VIRGINIA REGISTER OF REGULATIONS

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THE VIRGINIA REGISTER INFORMATION PAGE

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

ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

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

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

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

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

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

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

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

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

FAST-TRACK RULEMAKING PROCESS

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

EMERGENCY REGULATIONS

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

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

STATEMENT

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

CITATION TO THE *VIRGINIA REGISTER*

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

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

PUBLICATION SCHEDULE AND DEADLINES

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

January 2024 through February 2025

Volume: Issue	Material Submitted By Noon*	Will Be Published On
40:12	January 10, 2024	January 29, 2024
40:13	January 24, 2024	February 12, 2024
40:14	February 7, 2024	February 26, 2024
40:15	February 21, 2024	March 11, 2024
40:16	March 6, 2024	March 25, 2024
40:17	March 20, 2024	April 8, 2024
40:18	April 3, 2024	April 22, 2024
40:19	April 17, 2024	May 6, 2024
40:20	May 1, 2024	May 20, 2024
40:21	May 15, 2024	June 3, 2024
40:22	May 29, 2024	June 17, 2024
40:23	June 12, 2024	July 1, 2024
40:24	June 26, 2024	July 15, 2024
40:25	July 10, 2024	July 29, 2024
40:26	July 24, 2024	August 12, 2024
41:1	August 7, 2024	August 26, 2024
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41:3	September 4, 2024	September 23, 2024
41:4	September 18, 2024	October 7, 2024
41:5	October 2, 2024	October 21, 2024
41:6	October 16, 2024	November 4, 2024
41:7	October 30, 2024	November 18, 2024
41:8	November 13, 2024	December 2, 2024
41:9	November 26, 2024 **(Tuesday)**	December 16, 2024
41:10	December 11, 2024	December 30, 2024
41:11	December 23, 2024 **(Monday)**	January 13, 2025
41:12	January 8, 2025	January 27, 2025
41:13	January 22, 2025	February 10, 2025

*Filing deadlines are Wednesdays unless otherwise specified.

TITLE 4. CONSERVATION AND NATURAL RESOURCES

MARINE RESOURCES COMMISSION

Initial Agency Notice

Title of Regulation: **4VAC20-1270. Pertaining to Atlantic Menhaden.**

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

Name of Petitioner: Chesapeake Legal Alliance (David Reed) and Southern Maryland Recreational Fishing Organization.

Nature of Petitioner's Request: A petition for rulemaking has been requested by the petitioners for the following:

1. Enact a moratorium in the Chesapeake Bay: Set a precautionary moratorium on purse seine landings by the menhaden reduction fleet within the Chesapeake Bay.

2. Require no less than 40% of harvest from federal waters: Set a limit of no more than 60% of current purse seine menhaden landings within Virginia waters (approximately 94,000 metric tons).

3. Codify a one-mile shoreline buffer: Establish a permanent one-nautical-mile shoreline buffer along Virginia's shoreline prohibiting the use of menhaden purse seines.

4. Fund and implement a menhaden population study: Implement and enhance the Atlantic Menhaden Research proposal to investigate localized depletion and its impacts on the Chesapeake Bay (Virginia Institute of Marine Science, October 1, 2023).

5. Establish proper industry oversight: Require increased vessel and landings monitoring and reporting to ensure compliance and reduce bycatch and impacts on Chesapeake Bay habitats.

Agency Plan for Disposition of Request: The Marine Resources Commission is submitting notice of the petition for publication in the Virginia Register of Regulations and announcing a public comment period. Following receipt of comments on the petition, the commission will review the petition.

Public Comment Deadline: February 5, 2024.

Agency Contact: Jennifer Farmer, Regulatory Coordinator, Marine Resources Commission, 380 Fenwick Road, Building 96, Fort Monroe, VA, 23651, telephone (757) 247-2248, or email jennifer.farmer@mrc.virginia.gov.

VA.R. Doc. No PFR24-23; Filed December 21, 2023, 4:44 p.m.

TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

BOARD OF JUVENILE JUSTICE

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board of Juvenile Justice conducted a periodic review and a small business impact review of **6VAC35-11, Public Participation Guidelines**, and determined that this regulation should be retained as is. The board is publishing its report of findings dated November 29, 2023, to support this decision.

The regulation is required by § 2.2-4007.02 of the Code of Virginia and establishes the provisions by which agencies will ensure the general public has access to the regulatory development, repeal, and amendment process. Public participation in the regulatory process provides the public the opportunity to bring any concerns related to the protection of public health, safety, and welfare to the attention of the board and the department. In this way, this regulation is essential to protecting the public's welfare. The regulation is clearly written and easily understandable.

