition to, or request a hearing to consider, the proposal to amend Chapter 410 and adopt Chapter 415 shall file such comments and/or hearing requests on or before March 1, 2023, with the Clerk of the Commission, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218. Requests for a hearing shall state why a hearing is necessary and why the issues cannot be adequately addressed in written comments. Interested persons desiring to submit comments electronically may do so by following the instructions at the Commission's website: scc.virginia.gov/pages/Case-Information. All comments shall refer to Case No. INS-2022-00190.

(3) The Bureau shall file its response to any comments filed pursuant to Ordering Paragraph (2) on or before April 3, 2023.

(4) The Bureau shall provide notice of the proposal to amend Chapter 410 and adopt Chapter 415 to all carriers licensed in Virginia to write accident and sickness insurance and to all persons known to the Bureau to have an interest in accident and sickness insurance.

(5) The Commission's Office of General Counsel shall cause a copy of this Order, together with the proposal to amend and adopt new rules, to be forwarded to the Virginia Registrar of Regulations for appropriate publication in the Virginia Register of Regulations.

(6) The Commission's Division of Information Resources shall make available this Order and the attached proposal on the Commission's website: scc.virginia.gov/pages/Case-Information.

(7) The Bureau shall file with the Clerk of the Commission a certificate of compliance with the notice requirements of Ordering Paragraph (4) above.

A COPY hereof shall be sent electronically by the Clerk of the Commission to:

C. Meade Browder, Jr., Senior Assistant Attorney General, Office of the Attorney General, Division of Consumer Counsel, 202 North 9th Street, 8th Floor, Richmond, Virginia 23219-3424, at mbrowder@oag.state.va.us; 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 Donald Beatty.

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[1]In its 2022 session, the Virginia General Assembly amended Chapter 34 of Title 38.2 of the Code to provide for licensure of self-funded MEWAs. See 2022 Va. Acts Chs. 404 and 405.

[2]See 2022 Va. Acts Chs. 404 and 405.

[3]In its proposed amendments to Chapter 410, the Bureau proposes changing the title of that chapter to "Rules Governing Fully Insured Multiple Employer Welfare Arrangements."

[4]See § 38.2-3420 B 4 of the Code.

Chapter 410
Rules Governing Fully Insured Multiple Employer Welfare Arrangements

14VAC5-410-20. Applicability and scope.

A. This chapter shall apply to all multiple employer welfare arrangements offering or providing coverage in this Commonwealth if any of the following conditions is met:

1. The multiple employer welfare arrangement is domiciled in Virginia;

2. At least one employer whose principal office or headquarters is located in Virginia provides health care benefits to his employees through the multiple employer welfare arrangement, regardless of the plan's place of domicile; or

3. At least one employee who is employed in Virginia and who has been initially enrolled in the plan in Virginia is being provided health care benefits through the multiple employer welfare arrangement, regardless of the plan's place of domicile or the location of the employer's principal office or headquarters.

B. Multiple employer welfare arrangements shall be subject to all of the provisions of Title 38.2 of the Code of Virginia to the extent that such provisions are applicable to multiple employer welfare arrangements in accordance with § 38.2-3421 of the Code of Virginia.

C. This chapter shall not apply to self-funded multiple employer welfare arrangements licensed pursuant to Rules Governing Self-Funded Multiple Employer Welfare Arrangements (14VAC5-415).

14VAC5-410-30. Definitions.

As used in this chapter:

"Commission" means the State Corporation Commission.

"Contribution" means the amount paid or payable by the employer or employee for services provided through the multiple employer welfare arrangement.

"Direct basis" means that the liability of the insurer, health maintenance~~,~~ organization, health services plan, or dental or optometric services plan runs directly to the insured employee or certificate holder.

"Domicile" means the situs of the trust through which the multiple employer welfare arrangement is established, the plan's place of incorporation or, if not set up through a trust or incorporated, the location of the plan's headquarters.

"Fully insured" means all of the covered benefits are (i) insured on a direct basis by an insurance company licensed and in good standing to transact the business of insurance in Virginia pursuant to Title 38.2 of the Code of Virginia or (ii) arranged for or provided on a direct basis by (a) a health services plan licensed and in good standing in Virginia pursuant to Chapter 42 (§ 38.2-4200 et seq.) of Title 38.2 of the Code of Virginia, (b) a health maintenance organization licensed and in good standing in Virginia pursuant to Chapter 43 (§ 38.2-4300 et seq.) of Title 38.2 of the Code of Virginia, (c) a dental or optometric services plan licensed and in good standing in Virginia pursuant to Chapter 45 (§ 38.2-4500 et seq.) of Title 38.2 of the Code of Virginia, or (d) any combination thereof. The existence of contracts of reinsurance will not be considered in determining whether a plan is "fully insured."

"Good standing" means the license of any (i) company to transact the business of insurance in the Commonwealth of Virginia pursuant to Title 38.2 of the Code of Virginia, (ii) health services plan licensed pursuant to Chapter 42 (§ 38.2-4200 et seq.) of Title 38.2 of the Code of Virginia, (iii) health maintenance organization licensed pursuant to Chapter 43 (§ 38.2-4300 et seq.) of Title 38.2 of the Code of Virginia, or (iv) dental or optometric services plan licensed pursuant to Chapter 45 (§ 38.2-4500 et seq.) of Title 38.2 of the Code of Virginia where the license is not suspended or revoked, or the company, health services plan, health maintenance organization, or dental or optometric services plan is not precluded by order of the ~~Commission~~ commission from soliciting, negotiating, procuring, or effecting contracts of insurance.

"Health care services" means services ~~which~~ that are furnished to an individual for the purpose of preventing, alleviating, or healing human illness, injury, or physical disability. Such terminology may include services for optometric or dental care.

"Member" means an employer ~~which~~ that participates in a multiple employer welfare arrangement.

"Multiple employer welfare arrangement" means any plan or arrangement ~~which~~ that is established or maintained for the purpose of offering or providing coverage for health care services, whether such coverage is by direct payment, reimbursement, or otherwise, to employees of two or more employers, or to their beneficiaries except that such term does not include any such plan or other arrangement ~~which~~ that is established or maintained:

1. Under or pursuant to one or more agreements ~~which~~ that the Secretary of the ~~United States~~ U.S. Department of Labor finds to be collective bargaining agreements, or

2. By a rural electric cooperative.

For purposes of the definition of multiple employer welfare arrangement:

a. Two or more trades or businesses, whether or not incorporated, shall be deemed a single employer if such trades or businesses are within the same control group;

b. The term "control group" means a group of trades or businesses under common control;

c. The determination of whether a trade or business is under "common control" with another trade or business shall be determined under regulations of the Secretary of the ~~United States~~ U.S. Department of Labor applying principles similar to the principles applied in determining whether employees of two or more trades or businesses are treated as employed by a single employer under ~~section~~ § 4001(b) of the Employee Retirement Income Security Act, (29 USCS § 1301(b)), except that, for purposes of this subdivision, common control shall not be based on an interest of less than 25%; and

d. The term "rural electric cooperative" means:

(1) Any organization ~~which~~ that is exempt from tax under ~~section~~ § 501(a) of the Internal Revenue Code of 1986 (26 USC § 501(a)) and ~~which~~ that is engaged primarily in providing electric service on a mutual or cooperative basis, and

(2) Any organization described in paragraph (4) or (6) of ~~section~~ § 501(c) of the Internal Revenue Code of 1986 (26 USC § 501(c)(4) or (6)) ~~which~~ that is exempt from tax under ~~section~~ § 501(a) of such Code (26 USC § 501(a)) and at least 80% of the members of which are organizations described in subdivision d (1) of this definition.

"Self-funded multiple employer welfare arrangement" or "self-funded MEWA" means any multiple employer welfare arrangement that is not fully insured by a licensed insurance company. This term includes a benefit consortium established under Chapter 55 (§ 59.1-589 et seq.) of Title 59.1 of the Code of Virginia.

14VAC5-410-40. Licensing and filing requirements.

A. A multiple employer welfare arrangement that is not fully insured as defined in this chapter shall not operate in this Commonwealth without ~~first~~ (i) complying with the requirements of Rules Governing Self-Funded Multiple Employer Welfare Arrangements (14VAC5-415) or (ii) meeting the criteria and becoming appropriately licensed as an insurance company, health maintenance organization, health services plan, or a dental or optometric services plan pursuant to Title 38.2 of the Code of Virginia.

B. A fully insured multiple employer welfare arrangement shall not operate in this Commonwealth without first filing with the ~~Commission~~ commission:

1. The names, addresses, and biographical summaries of the plan's trustees, officers, directors, or other members of the plan's governing body.

2. The names, addresses, and qualifications of individuals responsible for the conduct of the plan's affairs, including any third-party administrators.

3. The names, addresses, and qualifications of persons who will solicit, negotiate, procure, or effect applications for coverage with the plan.

4. The names and addresses of employers participating in the plan.

5. Proof of coverage showing that the plan is fully insured by an insurer, health maintenance organization, health services plan, or dental or optometric services plan as required by the definition of "fully insured" in 14VAC5-410-30 ~~of this chapter~~. Proof of coverage shall be submitted on a form prescribed by the ~~Commission~~ commission and shall include ~~but not be limited to~~ (i) a copy of the policy insuring the plan; (ii) confirmation from the insurer, health maintenance organization, health services plan, or a dental or optometric services plan that coverage is in force; and (iii) a statement indicating the length of time coverage has been in force.

6. Any other information the ~~Commission~~ commission may require including ~~but not limited to~~ information pertaining to the adequacy of the plan's level of reserves and contributions.

C.1. If a multiple employer welfare arrangement changes coverage or does not remain fully insured as the term is defined in 14VAC5-410-30 ~~of this chapter~~, the plan shall notify the ~~Commission~~ commission at least 30 days prior to the effective date of any change or reduction in coverage.

2. Any multiple employer welfare arrangement ~~which~~ that ceases to remain fully insured shall, at least 30 days prior to the effective date of coverage termination, (i) notify the ~~Commission~~ commission of a replacement policy in accordance with subdivision B 5 of this section, (ii) apply for a license as a self-funded MEWA pursuant to 14VAC5-415, or ~~(ii)~~ (iii) apply for a license as an insurer, health maintenance organization, health services plan, or a dental or optometric services plan and be subject to all applicable provisions of Title 38.2 of the Code of Virginia. Such plan shall not be required to cease operations or discontinue benefits to existing members during this 30-day period. However, such plan shall not solicit, negotiate, procure, or effect coverage for new enrollments other than for dependents of employees already enrolled during this 30-day period unless (i) the plan has been licensed as required by this chapter, (ii) the plan becomes fully insured as the term is defined in 14VAC5-410-30 ~~of this chapter~~ and has provided the ~~Commission~~ commission with proof of coverage as required by subdivision B 5 of this section, or (iii) the plan is granted an extension by the ~~Commission~~ commission for good cause shown. Nothing contained in this section shall prevent the ~~Commission~~ commission from proceeding with an action in accordance with the provisions of 14VAC5-410-60 ~~of this chapter~~.