As part of the statutory mandate set out in § 2.2-4007.1 of the Code of Virginia, the board considered whether this regulation should be amended, repealed, or retained as is. The board concluded that the regulation should be retained without amendment.

Repealing the regulation would violate the statutory provision set out in § 2.2-4007.02 A of the Code of Virginia mandating that agencies develop, adopt, and use public participation guidelines. The text of the current regulation is consistent with the Model Public Participation Guidelines established by the Department of Planning and Budget in 2016. The regulation has been effective for its stated purpose, so the board believes changes are unnecessary.

The board did not receive any public comments either in support of or in opposition to the existing regulation. The regulation does not overlap with or duplicate federal or state law. The board last conducted a periodic review of the regulation in 2019 and made one amendment to conform the regulation to legislation passed by the General Assembly in 2012 requiring nonexempt agencies to afford interested parties an opportunity to be represented by counsel or another representative. No economic, technological, or other changes have created a need to amend the regulation since that time. Inasmuch as small businesses are members of the general public and are afforded the opportunity to be involved in the development, amendment, and repeal of regulations, this regulation serves to benefit such businesses.

Contact Information: Ken Davis, Regulatory Affairs Coordinator, Department of Juvenile Justice, 600 East Main Street, 20th Floor, Richmond, VA 23219, telephone (804) 807-0486, FAX (804) 371-6497, or email kenneth.davis@djj.virginia.gov.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

COMMON INTEREST COMMUNITY BOARD

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Common Interest Community Board conducted a periodic review and a small business impact review of **18VAC48-10, Public Participation Guidelines**, and determined that this regulation should be retained as is. The board is publishing its report of findings dated December 18, 2023, to support this decision.

The board's public participation guidelines mirror the Department of Planning and Budget's (DPB's) model public participation guidelines. The guidelines having the status of a regulation is necessary to promote public involvement in the development, amendment, or repeal of regulations. Further, the regulation is clearly written and understandable.

On September 21, 2023, the board voted to retain this regulation without amendment. The regulation continues to mirror the model public participation guidelines from DPB.

There is a continued need for this regulation because the regulation promotes public involvement in the development, amendment, or repeal of the regulations of the board. The board did not receive any comments or complaints during the public comment period. The regulation is not complex. The regulation does not overlap, duplicate, or conflict with any other federal or state laws or regulations. The regulation was last evaluated in 2019 and does not rely on technology, economic conditions, or any other factors due to the nature of public participation. This regulation outlines the Virginia Regulatory Town Hall as the mechanism for notification, registration, and meeting procedures for public participation. The board determined the regulation has no economic impact on small businesses.

Contact Information: Stephen Kirschner, Deputy Director for Licensing and Regulation, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8510, or email cic@dpor.virginia.gov.

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Common Interest Community Board conducted a periodic review and a small business impact review of **18VAC48-45, Time-Share Regulations**, and determined that this regulation should be retained as is. The board is publishing its report of findings dated December 15, 2023, to support this decision.

The regulation contains the requirements to obtain and maintain a time-share program, time-share exchange program, alternative purchase, or time-share reseller registration. The regulation also provides for standards of conduct related to marketing activities, public offerings statements, and disclosure documents for time-share developers.

The regulation is necessary for the protection of public health, safety, and welfare and is clearly written and understandable. On September 21, 2023, the board voted to retain the regulation without amendment. In accordance with the Governor's Executive Directive Number One (2022), the board is currently undertaking a separate action to perform a comprehensive line-by-line review of this regulation.

Section 55.1-2247 of the Code of Virginia mandates that the board promulgate regulations. The continued need for the regulation is established in statute. Repeal of the regulation would remove the current public protections provided by the regulation. The board provides protection to the public welfare of the citizens of the Commonwealth by ensuring full and fair disclosure in the offering of time-share interests and opportunities to participate in time-share exchange programs as well establishing standards of conduct for developers in their marketing activities.

No comments or complaints were received during the public comment period. The regulation is clearly written and easily understandable and does not overlap, duplicate, or conflict with federal or state law or regulation. The most recent periodic review of the regulation occurred in 2019. Currently, the board is conducting a comprehensive review of the regulation.

Contact Information: Stephen Kirschner, Deputy Director for Licensing and Regulation, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8510, or email cic@dpor.virginia.gov.

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Common Interest Community Board conducted a periodic review and a small business impact review of **18VAC48-50, Common Interest Community Manager Regulations**, and determined that this regulation should be retained as is. The board is publishing its report of findings dated December 15, 2023, to support this decision.