3. Any insurer, health maintenance organization, health services plan, or dental or optometric services plan providing coverage to a multiple employer welfare arrangement shall notify the ~~Commission~~ commission and the multiple employer welfare arrangement of any change or reduction in coverage at least 45 days prior to the effective date of such change or reduction in coverage.

4. Any insurer, health maintenance organization, health services plan, or dental or optometric services plan failing to provide notice to the ~~Commission~~ commission as required by subdivision 3 of this subsection shall be required to continue coverage to the multiple employer welfare arrangement for an additional 45 days after notice of cancellation is provided to the ~~Commission~~ commission.

D. In addition to the filing requirements stated in subsection B of this section, each fully insured multiple employer welfare arrangement shall file on or before March 1 of each year (i) proof of coverage as set forth in subdivision B 5 of this section and (ii) notice of any changes in information as filed with the ~~Commission~~ commission.

E. Any multiple employer welfare arrangement offering or providing coverage in this Commonwealth shall be subject to examination by the ~~Commission~~ commission in accordance with § 38.2-3422 of the Code of Virginia.

F. Notwithstanding any other provision of this chapter, any multiple employer health care plans licensed and operating, or whose license application is pending with the ~~Commission~~ commission on the effective date of this chapter and subsequently approved by the ~~Commission~~ commission may continue to operate as a multiple employer health care plan in the Commonwealth of Virginia, pursuant to the ~~Commission's~~ commission's Rules Governing Multiple Employer Health

Care Plans, for a period not to exceed three years after ~~the effective date of this chapter~~ January 15, 1995.

14VAC5-410-70. Service of process.

Suits, actions, and proceedings may be begun against any multiple employer welfare arrangement providing coverage in this Commonwealth by serving process on any trustee, director, officer, or agent of the plan, or, if none can be found, on the ~~clerk~~ Clerk of the Commission. ~~If any multiple employer welfare arrangement that is not fully insured provides coverage in this Commonwealth without obtaining a license as required by 14VAC5-410-40 of this chapter, it shall be deemed to have thereby appointed the Clerk of the Commission its attorney for service of process.~~ Service of process shall be made as provided for in Article 1 (§ 38.2-800 et seq.) of Chapter 8 of Title 38.2.

Chapter 415
Rules Governing Self-Funded Multiple Employer Welfare Arrangements

14VAC5-415-10. Applicability and scope.

A. This chapter shall apply to self-funded multiple employer welfare arrangements that issue health benefit plans in Virginia, including a benefits consortium established under Chapter 55 (§ 59.1-589 et. seq.) of Title 59.1 of the Code of Virginia.

B. This chapter shall not apply to a not-for-profit benefits consortium established under § 15.2-1517.1 of the Code of Virginia, a benefits consortium established under § 23.1-106 of the Code of Virginia, a multiple employer welfare arrangement meeting the requirements of § 38.2-3420 C of the Code of Virginia, or a fully insured multiple employer welfare arrangement registered pursuant to Rules Governing Fully Insured Multiple Employer Welfare Arrangements (14VAC5-410).

C. Self-funded multiple employer welfare arrangements shall be subject to the provisions of Title 38.2 of the Code of Virginia to the extent that such provisions are applicable to self-funded multiple employer welfare arrangements in accordance with § 38.2-3420 of the Code of Virginia.

14VAC5-415-20. Definitions.

Terms found in this chapter are used as defined in § 38.2-3431 B of the Code of Virginia. The following words and terms when used in this chapter shall have the following meaning unless the context clearly indicates otherwise:

"Benefits consortium" means a trust that is a self-funded MEWA, as defined in § 38.2-3420 of the Code of Virginia, and that complies with the conditions set forth in § 59.1-590 of the Code of Virginia.

"Commission" means the State Corporation Commission.

"ERISA" means the federal Employee Retirement Income Security Act of 1974, P.L. 93-406, 88 Stat. 829, as amended.

"Fully insured" means all of the covered benefits are (i) insured on a direct basis by an insurance company licensed and in good standing to transact the business of insurance in Virginia pursuant to Title 38.2 of the Code of Virginia or (ii) arranged for or provided on a direct basis by (a) a health services plan licensed and in good standing in Virginia pursuant to Chapter 42 (§ 38.2-4200 et seq.) of Title 38.2 of the Code of Virginia; (b) a health maintenance organization licensed and in good standing in Virginia pursuant to Chapter 43 (§ 38.2-4300 et seq.) of Title 38.2 of the Code of Virginia; (c) a dental or optometric services plan licensed and in good standing in Virginia pursuant to Chapter 45 (§ 38.2-4500 et seq.) of Title 38.2 of the Code of Virginia; or (d) any combination thereof. The existence of contracts of reinsurance will not be considered in determining whether a plan is "fully insured."

"Self-funded multiple employer welfare arrangement" or "self-funded MEWA" means any multiple employer welfare arrangement that is not fully insured by a licensed insurance company. This term includes a benefit consortium established under Chapter 55 (§ 59.1-589 et seq.) of Title 59.1 of the Code of Virginia.

14VAC5-415-30. Establishment of self-funded multiple employer welfare arrangements.

A. No person shall establish or operate a self-funded multiple employer welfare arrangement in the Commonwealth without obtaining a license from the commission. Any person may apply to the commission for a license to establish and operate a self-funded MEWA in compliance with this chapter.

B. Each application for a license shall be verified by an officer or authorized representative of the applicant, shall be in a form prescribed by the commission, and shall set forth or be accompanied by the following:

1. A copy of any basic organizational documents of the applicant, including the articles of incorporation, articles of association, trust agreement, or other applicable documents, and all amendments to those documents;

2. A copy of the bylaws, rules and regulations, or any similar document regulating the conduct of the internal affairs of the applicant;

3. The names, addresses, and official positions, and biographical information on forms acceptable to the commission of each member of the governing body and any person with authority to manage or establish policy;

4. Financial statements showing the applicant's assets, liabilities, and sources of financial support and a copy of the applicant's most recent audited financial statement completed no more than one year prior to the date of application;

5. A complete description of the plan of operation, including (i) the method of marketing the plan, (ii) a statement regarding the sources of working capital as well as any other sources of funding, and (iii) a description of any insurance, reinsurance, or alternative coverage arrangements proposed, including specific, aggregate, and terminal excess insurance or stop loss insurance;

6. A financial feasibility plan that includes (i) detailed enrollment projections; (ii) the methodology for determining premium rates to be charged during at least the first three years of operations and extending one year beyond the anticipated break-even point certified by an actuary; and (iii) a projection, along with material assumptions, of balance sheets, cash flow statements showing capital expenditures and purchase and sale of investments and income statements on a quarterly basis for at least three years and extending one year beyond the anticipated break-even point;

7. The names, addresses, and qualifications of persons responsible for the conduct of the applicant's affairs, including any third-party administrators;

8. The names, addresses, and qualifications of persons who will solicit, negotiate, procure, or effect applications for coverage with the self-funded MEWA;

9. Copies of (i) policies providing specific, aggregate, and terminal excess insurance; (ii) fiduciary liability insurance; (iii) the bond that satisfies the requirements of ERISA; and (iv) guarantees or standby letters of credit;

10. A copy of the self-funded MEWA's Form M-1, Report for Multiple Employer Welfare Arrangements, for the applicable plan year;

11. A signed attestation confirming that:

a. The self-funded MEWA makes available health plans or health benefit plans that meet the requirements for health benefit plans set forth in § 38.2-3420 B 3 of the Code of Virginia;

b. The sponsoring association is a nonstock corporation formed under the Virginia Nonstock Corporation Act (§ 13.1-801 et seq. of the Code of Virginia) that has been formed and maintained in good faith for purposes other than obtaining or providing health benefits;

c. The sponsoring association does not condition membership in the association on any factor relating to the health status of an individual, including an employee of an employer member of the sponsoring association or a dependent of such an employee;

d. The sponsoring association makes any health benefit plan available to all members regardless of any factor relating to the health status of such members or individuals eligible for coverage through another member;

e. The sponsoring association does not make any health benefit plan available to any person who is not a participating employee of the association or member of the association;

f. The sponsoring association operates as a nonprofit entity under § 501(c)(5) or § 501(c)(6) of the Internal Revenue Code;

g. The sponsoring association has been in active existence for at least five years; and

h. The guarantees or standby letters of credit comply with § 59.1-590 B 7 of the Code of Virginia; and

12. Any other information the commission may require.

14VAC5-415-40. Issuance of license; fee; minimum net worth; impairment.

A. The commission shall issue a license to a self-funded MEWA after the receipt of a complete application and payment of a $500 nonrefundable application fee if the commission is satisfied that the following conditions are met:

1. The persons responsible for the conduct of the affairs of the applicant are competent, trustworthy, and reputable;

2. The self-funded MEWA is financially responsible and may reasonably be expected to meet its obligations to members and prospective members. In making this determination, the commission may consider:

a. The financial soundness of the health benefit plan's arrangements for health care services;

b. The adequacy of working capital;

c. Any agreement with an insurer, a health services plan, a government, or any other organization for insuring the payment of the cost of health care services or the provision for automatic applicability of an alternative coverage if the health care plan is discontinued;

d. The deposit of acceptable securities in an amount satisfactory to the commission, submitted in accordance with § 38.2-1045 of the Code of Virginia as a guarantee to the self-funded MEWA's liabilities to its members and creditors;

e. The applicant's net worth, which shall include minimum net worth in an amount at least equal to $4 million; and

f. A financial statement of the self-funded MEWA on the form required by 14VAC5-415-50; and

3. If applicable, the self-funded MEWA is in compliance with the requirements of § 59.1-590 B 5 through B 10 of the Code of Virginia.

B. A licensed self-funded MEWA shall have and maintain at all times the minimum net worth described in subdivision A 2 e of this section. If the commission finds that the minimum net worth of a self-funded MEWA is impaired, the commission shall issue an order requiring the self-funded MEWA to eliminate the impairment within a period not exceeding 90 days. The commission may, by order served upon the self-funded MEWA, prohibit the self-funded MEWA from issuing

any new contracts while the impairment exists. If, at the expiration of the designated period, the self-funded MEWA has not satisfied the commission that the impairment has been eliminated, an order for the rehabilitation or liquidation of the self-funded MEWA may be entered.

C. A self-funded MEWA must comply with the requirements of Chapter 55 (§ 38.2-5500 et seq.) of Title 38.2 of the Code of Virginia.

D. A self-funded MEWA must (i) operate any health benefit plans in accordance with the fiduciary duties defined in ERISA and (ii) have the power to make and collect special assessments against members, and if any assessment is not timely paid, to enforce collection of such assessment. Each member of a self-funded MEWA shall be liable for that member's allocated share of the liabilities of the self-funded MEWA.

E. A self-funded MEWA must purchase and maintain policies of specific, aggregate, and terminal excess insurance with retention levels determined in accordance with sound actuarial principles from insurers licensed to transact the business of insurance in the Commonwealth. If a self-funded MEWA replaces, modifies, or otherwise changes coverage for specific, aggregate, or terminal excess insurance, the self-funded MEWA must notify the commission at least 30 days prior to the effective date of any such change in coverage.

F. The commission may refuse to issue a license to any self-funded MEWA and may suspend or revoke the license to any licensee pursuant to Article 6 (§ 38.2-1040 et seq.) of Chapter 10 of Title 38.2 of the Code of Virginia.

G. Each self-funded MEWA licensed under this section shall renew its license with the commission annually by July 1 pursuant to § 38.2-1025 of the Code of Virginia. The renewal license shall not be issued until the self-funded MEWA has paid all fees and charges imposed on it and has complied with all other requirements of law.

14VAC5-415-50. Annual statement, additional reports, and examinations.

A. Each self-funded MEWA shall file an annual statement as provided in § 38.2-1300 of the Code of Virginia with the commission annually by March 1. The statement shall be verified by at least two principal officers and shall cover the preceding calendar year.

B. In addition to the annual statement, the commission may require a licensed self-funded MEWA to file additional reports as provided in §§ 38.2-1301 and 38.2-1301.1 of the Code of Virginia, exhibits, or statements considered necessary to secure complete information concerning the condition, solvency, experience, transactions, or affairs of the self-funded MEWA. The commission shall establish deadlines for filing these additional reports, exhibits, or statements and may require verification by any officers of the self-funded MEWA designated by the commission.

C. The commission shall examine the affairs of each self-funded MEWA and its members as provided for in § 38.2-1317 of the Code of Virginia as often as the Bureau of Insurance deems necessary. The self-funded MEWA may be required to pay to the commission the expenses incurred by it in making an examination authorized under this section.

14VAC5-415-60. Investments.

A self-funded MEWA must comply with Chapter 14 (§ 38.2-1400 et seq.) of Title 38.2 of the Code of Virginia. In doing so, a self-funded MEWA may only invest in any Category 1 investment. A self-funded MEWA may petition the commission for permission to invest in any other investment allowed under the provisions of Chapter 14 prior to making such investment.

14VAC5-415-70. Protection against insolvency.

Each self-funded MEWA shall deposit and maintain acceptable securities with the State Treasurer in amounts prescribed by § 38.2-1045 of the Code of Virginia. The deposit shall be held as a special fund in trust, as a guarantee to the self-funded MEWA's liabilities to its members and creditors. The securities shall be deposited pursuant to a system of book-entry evidencing ownership interests of the securities with transfers of ownership interests effected on the records of a depository and its participants pursuant to rules and procedures established by the depository. Upon a determination of insolvency or action by the commission pursuant to Chapter 15 (§ 38.2-1500 et seq.) of Title 38.2 of the Code of Virginia, the deposit shall be an asset subject to the provisions of Chapter 15 and shall be used to protect the interests of the self-funded MEWA's enrollees and to ensure continuation of covered services to enrollees.

14VAC5-415-80. Financial and solvency requirements.

A. The financial and solvency requirements applicable to self-funded MEWAs granted a license under this chapter, insofar as they are not inconsistent with this chapter, include Articles 3 (§ 38.2-1017 et seq.), 4 (§ 38.2-1019 et seq.), 5 (§ 38.2-1024 et seq.), 6 (§ 38.2-1040 et seq.), and 7 (§ 38.2-1045 et seq.) of Chapter 10; Articles 1 (§ 38.2-1300 et seq.), 2 (§ 38.2-1306.2 et seq.), 3 (§ 38.2-1311 et seq.), 3.1 (§ 38.2-1316.1 et seq.), and 4 (§ 38.2-1317 et seq.) and §§ 38.2-1322 through 38.2-1332 and §§ 38.2-1333 through 38.2-1334.2:3 of Article 5 of Chapter 13; Articles 1 (§ 38.2-1400 et seq.), 2 (§ 38.2-1412 et seq.), and 4 (§ 38.2-1446 et seq.) of Chapter 14; Chapter 15 (§ 38.2-1500 et seq.); and Chapter 55 (§ 38.2-5500 et seq.) of Title 38.2 of the Code of Virginia.

B. For purposes of applying this section, "insurer" when used in a section of the Code of Virginia cited in subsection A of this section shall be construed to mean and include "self-funded MEWA" unless the section cited clearly applies to self-funded MEWAs without such construction.

14VAC5-415-90. Disclosure.

A. A self-funded MEWA shall provide meaningful disclosure to its members; members' participating and prospective participating employees regarding the medical, prescription drug, dental, and vision benefits provided to participating employees of the sponsoring association or its members; and the dependents of those employees through the health benefit plans offered by the self-funded MEWA.

B. A self-funded MEWA subject to Chapter 55 (§ 59.1-589 et seq.) of Title 59.1 of the Code of Virginia shall comply with the requirements of § 59.1-591 C of the Code of Virginia.

C. All other self-funded MEWAs shall include on health benefits plans, as applicable, the substance of the information required by § 59.1-591 C of the Code of Virginia.

14VAC5-415-100. Acts of other persons.

A self-funded MEWA is responsible for the acts of all persons who solicit, negotiate, procure, or effect applications for coverage with the self-funded MEWA.

14VAC5-415-110. Violations.

Any violation of this chapter shall be punished as provided for in § 38.2-218 of the Code of Virginia and any applicable law of the Commonwealth. The provisions of §§ 38.2-219 through 38.2-222 of the Code of Virginia shall also apply to a self-funded MEWA that fails to comply with the provisions set forth in this chapter.

14VAC5-415-120. Service of process.

Suits, actions, and proceedings may be begun against a self-funded MEWA offering or providing coverage in the Commonwealth by serving process on any trustee, director, officer, or agent of the self-funded MEWA, or if none can be found, on the Clerk of the Commission. If a benefits consortium offers or provides coverage in this Commonwealth without obtaining a license as required by this chapter, it shall be deemed to have thereby appointed the Clerk of the Commission its attorney for service of process. Service of process shall be made as provided for in Article 1 (§ 38.2-800 et seq.) of Chapter 8 of Title 38.2 of the Code of Virginia.

14VAC5-415-130. Severability.

If any provision of this chapter or the application to any person or circumstance is for any reason held to be invalid, the remainder of the chapter and the application of the provision to other persons or circumstances shall not be affected.

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

MEWA Attestation R21 (eff. 5/2023)

Self-Funded MEWA Application SCCBOI153 (eff. 5/2023)

VA.R. Doc. No. R23-7418; Filed January 3, 2023, 2:33 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

VIRGINIA BOARD FOR ASBESTOS, LEAD, AND HOME INSPECTORS

Final Regulation

REGISTRAR'S NOTICE: The Virginia Board for Asbestos, Lead, and Home Inspectors is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 6 of the Code of Virginia, which excludes regulations of the regulatory boards served by the Department of Professional and Occupational Regulation pursuant to Title 54.1 of the Code of Virginia that are limited to reducing fees charged to regulants and applicants. The board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Titles of Regulations: **18VAC15-20. Virginia Asbestos Licensing Regulations (amending 18VAC15-20-53).**

18VAC15-30. Virginia Lead-Based Paint Activities Regulations (amending 18VAC15-30-163).

Statutory Authority: §§ 54.1-201 and 54.1-501 of the Code of Virginia.

Effective Date: March 1, 2023.

Agency Contact: Trisha L. Lindsey, Executive Director, Virginia Board for Asbestos, Lead, and Home Inspectors, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8595, FAX (866) 350-5354, or email alhi@dpor.virginia.gov.

Summary:

The amendments put in place a temporary reduction in the renewal and late renewal fees charged by the Virginia Board for Asbestos, Lead, and Home Inspectors for certain licenses and training program approvals until February 2025, continuing a temporary fee reduction that became effective in 2021.

18VAC15-20-53. Renewal and late renewal fees.

A. Renewal and late renewal fees are set out in this section.

Fee Type	Fee Amount	When Due
Renewal for worker, supervisor, inspector, management planner, project designer, or project monitor license	$45	With renewal application
Renewal for asbestos analytical laboratory license	$75	With renewal application
Renewal for asbestos analytical laboratory branch office	$55	With renewal application
Renewal for asbestos contractor's license	$70	With renewal application
Renewal for accredited asbestos training program approval	$125	With renewal application
Late renewal for worker, supervisor, inspector, management planner, project designer, or project monitor license (includes a $35 late renewal fee in addition to the regular $45 renewal fee)	$80	With renewal application
Late renewal for asbestos analytical laboratory license (includes a $35 late renewal fee in addition to the regular $75 renewal fee)	$110	With renewal application
Late renewal for asbestos analytical laboratory branch office (includes $35 late renewal fee in addition to the regular $55 renewal fee)	$90	With renewal application
Late renewal for asbestos contractor's license (includes a $35 late renewal fee in addition to the regular $70 renewal fee)	$105	With renewal application
Late renewal for accredited asbestos training program approval (includes a $35 late renewal fee in addition to the regular $125 renewal fee)	$160	With renewal application

~~B. For licenses expiring after February 1, 2020, and before February 1, 2021, the renewal fees shall be as follows:~~

~~Renewal for worker, supervisor, inspector, management planner, project designer, or project monitor license~~	~~$40~~
~~Renewal for asbestos analytical laboratory license~~	~~$65~~
~~Renewal for asbestos contractor's license~~	~~$60~~
~~Renewal for accredited asbestos training program approval~~	~~$75~~

~~For late renewals received after March 1, 2020, and on or before February 28, 2021, the late renewal fees shall be as follows:~~

~~Late renewal for worker, supervisor, inspector, management planner, project designer, or project monitor license~~	~~$75~~
~~Late renewal for asbestos analytical laboratory license~~	~~$100~~
~~Late renewal for asbestos contractor's license~~	~~$95~~
~~Late renewal for accredited asbestos training program approval~~	~~$110~~

~~C.~~ B. For licenses expiring after February 1, 2021, and before February 1, 2023, the renewal fees shall be as follows:

Renewal for worker, supervisor, inspector, management planner, project designer, or project monitor license	$25
Renewal for asbestos analytical laboratory license	$40
Renewal for asbestos analytical laboratory branch office	$40
Renewal for asbestos contractor's license	$30
Renewal for accredited asbestos training program approval	$40

For late renewals received after March 1, 2021, and on or before February 28, 2023, the late renewal fees shall be as follows:

Late renewal for worker, supervisor, inspector, management planner, project designer, or project monitor license	$60
Late renewal for asbestos analytical laboratory license	$75
Late renewal for asbestos analytical laboratory branch office	$75
Late renewal for asbestos contractor's license	$65
Late renewal for accredited asbestos training program approval	$75

C. For licenses expiring after February 1, 2023, and before February 1, 2025, the renewal fees shall be as follows:

Renewal for worker, supervisor, inspector, management planner, project designer, or project monitor license	$25
Renewal for asbestos analytical laboratory license	$40
Renewal for asbestos analytical laboratory branch office	$40
Renewal for asbestos contractor's license	$30
Renewal for accredited asbestos training program approval	$40

For late renewals received after March 1, 2023, and on or before February 28, 2025, the late renewal fees shall be as follows:

Late renewal for worker, supervisor, inspector, management planner, project designer, or project monitor license	$60
Late renewal for asbestos analytical laboratory license	$75
Late renewal for asbestos analytical laboratory branch office	$75
Late renewal for asbestos contractor's license	$65
Late renewal for accredited asbestos training program approval	$75

18VAC15-30-163. Renewal and late renewal fees.