The regulation contains the requirements for obtaining licensure as a common interest community manager, certification as a certified principal or supervisory employee, and approval as a common interest community manager training program. The regulation also establishes methods for renewal of licenses and certificates and standards of practice and conduct to ensure competence and integrity of all regulants and to administer the regulatory program in accordance with Chapters 2 (§ 54.1-200 et seq.) and 23.3 (§ 54.1-2345 et seq.) of Title 54.1 of the Code of Virginia. The regulation is necessary for the protection of the public and is clearly written and understandable.

On September 21, 2023, the board voted to retain the regulation without amendment. In accordance with the Governor's Executive Directive Number One (2022), the board is currently undertaking a separate action to perform a comprehensive line-by-line review of this regulation.

Sections 54.1-201 and 54.1-2349 of the Code of Virginia mandate the board promulgate regulations. The continued need for the regulation is established in statute. Repeal of the regulation would remove the current public protections provided by the regulation. The board provides protection to the safety and welfare of the citizens of the Commonwealth by ensuring that (i) only those firms that meet specific criteria set forth in the statutes and regulations are eligible for licensure as a common interest community manager; (ii) only those individuals who meet specific criteria set forth in the statutes and regulations are eligible for certification as a certified principal or supervisory employee; and (iii) only those common interest community manager training programs meeting the requirements of statute and regulations are approved by the board.

There were no comments or complaints received during the public comment period. The regulation is clearly written and easily understandable and does not overlap, duplicate, or conflict with federal or state law or regulation. The most recent periodic review of the regulation occurred in 2019. Currently, the board is conducting a comprehensive review of the regulation.

Contact Information: Stephen Kirschner, Deputy Director for Licensing and Regulation, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8510, or email cic@dpor.virginia.gov.

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Common Interest Community Board conducted a periodic review and a small business impact review of **18VAC48-60, Common Interest Community Association Registration Regulations**, and determined that this regulation should be retained as is. The board is publishing its report of findings dated December 18, 2023, to support this decision.

The regulation contains the requirements for common interest community associations to obtain and maintain a registration with the board by filing an annual report in accordance with applicable statutes. The regulation is necessary to interpret and apply requirements imposed upon the board by applicable statutes. The regulation is clearly written and understandable. The regulation is designed to achieve its objective in the most efficient and cost-effective manner.

The regulation is necessary for the protection of public health, safety, and welfare and is clearly written and understandable. On September 21, 2023, the board voted to retain the regulation without amendment. In accordance with the Governor's Executive Directive Number One (2022), the board is currently undertaking a separate action to perform a comprehensive line-by-line review of this regulation.

Sections 54.1-2349 and 54.1-2351 of the Code of Virginia mandate that the Common Interest Community Board promulgate regulations. The continued need for the regulation is established in statute. Repeal of the regulation would remove the current public protections provided by the regulation. The requirements for common interest associations to file annual reports with the board are established by statute. No comments or complaints were received during the public comment period.

The regulation is clearly written and easily understandable and does not overlap, duplicate, or conflict with federal or state law or regulation. The most recent periodic review of the regulation occurred in 2019. Currently, the board is conducting a comprehensive review of the regulation.

Contact Information: Stephen Kirschner, Deputy Director for Licensing and Regulation, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8510, or email cic@dpor.virginia.gov.

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Common Interest Community Board conducted a periodic review and a small business impact review of **18VAC48-70, Common Interest Community Ombudsman Regulations**, and determined that this regulation should be retained as is. The board is publishing its report of findings dated December 18, 2023, to support this decision.

The regulation contains the requirements for establishment of complaint procedures by common interest community associations. The regulation is necessary to interpret and apply the requirements imposed upon the board by Chapter 23.3 (§ 54.1-2345 et seq.) of Title 54.1 of the Code of Virginia and protects the public welfare, in part, by requiring common interest community associations establish written procedures for the resolution of complaints from association members and other members of the public. The regulation is clearly written and understandable. The regulation is designed to achieve its objective in the most efficient and cost-effective manner.

On September 21, 2023, the board voted to retain the regulation without amendment. In accordance with the Governor's Executive Directive Number One (2022), the board is currently undertaking a separate action to perform a comprehensive line-by-line review of this regulation.

Section 54.1-2354.4 of the Code of Virginia mandates the Common Interest Community Board promulgate regulations, specifically, the board must establish by regulation that common interest community associations have procedures for the resolution of complaints. The continued need for the regulation is established in statute. Repeal of the regulation would remove the current public protections provided by the regulation.