A. Renewal and late renewal fees are as follows:

Fee Type	Fee Amount	When Due
Renewal for worker, supervisor, inspector, risk assessor, or project designer license	$45	With renewal application
Renewal for lead contractor license	$70	With renewal application
Renewal for accredited lead training program approval	$125	With renewal application
Late renewal for worker, supervisor, inspector, risk assessor, or project designer license (includes a $35 late renewal fee in addition to the regular $45 renewal fee)	$80	With renewal application
Late renewal for lead contractor license (includes a $35 late renewal fee in addition to the regular $70 renewal fee)	$105	With renewal application
Late renewal for accredited lead training program approval (includes a $35 late renewal fee in addition to the regular $125 renewal fee)	$160	With renewal application

~~B. For licenses expiring after February 1, 2020, and before February 1, 2021, the renewal fees shall be as follows:~~

~~Renewal for worker, supervisor, inspector, risk assessor, or project designer license~~	~~$40~~
~~Renewal for lead contractor license~~	~~$60~~
~~Renewal for accredited lead training program approval~~	~~$75~~

~~For late renewals received after March 1, 2020, and on or before February 28, 2021, the late renewal fees shall be as follows:~~

~~Late renewal for worker, supervisor, inspector, risk assessor, or project designer license~~	~~$75~~
~~Late renewal for lead contractor license~~	~~$95~~
~~Late renewal for accredited lead training program approval~~	~~$110~~

~~C.~~ B. For licenses expiring after February 1, 2021, and before February 1, 2023, the renewal fees shall be as follows:

Renewal for worker, supervisor, inspector, risk assessor, or project designer license	$25
Renewal for lead contractor license	$30

Renewal for accredited lead training program approval	$40

For late renewals received after March 1, 2021, and on or before February 28, 2023, the late renewal fees shall be as follows:

Late renewal for worker, supervisor, inspector, risk assessor, or project designer license	$60
Late renewal for lead contractor license	$65
Late renewal for accredited lead training program approval	$75

C. For licenses expiring after February 1, 2023, and before February 1, 2025, the renewal fees shall be as follows:

Renewal for worker, supervisor, inspector, risk assessor, or project designer license	$25
Renewal for lead contractor license	$30
Renewal for accredited lead training program approval	$40

For late renewals received after March 1, 2023, and on or before February 28, 2025, the late renewal fees shall be as follows:

Late renewal for worker, supervisor, inspector, risk assessor, or project designer license	$60
Late renewal for lead contractor license	$65
Late renewal for accredited lead training program approval	$75

VA.R. Doc. No. R23-7422; Filed January 11, 2023, 11:05 a.m.

BOARD OF NURSING

Fast-Track Regulation

Title of Regulation: **18VAC90-26. Regulations for Nurse Aide Education Programs (amending 18VAC90-26-10, 18VAC90-26-20, 18VAC90-26-30, 18VAC90-26-50, 18VAC90-26-70).**

Statutory Authority: §§ 54.1-2400 and 54.1-3005 of the Code of Virginia.

Public Hearing Information:

February 22, 2023 - 9 a.m. - Department of Health Professions, Perimeter Center, 9960 Mayland Drive, Conference Center 201, Board Room 3, Henrico, Virginia 23233

Public Comment Deadline: March 1, 2023.

Effective Date: March 16, 2023.

Agency Contact: Jay P. Douglas, R.N., Executive Director, Board of Nursing, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, 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 Board of Nursing the authority to promulgate regulations to administer the regulatory system. The specific authority for the board to regulate nurse aide education programs is found in § 54.1-3028.1 of the Code of Virginia.

Purpose: The purpose of this regulatory action is to ensure nurse aide programs are able to continue providing education to students in a timely manner and in a manner that protects the public health by ensuring students receive appropriate clinical training by qualified instructors. Nurse aide education programs have struggled to place nurse aide students in nursing home facilities given the restrictions that have been in place for several years due to the COVID-19 pandemic. In addition, programs have had difficulty in obtaining and retaining qualified personnel to teach in nurse aide education programs. The regulatory action is to allow other qualified health professionals to serve as instructors to nurse aide students as well as provide increased latitude that accounts for the newer nursing workforce.

Rationale for Using Fast-Track Rulemaking Process: The changes, which are deemed to be noncontroversial, were specifically prompted by a petition for rulemaking that requested that the board (i) amend the regulation that currently limit the locations nurse aide program training can occur and who could provide training and (ii) review the regulation to search for potential changes that could improve training, the accessibility of training, and the ability of nurse aide education programs to hire qualified instructional personnel. Board staff also reviewed the regulation for lack of clarity, particularly among roles of instructional personnel and maintenance of program records.

Substance: The board is amending (i) 18VAC90-26-10 to provide definitions of "clinical setting" and "direct client care" and to specify that the acronym "NNAAP" stands for "National Nurse Aide Assessment Program"; (ii) 18VAC90-26-20 to clarify that a nurse aide education program must implement a board-approved curriculum to maintain approval and to ensure that students employed by or with an offer of employment by a facility are not charged a fee by the education program; (iii) 18VAC90-26-30 to clarify and further define roles and decrease requirements for the program coordinator, primary instructor, and other instructional personnel; (iv) 18VAC90-26-50 to include a requirement that educational programs retain documentation listed in the section for two years following a site or survey visit and to eliminate the restriction on the number of hours of clinical instruction that may be provided outside of a geriatric care facility; and (v) 18VAC90-26-70 to require that programs that have not held classes for a period of one year notify the board.

Issues: The advantages to the public include nurse aide programs that can produce more and better trained nurse aides,

retain more qualified instructors, and provide nurse aides with clinical training that matches the reality of nurse aide practice in the Commonwealth. There are no disadvantages to the public. There are no advantages or disadvantages to the agency or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

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

Summary of the Proposed Amendments to Regulation. In response to a petition for rulemaking and following a review of this regulation, the Board of Nursing (Board) proposes to (i) allow nurse aide training to occur outside of a nursing home facility; (ii) allow the program coordinator or the primary instructor, but not both, to be a non-registered nurse; (iii) remove requirements for geriatric care experience for registered nurse or licensed practical nurse instructors; (iv) allow instructional personnel from other health professions to supplement the primary instructor, and to also reduce the two year experience requirement for a licensed practical nurse acting as other instructional personnel to one year; (v) specify that program documentation be maintained for two years following each site visit; and (vi) require notification if a program has been inactive for a year.

Background. Some of the proposed changes were specifically prompted by a petition for rulemaking[2] and others resulted from staff efforts to identify potential changes that could improve training, the accessibility of training, and the ability of nurse aide education programs to hire qualified instructional personnel. According to the Board, nurse aide education programs have struggled to place their students in nursing home facilities given the restrictions that have been in place for several years due to the COVID-19 pandemic.[3] In addition, programs have had difficulty in obtaining and retaining qualified personnel to teach in nurse aide education programs. In order to address these issues, the Board proposes amendments to this regulation as discussed.

Estimated Benefits and Costs. One of the proposed amendments would allow nurse aide training to occur outside of a nursing home facility. Currently, nurse aide education programs are required to provide skills training experience in a "nursing facility" specifically. Additionally, there is a limitation that only five of the 40 hours of direct client care training may occur outside of geriatric long-term care facilities. However, due to the COVID-19 pandemic and the associated restrictions on who can enter in these facilities, the education programs have struggled to comply with this requirement, which probably prompted the petition for rulemaking.[4] The Board proposes to allow skills training to occur in a "clinical setting" which is broader than the nursing facility. This proposed change would broaden the types of facilities where training can occur and should provide additional options to the education programs and their students.

The Board also proposes to change the requirements for program coordinators, primary instructors, and other instructional personnel in a way to make the requirements less restrictive. Currently, both the program coordinator and primary instructor must hold a license as a registered nurse. Under the proposed amendments, only the program coordinator or primary instructor would be required to hold a license as a registered nurse. This would allow training programs to be in compliance even if they only had a single registered nurse (acting as either the coordinator or as the primary instructor) as opposed to having to have two registered nurses on staff. Also, the requirement for direct client care experience in geriatric services for registered nurse or licensed practical nurse instructors would be removed, thereby allowing additional experience from other clinical settings. Similarly, this change would provide some relief to the training programs by expanding the pool of potential trainers. Additionally, the requirements for other instructional personnel who supplement the primary instructor would be amended to permit health professionals other than registered nurses and licensed practical nurses to become instructors. Currently, the other instructional personnel that support the primary instructor are required to be either a registered nurse or a licensed practical nurse. Moreover, the proposal would reduce the two-year experience requirement for a licensed practical nurse as other instructional personnel to one year. Again, these changes open the possibility of other health professionals supplementing the primary instructor, expand the pool of individuals who may be hired to help the primary instructor, and provide some relief to the training programs.

The common theme in the proposed changes is a shift from the emphasis on the type of education and experience gained in a nursing facility setting to that gained in other settings such as assisted living facilities, home care, and hospitals. Nursing facility care is probably more intensive overall compared to other settings, but allowing additional settings would offer additional educational and training opportunities and may thereby increase the pool of available instructors.[5] In addition, not all nurse aides actually obtain employment in a nursing home. This leads to overinvestment in this aspect of nursing aide education and training for those who may never work in a nursing facility. Under the proposed changes, the education and experience provided to nursing aides may more closely align with their actual work experience after graduation and thereby improve the allocation of scarce resources.

One of the remaining proposed changes would specify that documentation be maintained for two years following a site or survey visit. Currently, the language requires records to be maintained but does not state for how long. Specifying the recordkeeping requirements will assist the Board in its oversight responsibilities and ensure the programs have clarity about the Board's expectations. The proposed duration of two years may be more or less than what an individual program

may already be doing, and thus may extend or shorten the duration compared to their current practice. To the extent that these programs already maintain the required documentation, any extension or shortening would not introduce significant costs or benefits, but data is not available on the industry's current record keeping practices.

Finally, the Board proposes to require a program that has not held classes for one year to notify the Board of the program's inactivity. The Board states that this change is necessary because under the current regulatory language, there is a requirement to place the program's approval on inactive status if a program is inactive for one year. However, there is currently no reporting requirement for the education programs. This leads the Board to discover program closures well after the program has been inactive for one year. Thus, this change would help provide timely and accurate information to the Board in so far as which programs should be designated as inactive.

Businesses and Other Entities Affected. This regulation affects nurse aide education programs and their students. There are currently 236 nurse aide programs in Virginia. The Board does not track or regulate students, so an estimate of the number of students that would be affected is not available. The Board reports that there were 3,767 students undergoing testing for certification as a nurse aide in 2021, but that number is not comprehensive as many students do not participate in testing because they are able to work without certification. No nurse aide program or students appear to be disproportionately affected.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.[6] An adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined. As noted, the proposed changes generally allow education and training opportunities available from settings other than nursing facilities be utilized. The remaining changes regarding specification of two years in records maintenance and notification of inactive status do not appear to have the potential to pose significant costs. Thus, no adverse impact is indicated.

Small Businesses[7] Affected.[8] No data are available to assess whether the education programs meet the definition of a small business.

Localities[9] Affected.[10] The proposed amendments do not disproportionally affect any particular localities and do not introduce costs for local governments.

Projected Impact on Employment. The proposed amendments are expected to expand the pool of instructors educational programs can hire from which is essentially an increase in the available supply of potential instructors. Such a flexibility may allow them to maintain or expand the size of their programs. Thus, an increase in the number of instructors hired by the programs may be expected or a potential decrease may be avoided. However, since at least some of these instructors may hold jobs elsewhere currently, the impact on total employment may not be large.

Effected on the Use and Value of Private Property. The proposed changes that allow utilization of education and experience available in settings other than nursing facilities provide additional opportunities to the programs in terms of where they can provide training and who they can hire as instructors. These flexibilities should provide some cost avoidances and improve their asset values.

The proposed amendments do not affect 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]https://townhall.virginia.gov/l/viewpetition.cfm?petitionid=356.

[3]See page 1 at https://townhall.virginia.gov/l/GetFile.cfm?File=27\5929\9569\AgencyStatement_DHP_9569_v1.pdf.

[4]Arguably even before the pandemic, the U.S. Supreme Court's ruling on June 22, 1999, in Olmstead v. L.C. which requires that individuals with disabilities be served in the most integrated settings possible has resulted in moving many nursing home residents into community based programs severely restricting nursing home services growth over two decades and thereby educational and training opportunities available through them.

[5]One of the comments states "COVID has created an issue with interacting with patient in a long term setting and to be honest it does not give you a lot of diversity of the type of patients that you will encounter. By engaging in the same routine care of patients, CNAs can become stagnant in their skills and quite frankly that is dangerous for our long term care population. I have seen this first hand. Also, I do have hospital experience as a CNA, which is most of my professional career. The hospital setting gives you the ability to see different patients on a routine basis and allows the chance to use different skills daily making the CNA well rounded. Additionally, the CNA has the ability to learn new skills that she would necessarily not be able to learn in the long term care setting. Personally, I was able to learn to do bladder scanners on patients." See https://townhall.virginia.gov/l/ViewComments.cfm?commentid=119235.

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

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

[8]If the proposed regulatory action may have an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable

effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to § 2.2-4007.1 of the Code of Virginia, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

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

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

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

Summary:

As a result of a petition for rulemaking and following a review of the regulations governing nurse aide education programs, the amendments (i) allow nurse aide training to occur outside of a nursing home facility focusing on geriatric care; (ii) update requirements of the program coordinator, primary instructor, and other instructional personnel to clarify roles and duties of each; (iii) remove requirements for geriatric care experience for registered nurse and licensed practical nurse instructors and allow instructional personnel from other health professions to supplement the primary instructor; (iv) require program documentation be maintained for two years following each site visit; and (v) update procedures for program closures.

18VAC90-26-10. Definitions.

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

"Approval" means the process by which the board evaluates and grants official recognition to a nurse aide education program.

"Board" means the Virginia Board of Nursing.

"Client" means a person receiving the services of a certified nurse aide, to include a patient in a health care facility or at home or a resident of a long-term care facility.

"Clinical setting" means a location in which clinical practice occurs in a setting comparable to those in which the practice of a nurse aide may occur.

"Committee" means the Education Special Conference Committee, comprised of not less than two members of the board in accordance with § 2.2-4019 of the Code of Virginia.

"Conditional approval" means the time-limited status that results when a board-approved nurse aide education program has failed to maintain requirements as set forth in this chapter.

"Direct client care" means nurse aide care provided to patients or clients in a clinical setting supervised by a qualified instructor.

"Nurse aide education program" means a program designed to prepare nurse aides for certification.

"Nursing facility" means a licensed nursing home or an entity that is certified for Medicare or Medicaid long-term care reimbursement and licensed or certified by the Virginia Department of Health.

"NNAAP" means National Nurse Aide Assessment Program.

"Primary instructor" means a registered nurse who is responsible for teaching and evaluating the students enrolled in a nurse aide education program.

"Program coordinator" means a registered nurse who is administratively responsible and accountable for a nurse aide education program.

"Program provider" means an entity that conducts a board-approved nurse aide education program.

"Site visit" means a focused onsite review of the nurse aide education program by board staff for the purpose of evaluating program components, such as the physical location (skills lab, classrooms, learning resources) for obtaining program approval, change of location, or verification of noncompliance with this chapter or in response to a complaint.

"Survey visit" means a comprehensive onsite review of the nurse aide education program by board staff for the purpose of granting continued program approval. The survey visit includes the program's completion of a self-evaluation report prior to the visit as well as a board staff review of all program resources, including skills lab, classrooms, learning resources, and clinical facilities, and other components to ensure compliance with this chapter. Meetings with administration, instructional personnel, and students will occur on an as-needed basis.

18VAC90-26-20. Establishing and maintaining a nurse aide education program.

A. Establishing a nurse aide education program.

1. A program provider wishing to establish a nurse aide education program shall submit a complete application to the board at least 90 days in advance of the expected opening date.

2. The application shall provide evidence of the ability of the institution to comply with subsection B of this section.

3. Approval may be granted when all documentation of the program's compliance with requirements as set forth in subsection B of this section has been submitted and deemed satisfactory to the board and a site visit has been conducted. Advertisement of the program is authorized only after board approval has been granted.

4. If approval is denied, the program may request, within 30 days of the mailing of the decision, an informal conference

to be convened in accordance with § 2.2-4019 of the Code of Virginia.

5. If denial is recommended following an informal conference, which is accepted by the board or a panel thereof, no further action will be required of the board unless the program requests a hearing before the board or a panel thereof in accordance with § 2.2-4020 and subdivision 11 of § 54.1-2400 of the Code of Virginia.

6. If the decision of the board or a panel thereof following a formal hearing is to deny initial approval, the program shall be advised of the right to appeal the decision to the appropriate circuit court in accordance with § 2.2-4026 of the Code of Virginia and Part 2A of the Rules of the Supreme Court of Virginia.

B. Maintaining an approved nurse aide education program. To maintain approval, the nurse aide education program shall:

1. Demonstrate evidence of compliance with the following essential elements:

a. ~~Curriculum content as approved by the board and~~ Implementation of the board approved curriculum as set forth in subsection A of 18VAC90-26-40 and subsection C of 18VAC90-26-50.

b. Maintenance of qualified instructional personnel as set forth in 18VAC90-26-30.

c. Classroom facilities that meet requirements set forth in subsection D of 18VAC90-26-50.

d. Maintenance of records as set forth in subsection A of 18VAC90-26-50.

e. Skills training experience in a ~~nursing facility~~ clinical setting that has not been subject to penalty as provided in 42 CFR 483.151(b)(2) (Medicare and Medicaid Programs: Nurse Aide Training and Competency Evaluation and Paid Feeding Assistants, October 1, 2013 edition) in the past two years. The foregoing shall not apply to a nursing facility that has received a waiver from the state survey agency in accordance with federal law.

f. The use of a ~~nursing facility~~ clinical setting in Virginia located 50 miles or more from the school shall require board approval.

~~f.~~ g. Agreement that board representatives may make unannounced site visits to the program.

~~g.~~ h. Financial support and resources sufficient to meet requirements of this chapter as evidenced by a copy of the current annual budget or a signed statement from the administration specifically detailing its financial support and resources.

~~h.~~ i. Completion and submission of biennial survey visit review reports and program evaluation reports as requested by the board within a timeframe specified by the board.

2. Impose no fee for any portion of the program, including any fees for textbooks or other required course materials, on any nurse aide student who, on the date on which the student begins the program, is either employed or has an offer of employment from a ~~nursing~~ facility.

3. Provide documentation that each student applying to or enrolled in such program has been given a copy of applicable Virginia law regarding criminal history records checks for employment in certain health care facilities~~,~~ and a list of crimes that pose a barrier to such employment.

4. Report all substantive changes in subdivision 1 of this subsection within 10 days of the change to the board to include a change in the program coordinator, primary instructor, program ownership, physical location of the program, or licensure status of the clinical facility.

5. Provide each student with a copy of ~~his~~ the student's certificate of completion as specified in ~~18VAVC90-26-50~~ 18VAC90-26-50.

18VAC90-26-30. Requirements for instructional personnel.

A. The program coordinator or primary instructor shall:

1. Hold a current, unrestricted Virginia license or multistate licensure privilege as a registered nurse; and

2. Have two years of experience as a registered nurse and at least one year of direct client care or supervisory experience in the provision of long-term care services. Experiences may include employment in a nurse aide education program or employment in, or supervision of nursing students in, a nursing facility or unit, geriatrics department, chronic care hospital, home care, or other long-term care setting.

B. Program coordinator.

1. ~~Each program shall have a program coordinator who must be a registered nurse who holds a current, unrestricted license in Virginia or a multistate licensure privilege. 2.~~ The program coordinator shall assume the administrative responsibility and accountability for the nurse aide education program and shall:

a. Ensure that the provisions of subsection F of this section are maintained;

b. Maintain records as required by subsection A of 18VAC90-26-50; and

c. Perform other activities necessary to comply with subsection B of 18VAC90-26-20.

~~3.~~ 2. The primary instructor may be the program coordinator ~~in any nurse aide education program~~, except in a nursing facility-based program.

~~4.~~ 3. The director of nursing services in a nursing facility-based program may serve as the program coordinator but shall not ~~simultaneously~~ engage in the actual classroom,

skills laboratory, or clinical teaching ~~while serving as the director of nursing services~~.

~~B.~~ C. Primary instructor.

1. ~~Qualifications. Each program shall have a primary instructor who does the majority of the actual teaching of the students and who shall:~~

~~a. Hold a current, unrestricted Virginia license or a multistate licensure privilege as a registered nurse ; and~~

~~b. Have two years of experience as a registered nurse within the previous five years and at least one year of direct client care or supervisory experience in the provision of geriatric long-term care services. Other experience may include employment in a nurse aide education program or employment in or supervision of nursing students in a nursing facility or unit, geriatrics department, chronic care hospital, home care, or other long-term care setting. 2. Responsibilities.~~ The primary instructor is responsible for the ~~teaching~~ majority of instruction and evaluation of students and shall not assume other duties while instructing or supervising students. A program may request an exception to the restriction on assumption of other duties. The executive director of the board shall be authorized to make the decision on requests for exception or may refer to an informal fact-finding committee for consideration as needed.