The board provides protection to the public welfare of the citizens of the Commonwealth. There were no comments or complaints received during the public comment period. The regulation is clearly written and easily understandable and does not overlap, duplicate, or conflict with federal or state law or regulation. The most recent periodic review of the regulation occurred in 2019. Currently, the board is conducting a comprehensive review of the regulation.

Contact Information: Stephen Kirschner, Deputy Director for Licensing and Regulation, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8510, or email cic@dpor.virginia.gov.

REAL ESTATE BOARD

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Real Estate Board conducted a periodic review and a small business impact review of **18VAC135-11, Public Participation Guidelines**, and determined that this regulation should be retained as is. The board is publishing its report of findings dated December 18, 2023, to support this decision.

The board's public participation guidelines mirror the Department of Planning and Budget's (DPB's) model public participation guidelines. The guidelines, having the status of a regulation, are necessary to promote public involvement in the development, amendment, or repeal of regulations. Further, the regulation is clearly written and understandable.

On September 28, 2023, the board voted to retain this regulation without amendment. The regulation continues to mirror the model public participation guidelines from DPB.

There is a continued need for this regulation because it promotes public involvement in the development, amendment, or repeal of the regulations of the board. The board did not receive any comments or complaints during the public

comment period. The regulation is not complex. The regulation does not overlap, duplicate, or conflict with any other federal or state laws or regulations. The regulation was last evaluated in 2019 and does not rely on technology, economic conditions, or any other factors due to the nature of public participation. This regulation outlines the Virginia Regulatory Town Hall as the mechanism for notification, registration, and meeting procedures for public participation. The board determined the regulation has no economic impact on small businesses.

Contact Information: Stephen Kirschner, Deputy Director for Licensing and Regulation, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8510, or email reboard@dpor.virginia.gov.

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Real Estate Board conducted a periodic review and a small business impact review of **18VAC135-20, Virginia Real Estate Board Licensing Regulations**, and determined that this regulation should be retained as is. The board is publishing its report of findings dated December 15, 2023, to support this decision.

The regulation contains the requirements for (i) obtaining a license or approval of schools, instructors, and courses; (ii) renewal and reinstatement of licenses and approvals; (iii) standards of professional conduct to ensure competence and integrity of all regulants; and (iv) administering the regulatory program in accordance with Chapters 2 (§ 54.1-200 et seq.) and 21 (§ 54.1-2100 et seq.) of Title 54.1 of the Code of Virginia. The regulation is necessary for the protection of public health, safety, and welfare and is clearly written and understandable.

On September 28, 2023, the board voted to retain the regulation without amendment. In accordance with the Governor's Executive Directive Number One (2022), the board is currently undertaking a separate action to perform a comprehensive line-by-line review of this regulation.

Sections 54.1-201, 54.1-2105, and 54.1-2105.02 of the Code of Virginia mandate the board promulgate regulations. The continued need for the regulation is established in statute. Repeal of the regulation would remove the current public protections provided by the regulation. The board provides protection to the safety and welfare of the citizens of the Commonwealth by ensuring that only those individuals who or businesses that meet specific criteria set forth in the statutes and regulations are eligible to receive a real estate license or approval as a school, instructor, or course. The board is also tasked with ensuring that the board's regulants meet standards of practice that are set forth in the regulation.

There were no comments or complaints received during the public comment period. The regulation is clearly written and easily understandable and does not overlap, duplicate, or conflict with federal or state law or regulation. The most recent periodic review of the regulation occurred in 2019. Currently, the board is conducting a comprehensive review of the regulation.

Contact Information: Stephen Kirschner, Deputy Director for Licensing and Regulation, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8510, or email reboard@dpor.virginia.gov.

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Real Estate Board conducted a periodic review and a small business impact review of **18VAC135-50, Fair Housing Regulations**, and determined that this regulation should be retained as is. The board is publishing its report of findings dated December 15, 2023, to support this decision.

The regulation contains the requirements for the administration and enforcement of the Virginia Fair Housing Law in accordance with Chapter 5.1 (§ 36-96.1 et seq.) of Title 36 and Chapter 23.2 (§ 54.1-2343 et seq.) of Title 54.1 of the Code of Virginia. The regulation is necessary for the protection of public health, safety, and welfare and is clearly written and understandable.

On September 28, 2023, the board voted to retain the regulation without amendment. In accordance with the Governor's Executive Directive Number One (2022), the board is currently undertaking a separate action to perform a comprehensive line-by-line review of this regulation.

Sections 36-96.8 and 54.1-2344 of the Code of Virginia mandate the board promulgate regulations. The continued need for the regulation is established in statute. Repeal of the regulation would remove the current public protections provided by the regulation. The Real Estate Board and the Fair Housing Board provide protection to the safety and welfare of the citizens of the Commonwealth by ensuring enforcement of the Virginia Fair Housing Law.