The primary instructor shall:

a. Participate in the planning of each learning experience;

b. Ensure that course objectives are met; and

c. Ensure that ~~the provisions of subsection F of this section are maintained;~~

~~d. Maintain records as required by subsection A of 18VAC90-26-50;~~

~~e. Perform other activities necessary to comply with subsection B of 18VAC90-26-20; and~~

~~f. Ensure that~~ students do not perform services for which they have not received instruction and been found proficient.

~~C.~~ D. Other instructional personnel.

1. ~~Instructional~~ Other instructional personnel from the health professions with at least one year of experience in their field may supplement the primary instructor in the classroom setting.

2. Other instructional personnel who assist the primary instructor in ~~providing classroom or~~ clinical ~~supervision~~ instruction shall be registered nurses or licensed practical nurses.

a. A registered nurse shall:

(1) Hold a current, unrestricted Virginia license or multistate licensure privilege as a registered nurse; and

(2) Have had at least one year of direct client ~~geriatric~~ care experience as a ~~registered~~ nurse.

b. A licensed practical nurse shall:

(1) Hold a current, unrestricted Virginia license or multistate licensure privilege as a practical nurse; and

(2) Have had at least ~~two years~~ one year of direct client ~~geriatric~~ care experience as a licensed practical nurse.

~~2. Responsibilities.~~ 3. Other instructional personnel shall provide instruction under the supervision of the primary instructor.

~~D.~~ E. Prior to being assigned to teach in a nurse aide education program, all instructional personnel shall demonstrate competence to teach adults or high school students by one of the following:

1. Satisfactory completion of at least 12 hours of coursework that includes:

a. Basic principles of adult learning;

b. Teaching methods and tools for adult learners;

c. Evaluation strategies and measurement tools for assessing student learning outcomes;

d. Review of current regulations for nurse aide education programs;

e. Review of the board-approved nurse aide curriculum content; and

f. Review of the skills evaluated on the board-approved nurse aide certification examination; or

2. Have:

a. Experience in teaching the curriculum content and skills evaluated on the board-approved nurse aide certification examination to adults or high school students; and

b. Knowledge of current regulations for nurse aides and nurse aide education programs.

~~E.~~ F. In order to remain qualified to teach the nurse aide curriculum, instructional personnel shall complete a refresher course every three years that includes a review of regulations for nurse aides and nurse aide education programs and the skills evaluated on the board-approved nurse aide certification examination.

~~F. To meet planned program objectives, the program may, under the direct, onsite supervision of the primary instructor, use other persons who have expertise in specific topics and have had at least one year of experience in their field.~~

G. When students are giving direct care to clients in clinical areas, instructional personnel must be on site solely to supervise the students. The ratio of students to each instructor shall not exceed 10 students to one instructor in all clinical areas, including the skills laboratory.

18VAC90-26-50. Other program requirements.

A. Records. Original documentation shall be maintained for a period of two years following each site or survey visit, to include:

1. Each nurse aide education program shall develop and maintain an individual record of major skills taught and the date of performance by the student. At the completion of the nurse aide education program, the program shall provide each nurse aide with a copy of this record and a certificate of completion from the program, which includes the name of the program, the board approval number, date of program completion, and the signature of the primary instructor or program coordinator.

2. A record of the graduates' performance on the state-approved nurse aide certification examination (~~the National Nurse Aide Assessment Program or~~ NNAAP) shall be maintained.

3. A record that documents the disposition of complaints against the program shall be maintained.

B. Student identification. The nurse aide students shall wear identification that clearly distinguishes them as a "nurse aide student." Name identification on a badge shall follow the policy of the facility in which the nurse aide student is practicing clinical skills.

C. Length of program.

1. By May 12, 2023, the program shall be at least 140 clock hours in length, at least 20 hours of which shall be specifically designated for skills acquisition in the laboratory setting.

2. The program shall provide for at least 24 hours of instruction prior to direct contact of a student with a client.

3. Clinical training in clinical settings shall be at least 40 hours of providing direct client care. ~~Five of the clinical hours may be in a setting other than a geriatric long-term care facility.~~ Hours of observation shall not be included in the required 40 hours of ~~skills~~ clinical training.

4. Time spent in employment orientation to facilities used in the education program must not be included in the 140 hours allotted for the program.

D. Classroom facilities. The nurse aide education program shall provide facilities that meet federal and state requirements including:

1. Comfortable temperatures.

2. Clean and safe conditions.

3. Adequate lighting.

4. Adequate space to accommodate all students.

5. Current instructional technology and equipment needed for simulating client care.

6. Equipment and supplies sufficient for the size of the student cohort.

18VAC90-26-70. Interruption or closing of a program.

A. Interruption of program

1. When a program provider does not hold classes for a period of one year, the program shall notify the board immediately, shall be placed on inactive status, and shall not be subject to compliance with subsection B of 18VAC90-26-20.

2. At any time during the year after the program is placed on inactive status, the program provider may request that the board return the program to active status by providing a list of the admitted student cohort and start date.

3. If the program provider does not hold classes for two consecutive years, the program shall be considered closed and shall be subject to the requirements of subsection B of this section. In the event that a program desires to reopen after closure, submission of a new program ~~approval~~ application shall be required.

B. Closing of a nurse aide education program. When a nurse aide education program closes, the program provider shall:

1. Notify the board of the date of closing.

2. Submit to the board a list of all graduates with the date of graduation of each.

VA.R. Doc. No. PFR22-16; Filed January 11, 2023, 10:22 a.m.

TITLE 22. SOCIAL SERVICES

DEPARTMENT FOR AGING AND REHABILITATIVE SERVICES

Action Withdrawn

Titles of Regulations: **22VAC30-60. Grants to Area Agencies on Aging.**

22VAC30-140. State Long-Term Care Ombudsman Program.

Statutory Authority: § 51.5-131 of the Code of Virginia; 42 USC § 3001 et seq.

The Department for Aging and Rehabilitative Services (DARS) has WITHDRAWN the regulatory action for **22VAC30-60, Grants to Area Agencies on Aging,** which was published as a Notice of Intended Regulatory Action in 35:12 VA.R. 1399 February 4, 2019. This action is being withdrawn because DARS has reassessed planned regulatory actions under Executive Order 19 (2022) and the regulatory reduction initiative. The purpose of the proposed action was to repeal 22VAC30-60-570, 22VAC30-60-580, and 22VAC30-60-590

regarding the Office of the State Long-Term Care Ombudsman (OSLTCO) and the State Long-Term Care Ombudsman Program (SLTCOP) and amend several additional sections within 22VAC30-60 that include OSLTCO and the SLTCOP references or content to fully execute the move of program requirements to a single new chapter, which was to be **22VAC30-140, State Long-Term Care Ombudsman Program**. DARS believes some of the originally planned elements for the chapter for SLTCOP can be accomplished through other avenues, such as the development of guidance documents, trainings, and technical assistance in partnership with Area Agencies on Aging, which serve as local ombudsman entities.

Agency Contact: Charlotte Arbogast, Policy Advisor, Department for Aging and Rehabilitative Services, 8004 Franklin Farms Drive , Richmond, VA 23229, telephone (804) 662-7093, FAX (804) 662-7663, TDD (800) 464-9950, or email charlotte.arbogast@dars.virginia.gov.

VA.R. Doc. No. R19-5669; Filed January 4, 2023, 9:26 a.m.

TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

DEPARTMENT OF MOTOR VEHICLES

Final 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.

Effective Date: March 1, 2023.

Agency Contact: Patrick Harrison, Acting Legislative Services Manager, Department of Motor Vehicles, P.O. Box 27412, Richmond, VA 23269-0001, telephone (804) 249-5115, FAX (804) 367-6631, TDD (800) 272-9268, or email patrick.harrison@dmv.virginia.gov.

Summary:

The 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 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. A change to the proposed regulation requires flags attached to vehicle loads be red or orange fluorescent.

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

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~~ overwidth] 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~~ attached to vehicle loads] shall be red or [~~any highly~~ orange] 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~~ traffic control] 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~~ all] 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.

FORMS

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.

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 30, 2022, 7:31 a.m.

GUIDANCE DOCUMENTS

PUBLIC COMMENT OPPORTUNITY

Pursuant to § 2.2-4002.1 of the Code of Virginia, a certified guidance document is subject to a 30-day public comment period after publication in the Virginia Register of Regulations and prior to the guidance document's effective date. During the public comment period, comments may be made through the Virginia Regulatory Town Hall website (http://www.townhall.virginia.gov) or sent to the agency contact. Under subsection C of § 2.2-4002.1, the effective date of the guidance document may be delayed for an additional period. The guidance document may also be withdrawn.

The following guidance documents have been submitted for publication by the listed agencies for a public comment period. Online users of this issue of the Virginia Register of Regulations may click on the name of a guidance document to access it. Guidance documents are also available on the Virginia Regulatory Town Hall (http://www.townhall.virginia.gov) or from the agency contact or may be viewed at the Office of the Registrar of Regulations, 900 East Main Street, Richmond, Virginia 23219.

DEPARTMENT FOR AGING AND REHABILITATIVE SERVICES

Title of Document: Work Incentives Specialist Advocate (WISA) Manual.

Public Comment Deadline: March 1, 2023.

Effective Date: March 2, 2023.

Agency Contact: Charlotte Arbogast, Senior Policy Analyst and Regulatory Coordinator, Department for Aging and Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, VA 23229, telephone (804) 662-7093, or email charlotte.arbogast@dars.virginia.gov.

STATE BOARD OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

Title of Document: Case Management Operational Guidelines 2023.

Public Comment Deadline: March 1, 2023.

Effective Date: March 2, 2023.

Agency Contact: Eric Williams, Director of Provider Development, Developmental Disabilities Service Division, Department of Behavioral Health and Developmental Services, P.O. Box 1797, Richmond, VA 23218-1797, telephone (804) 371-7428, or email eric.williams@dbhds.virginia.gov.

COMMON INTEREST COMMUNITY BOARD

Title of Document: Regarding Specific Maximum Allowable Fees Set by the Property Owners Association Act and Virginia Condominium Act Charged by the Preparer of Disclosure Packets and Resale Certificates.

Public Comment Deadline: March 1, 2023.

Effective Date: March 2, 2023.

Agency Contact: Trisha L. Lindsey, Executive Director, Common Interest Community Board, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8510, or email cic@dpor.virginia.gov.

STATE BOARD OF EDUCATION

Title of Document: Guidelines for Recycling Materials in Public Schools.

Public Comment Deadline: March 1, 2023.

Effective Date: March 2, 2023.

Agency Contact: Jim Chapman, Regulatory and Legal Coordinator, James Monroe Building, Department of Education, 101 North 14th Street, 25th Floor, Richmond, VA 23219, telephone (804) 225-2540, or email jim.chapman@doe.virginia.gov.

STATE BOARD OF HEALTH

Title of Document: Guidance for the Retention of X-Ray Images.

Public Comment Deadline: March 1, 2023.

Effective Date: March 2, 2023.

Agency Contact: Cameron Rose, Policy Analyst, Virginia Department of Health, 109 Governor Street, Room 733, Richmond, VA 23235, telephone (804) 864-7090, or email cameron.rose@vdh.virginia.gov.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Proposed Enforcement Action for the Town of Christiansburg

An enforcement action has been proposed for the Town of Christiansburg, Virginia for violations in the Town of Christiansburg. The State Water Control Board proposes to issue a special order by consent to the Town of Christiansburg to address noncompliance with the State Water Control Law and regulations. A description of the proposed action is available at the Department of Environmental Quality office listed or online at www.deq.virginia.gov. The staff contact person will accept comments by email or postal mail from January 30, 2023, to March 2, 2023.

Contact Information: Tim Fletcher, Department of Environmental Quality, 901 Russell Drive, Salem, VA 24153, or email timothy.fletcher@deq.virginia.gov.

Proposed Enforcement Action for Innovative Refrigeration Systems Inc. - Albemarle County

An enforcement action has been proposed for Innovative Refrigeration Systems Inc. for violations at Hillcrest Vineyard and Winery in Albemarle County. The Virginia Department of Environmental Quality (DEQ) proposes to issue a consent order with penalty to Innovative Refrigeration Systems Inc. to address noncompliance with State Water Control Law. A description of the proposed action is available at the DEQ office listed or online at www.deq.virginia.gov. The staff contact will accept comments by email, fax, or postal mail from January 30, 2023, to March 1, 2023.

Contact Information: Eric Millard, 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.

Proposed Consent Special Order for Massey, Wood, and West - Richmond City

The Virginia Department of Environmental Quality (DEQ) proposes to issue a consent special order to Massey, Wood, and West for alleged violation of the Virginia Waste Management Act at the property located at 1713 Westwood Avenue, Richmond, Virginia. A description of the proposed action is available at the DEQ office listed or online at www.deq.virginia.gov. The staff contact person will accept comments by email or postal mail from January 30, 2023, to March 1, 2023.

Contact Information: Cara Witte, Enforcement Specialist, Department of Environmental Quality, 4949-A Cox Road, Glen Allen, VA 23060, telephone (804) 712-4192, FAX (804) 698-4178, or email cara.witte@deq.virginia.gov.

Proposed Enforcement Action for U.S. Department of Agriculture - U.S. Forest Service Grindstone Recreation Area - Smyth County

An amended enforcement action has been proposed for the U.S. Department of Agriculture - U.S. Forest Service for violations of the State Water Control Law at the Grindstone Recreation Area sewage treatment plant in Smyth County. The Department of Environmental Quality proposes to issue an amendment to order by consent to resolve violations associated with the facility. A description of the proposed action is available at the Department of Environmental Quality office listed or online at www.deq.virginia.gov. The staff contact person will accept comments by email or postal mail from January 30, 2023, to March 1, 2023.

Contact Information: Jonathan Chapman, Enforcement Specialist, Department of Environmental Quality, Southwest Regional Office, 355-A Deadmore Street, Abingdon, VA 24210, or email jonathan.chapman@deq.virginia.gov.

Public Meeting and Opportunity for Public Comment for a Cleanup Study for Segments of Bailey Creek, Nuttree Branch, Oldtown Creek, Proctors Creek, Rohoic Creek, and Swift Creek in Chesterfield, Dinwiddie, and Prince George Counties, and the Cities of Petersburg and Hopewell

Purpose of notice: The Department of Environmental Quality (DEQ) seeks public comment on the development of a cleanup study, also known as a total maximum daily load (TMDL) report, for segments of Bailey Creek, Nuttree Branch, Oldtown Creek, Proctors Creek, Rohoic Creek, and Swift Creek in Chesterfield, Dinwiddie, and Prince George Counties, and the Cities of Petersburg and Hopewell. These streams are listed as impaired since monitoring data does not meet Virginia's water quality standards for aquatic life use due to benthic impairments. 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 cleanup studies to address pollutants responsible for causing waters to be on Virginia's § 303(d) list of impaired waters. A component of a cleanup study is the wasteload allocation (WLA); therefore, this notice is provided pursuant to § 2.2-4006 A 14 of the Code of Virginia for adoption of the WLA into the Water Quality Management Planning Regulation, 9VAC25-720, after completion of the study. The adoption of the WLA may require new or additional requirements for entities holding a Virginia Pollutant Discharge Elimination System (VPDES) permit in these watersheds.

A study has been completed for segments of Bailey Creek, Nuttree Branch, Oldtown Creek, Proctors Creek, Rohoic Creek, and Swift Creek to identify pollutant sources and recommend reductions needed from the sources to meet water quality standards. DEQ will present the results of the study at

the public meeting and provide an overview of the draft report. Citizens are invited to provide comment on the study.

Cleanup study location: The cleanup study addresses the following impaired stream segments: Bailey Creek is located in the City of Hopewell and Prince George County, and the impaired area is 6.47 miles in length, beginning at its headwaters and extending to the tidal limit. Nuttree Branch is located within Chesterfield County, and the impairment length is 5.58 miles, beginning at its headwaters and extending to the confluence with Swift Creek. Oldtown Creek is located within Chesterfield County and the City of Colonial Heights and is 10.4 miles, and the impairment begins at its headwaters and extends to the fall line. Proctors Creek is within Chesterfield County and is 8.26 miles, and the impairment starts at its headwaters and extends to its tidal limit. Rohoic Creek is located in Dinwiddie County and the City of Petersburg, and the impairment begins at its headwaters and extends to the mouth at the Appomattox River and includes the tributaries for a total length of 13.45 miles. Swift Creek is located within Chesterfield County, and the impairments extend from Reedy Creek to the limit of Swift Creek Lake (2.88 miles) and from Swift Creek Lake dam downstream to the confluence with Licking Creek (7.25 miles).

TMDL technical advisory committee meetings to assist in development of this cleanup study were convened on February 3, 2021; April 14, 2021; and May 9, 2022.

Public meeting: The final public meeting on the development of the cleanup study will be held at the Clover Hill Library large meeting room, 6701 Deer Run Drive, Midlothian, Virginia 23112, on February 15, 2023, at 5 p.m. In the event of inclement weather, the meeting will be held on February 22, 2023, at the same time and location.

Public comment period: February 15, 2023, to March 17, 2023.

How to comment: DEQ accepts comments orally at the public meeting, by email, fax, or postal mail. All comments must be received by DEQ during the comment period. Submittals must include the name, organization represented (if any), mailing addresses, and telephone numbers of the commenter or requester.

Contact the agency contact listed for public comments, document requests, and additional information. The public may review the cleanup study at https://www.deq.virginia.gov/water/water-quality/tmdl-development/tmdls-under-development.

Contact Information: Kelley West, Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060, telephone (804) 432-7946, FAX (804) 698-4178, or email kelly.west@deq.virginia.gov.

DEPARTMENT OF FORENSIC SCIENCE

Approval of Field Tests for Detection of Drugs

In accordance with 6VAC40-30, Regulations for the Approval of Field Tests for Detection of Drugs, and under the authority of the Code of Virginia, the Department of Forensic Science recently conducted a reevaluation of field tests approved for the detection of drugs.

SIRCHIE FINGERPRINT LABORATORIES
100 HUNTER PLACE
YOUNGSVILLE, NORTH CAROLINA 27596

NARK II

Drug or Drug Type:	Manufacturer's Field Test:
Heroin	01 - Marquis Reagent
Amphetamine	01 - Marquis Reagent
3,4-Methylenedioxymethamphetamine (MDMA)	01 - Marquis Reagent
Morphine	02 - Nitric Acid
Phenobarbital	03 - Dille-Koppanyi Reagent
Lysergic Acid Diethylamide	04 - LSD (Ehrlich's) Reagent
Marijuana	05 - Duquenois - Levine Reagent
Cocaine Hydrochloride	07 - Scott Reagent (Modified)
Cocaine base	07 - Scott Reagent (Modified)
Phencyclidine	09 - PCP Reagent

Heroin	10 - Special Opiates Reagent
Codeine	10 - Special Opiates Reagent
Buprenorphine	10 - Special Opiates Reagent
Heroin	11 - Heroin (Mecke's Modified) Reagent
Pentazocine	12 - Frohdes Reagent
Dimethyltryptamine	12 - Frohdes Reagent
Ephedrine	13 - Ephedrine Reagent
Diazepam	14 - Valium, Rohypnol & Methcathinone Reagent
Flunitrazepam	14 - Valium, Rohypnol & Methcathinone Reagent
Methamphetamine	15 - Methamphetamine/MDMA (Ecstasy) Reagent
Morphine	19 - Mayer's Reagent
Methadone	22 - Mandelin Reagent
Amphetamine	22 - Mandelin Reagent
JWH-018	23 (A & B) - Synthetic Cannabinoids Reagent
Psilocybin	30 - Psilocybin/Psilocin Reagent
Methamphetamine	31 - Liebermann Reagent
Morphine	31 - Liebermann Reagent
Fentanyl	33 - Fentanyl Reagent
Marijuana	34 - Hemp/CBD Test
Industrial hemp	34 - Hemp/CBD Test

SAFARILAND, INC.
13386 INTERNATIONAL PARKWAY
JACKSONVILLE, FLORIDA 32218

NIK

Drug or Drug Type:	Manufacturer's Field Test:
Heroin	Test A - Marquis Reagent
Amphetamine	Test A - Marquis Reagent
Methamphetamine	Test A - Marquis Reagent
3,4-Methylenedioxymethamphetamine (MDMA)	Test A - Marquis Reagent
Morphine	Test A - Marquis Reagent
Amobarbital	Test C - Dille-Koppanyi Reagent System
Pentobarbital	Test C - Dille-Koppanyi Reagent System
Secobarbital	Test C - Dille-Koppanyi Reagent System
Lysergic Acid Diethylamide	Test D - LSD Reagent System
Marijuana	Test E - Duquenois - Levine Reagent System
Industrial hemp	Test E - Duquenois - Levine Reagent System
delta-9-tetrahydrocannabinol	Test E - Duquenois - Levine Reagent System
Cocaine Hydrochloride	Test G - Scott Reagent System Modified

Cocaine Base	Test G - Scott Reagent System Modified
Methadone	Test H - Methadone Reagent System
Cocaine Hydrochloride	6500 or 6501 - Cocaine ID Swab
Cocaine base	6500 or 6501 - Cocaine ID Swab
Phencyclidine	Test J - PCP Reagent System
Heroin	Test K - Opiates Reagent
Morphine	Test K - Opiates Reagent
Heroin	Test L - Brown Heroin Reagent System
gamma hydroxybutyrate (GHB)	Test O - GHB Reagent System
gamma-butyrolactone	Test O - GHB Reagent System
Pseudoephedrine	Test Q - Ephedrine Reagent System
Diazepam	Test R - Valium Reagent System
Marijuana	Test S - KN Reagent System
Industrial hemp	Test S - KN Reagent System
delta-9-tetrahydrocannabinol	Test S - KN Reagent System
Methamphetamine	Test U - Methamphetamine Reagent
3,4-Methylenedioxymethamphetamine (MDMA)	Test U - Methamphetamine Reagent
Amphetamine	Test W - Mandelin Reagent System
Marijuana	Test Y - Cannabis Typification
Industrial Hemp	Test Y - Cannabis Typification

MISTRAL SECURITY INCORPORATED
7910 WOODMONT AVENUE
SUITE 820
BETHESDA, MARYLAND 20814

Drug or Drug Type:	Manufacturer's Field Test:
Marijuana	CANNABISPRAY-1 (1030) / CANNABISPRAY-2 (1040) Cannabinoids Detection Sprays / Collection Papers 530
Heroin	HEROSOL Drug Detection Spray 1110 / Collection Papers 530
Cocaine Hydrochloride	COCA TEST Cocaine Detection Spray 1200 / Collection Papers 530
Cocaine base	COCA TEST Cocaine Detection Spray 1200 / Collection Papers 530
Methamphetamine	METH TEST-1 (1410) / METH TEST-2 (1420) Methamphetamine Detection Sprays/ Test Papers 630
Heroin	DETECT 4 DRUGS Multi-Drug Detection Spray 1710 / Test Papers 630
Amphetamine	DETECT 4 DRUGS Multi-Drug Detection Spray 1710 / Test Papers 630
Methamphetamine	DETECT 4 DRUGS Multi-Drug Detection Spray 1710 / Test Papers 630
Marijuana	DETECT 4 DRUGS Multi-Drug Detection Spray 1710 / Test Papers 630
Phencyclidine	DETECT 4 DRUGS Multi-Drug Detection Spray 1710 / Test Papers 630
Ketamine	DETECT 4 DRUGS Multi-Drug Detection Spray 1710 / Test Papers 630
Lysergic acid diethylamide	DETECT 4 DRUGS Multi-Drug Detection Spray 1710 / Test Papers 630

Buprenorphine	DETECT 4 DRUGS Multi-Drug Detection Spray 1710 / Test Papers 630

PENTEST

Drug or Drug Type:	Manufacturer's Field Test:
Marijuana	CANNABIS TEST 01050
Heroin	HEROSOL 01118
Methamphetamine	METH-X 01448
Marijuana	D4D 01718
Phencyclidine	D4D 01718
Amphetamine	D4D 01718
Ketamine	D4D 01718
Methamphetamine	D4D 01718
Ephedrine	D4D 01718
Heroin	D4D 01718
Lysergic Acid Diethylamide	LSD TEST 01918
Morphine	OPIA TEST 03018
Opium	OPIA TEST 03018
Codeine	OPIA TEST 03018

PDT

Drug or Drug Type:	Manufacturer's Field Test:
Amphetamine	101 Marquis Reagent
Methamphetamine	101 Marquis Reagent
Heroin	101 Marquis Reagent
Fentanyl	101 Marquis Reagent
Heroin	104 Nitric Acid Reagent
Phenobarbital	107 Dille-Koppanyi Reagent
Lysergic Acid Diethylamide	110 Modified Ehrlich's Reagent
Marijuana	113 Duquenois-Levine Reagent
Cocaine Hydrochloride	122 Modified Scott Reagent
Cocaine base	122 Modified Scott Reagent
Methadone	125 Methadone Reagent
Amphetamine	128 Mandelin Reagent
Methadone	128 Mandelin Reagent
Morphine	137 Opiates Reagent
Heroin	140 Modified Mecke's Reagent
Methaqualone	143 Methaqualone/PCP (Phencyclidine) Reagent
Phencyclidine	143 Methaqualone/PCP (Phencyclidine) Reagent

Pentazocine	146 Talwin Reagent
gamma hydroxybutyrate (GHB)	150 GHB: Gamma-Hydroxybutyrate Reagent
Ephedrine	155 Chen's Reagent
Diazepam	158 Valium (Diazepam) / Rohypnol (Flunitrazepam)
Flunitrazepam	158 Valium (Diazepam) / Rohypnol (Flunitrazepam)
Ketamine	161 Morris Reagent
Methamphetamine	164 Methamphetamine (MDMA/Ecstasy) Reagent
Psilocybin	167 Psilocybin Reagent
MDPV	170 Bath Salts: MDPV-Methylenedioxypyrovalerone Reagent
Mephedrone	173 Bath Salts: Mephedrone Reagent
Heroin	180 Mayer's Reagent
alpha-PVP	195 Bath Salts: a-PVP Reagent
Marijuana	214 CBD/THC
Industrial hemp	214 CBD/THC
Marijuana	216 DL/4AP
Industrial hemp	216 DL/4AP
Fentanyl	220 Fentanyl 2

DETECTACHEM INC
120 INDUSTRIAL BOULEVARD
SUGAR LAND, TX 77478

MobileDetect

Drug or Drug Type:	Manufacturer's Field Test:
Fentanyl	MDT (Multi-Drug Test)
Heroin	MDT (Multi-Drug Test)
Methamphetamine	MDT (Multi-Drug Test)
Cocaine Hydrochloride	MDT (Multi-Drug Test)
3,4-methylenedioxymethamphetamine (MDMA)	MDT (Multi-Drug Test)
Methamphetamine	DME (Meth/MDMA Test)
Cocaine Hydrochloride	DCO (Cocaine Test)
Marijuana	DCT (CBD/THC Test)
Industrial hemp	DCT (CBD/THC Test)
Heroin	DHE (Heroin Test)
Fentanyl	FYL (Fentanyl Test Strips)
Buprenorphine	DSO (Special Opiates Test)

Contact Information: Amy C. Jenkins, Department of Forensic Science, 700 North 5th Street, Richmond, VA 23219, telephone (804) 786-2281, or email amy.jenkins@dfs.virginia.gov.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Draft Home Health Provider Manual Chapter V

The draft Home Health Provider Manual Chapter V 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/for public comment until February 2, 2023.

Contact Information: Emily McClellan, Regulatory Manager, Division of Policy and Research, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-4300, FAX (804) 786-1680.

Draft Hospice Provider Manual Chapter V

The draft Hospice Provider Manual Chapter V 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/ for public comment until February 2, 2023.

Contact Information: Emily McClellan, Regulatory Manager, Division of Policy and Research, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-4300, FAX (804) 786-1680.

Draft Pharmacy Provider Manual Chapter II

The draft Pharmacy Provider Manual Chapter II 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/for public comment until February 2, 2023.

Contact Information: Emily McClellan, Regulatory Manager, Division of Policy and Research, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-4300, FAX (804) 786-1680.

Draft Pharmacy Provider Manual Chapter V

The draft Pharmacy Provider Manual Chapter V 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/ for public comment until February 10, 2023.

Contact Information: Emily McClellan, Regulatory Manager, Division of Policy and Research, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-4300, FAX (804) 786-1680.

Draft Physician/Practitioner Provider Manual Chapter II

The draft Physician/Practitioner Provider Manual Chapter II 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/ for public comment until February 10, 2023.

Contact Information: Emily McClellan, Regulatory Manager, Division of Policy and Research, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-4300, FAX (804) 786-1680.

Draft Transportation Provider Manual Chapter V

The draft Transportation Provider Manual Chapter V 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/for public comment until February 5, 2023.

Contact Information: Emily McClellan, Regulatory Manager, Division of Policy and Research, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-4300, FAX (804) 786-1680.

VIRGINIA DEPARTMENT OF PLANNING AND BUDGET

Commercial Activities List – Public Comments and Recommendations

Pursuant to § 2.2-1501.1 of the Code of Virginia, the Virginia Department of Planning and Budget (DPB) published the Commercial Activities List (CAL) on February 14, 2022. The CAL is posted on the DPB website under Documents, Instructions and Publications as "Commercial Activities List - 2021" and is also included in this notice.

DPB is seeking written comments on the CAL and invites recommendations from the public regarding activities being performed by state agencies that might better be performed by the private sector. The public comment period will begin January 30, 2023, and end February 13, 2023. Please include "CAL" in the subject of the email.

Contact Information: Cari Corr, Commercial Activities List, Virginia Department of Planning and Budget, 1111 East Broad Street, Richmond, VA 23219, telephone (804) 225-4549, or email cari.corr@dpb.virginia.gov.

Virginia Commercial Activities List for FY 2020 and FY 2021

NIGP	NIGP Title
90648	Historical Preservation
91013	Elevator Installation, Maintenance and Repair
91223	Construction, General (Backfill Services, Digging, Ditching, Road Grading, Rock Stabilization)
91265	Maintenance and Repair, Tennis/Sport Court
91359	Construction and Upgrades, Wastewater Treatment Plant
91360	Construction, Water System/Plants, Main and Service Line
91427	Carpentry
91464	Plastering
91500	Communications and Media Related Services
91522	Communications Marketing Services
91806	Administrative Consulting
91807	Advertising Consulting
91815	Architectural Consulting
91819	Buildings, Structures and Components Consulting
91831	Construction Consulting
91873	Landscaping Consulting
91875	Management Consulting
91878	Medical Consulting
91885	Personnel/Employment Consulting (Human Resources)
91891	Roofing Consultant
91895	Telecommunications Consulting
92000	Data Processing, Computer, Programming, and Software Services
92002	Access Services, Data
92022	Data Preparation and Processing Services (Bates Coding)
92032	Intelligent Transportation System Software (Design, Development, and Maintenance Services)
92037	Networking Services (Installation, Security, and Maintenance)
92039	Processing System Services, Data Not Otherwise Classified
92040	Programming Services, Computer
92416	Course Development Services, Instructional/Training
92480	Tutoring
92500	Engineering Services, Professional

92824	Buses, School and Mass Transit, Maintenance and Repair
93881	Scientific Equipment Maintenance and Repair
94155	HVAC Systems Maintenance and Repair, Power Plant
94620	Auditing
94649	Financial Services Not Otherwise Classified
94650	Fund Raising Services
94670	Payment Card Services
94807	Administration Services, Health
94828	Dental Services
94876	Psychologists/Psychological and Psychiatric Services (Behavioral Management Services)
95256	Housekeeping Services
95277	Research and Evaluation, Human Services (Productivity Audits)
95285	Support Services
95605	Business Research Services
95826	Construction Management Services
95839	Financial Management Services
95859	Industrial Management Services
95874	Personnel Management Services
95939	Dam and Levee Construction, Maintenance, Management, and Repair
95973	Ship Maintenance and Repair
95984	Towing Services, Marine
96110	Business Plan Development Services
96114	Commissioning of Facilities Services (Functional and Prefunctional)
96129	Economic Impact Studies
96130	Employment Agency and Search Firm Services (Background Investigations and Drug Testing for Employment)
96196	Non-Professional Services Not Otherwise Classified
96269	Personnel Services, Temporary
96289	Vehicle Transporting Services
96343	Intergovernmental/Inter-Agency Contracts
96728	Computer Hardware and Software Manufacturing Services
96847	Inspection Services, Construction Type
96881	Traffic Sign Maintenance and Repair
98854	Lighting Services for Parks, Athletic Fields, and Parking Lots

98863	Park Area Construction/Renovation
99029	Disaster Preparedness/Emergency Planning Services
99050	Installation of Security and Alarm Equipment

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.