No comments or complaints were received during the public comment period. The regulation is clearly written and easily understandable and does not overlap, duplicate, or conflict with federal or state law or regulation. The most recent periodic review of the regulation occurred in 2019. Currently, the board is conducting a comprehensive review of the regulation.

Contact Information: Stephen Kirschner, Deputy Director for Licensing and Regulation, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8510, or email reboard@dpor.virginia.gov.

BOARD FOR WATERWORKS AND WASTEWATER WORKS OPERATORS AND ONSITE SEWAGE SYSTEM PROFESSIONALS

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals conducted a periodic review and a small business impact review of **18VAC160-11, Public Participation Guidelines**, and determined that this regulation should be retained as is. The board is publishing its report of findings dated December 20, 2023, to support this decision.

The board's public participation guidelines mirror the Department of Planning and Budget's (DPB's) model public participation guidelines. The guidelines having the status of a regulation is necessary to promote public involvement in the development, amendment, or repeal of regulations. Further, the regulation is clearly written and understandable.

On October 19, 2023, the board voted to retain this regulation without amendment. The regulation continues to mirror the model public participation guidelines from DPB.

There is a continued need for this regulation. The board did not receive any comments or complaints during the public comment period. The regulation is not complex. The regulation does not overlap, duplicate, or conflict with any other federal or state laws or regulations. The regulation was last evaluated in 2019 and does not rely on technology, economic conditions, or any other factors due to the nature of public participation. This regulation outlines the Virginia Regulatory Town Hall as the mechanism for notification, registration, and meeting procedures for public participation. The board determined the regulation has no economic impact on small businesses.

Contact Information: Tanya Pettus, Administrator, Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8595, or email waterwasteoper@dpor.virginia.gov.

TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

MOTOR VEHICLE DEALER BOARD

Agency Notice

Pursuant to Executive Order 19 (2022) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the following regulations are undergoing a periodic review and small business impact review: **24VAC22-11, Public Participation Guidelines**; **24VAC22-20, Motor Vehicle Dealer Fees**; and **24VAC22-30, Motor Vehicle Dealer Advertising Practices and Enforcement Regulations**. The review of each regulation will be guided by the principles in Executive Order 19 (2022). The purpose of a periodic review is to determine whether each regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to 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 15, 2024, and ends February 5, 2024.

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: William Childress, Executive Director, Motor Vehicle Dealer Board, 2201 West Broad Street, Suite 104, Richmond, VA 23220, telephone (804) 367-1100, ext: 3002, FAX (804) 367-1053, or email william.childress@mvdb.virginia.gov.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF PHARMACY

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Pharmacy intends to consider amending **18VAC110-21, Regulations Governing the Licensure of Pharmacists and Registration of Pharmacy Technicians**. The purpose of the proposed action is to, pursuant to Chapters 171 and 172 of the 2023 Acts of Assembly, expand the conditions for which a pharmacist can initiate treatment by adding group A streptococcus bacteria infections, influenza virus infections, COVID-19 virus infections, and urinary tract infections to the list of conditions for which pharmacists can initiate treatment with controlled substances or devices for persons 18 years of age and older. Clinical decision-making for these four diseases and conditions can be guided by a clinical test that is classified as waived under the federal Clinical Laboratory Improvement Amendments of 1988 (42 USC § 263a).

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

Statutory Authority: §§ 54.1-2400 and 54.1-3303.1 of the Code of Virginia.

Public Comment Deadline: February 14, 2024.

Agency Contact: Caroline Juran, RPh, Executive Director, Board of Pharmacy, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 367-4456, FAX (804) 527-4472, or email caroline.juran@dhp.virginia.gov.

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TITLE 3. ALCOHOLIC BEVERAGE AND CANNABIS CONTROL

VIRGINIA CANNABIS CONTROL AUTHORITY

Final Regulation

REGISTRAR'S NOTICE: The Virginia Cannabis Control Authority is claiming an exemption from the Administrative Process Act in accordance with the fifth enactment of Chapters 740 and 773 of the 2023 Acts of Assembly, which exempts the actions of the authority relating to the adoption of regulations necessary to implement the provisions of the act.

Title of Regulation: **3VAC10-30. Applications, Licenses, Permits, and Registrations (adding 3VAC10-30-10 through 3VAC10-30-180).**

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

Effective Date: January 1, 2024.

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

Background: Chapters 740 and 773 of the 2023 Acts of Assembly transferred regulatory authority for the Medical Cannabis Program from the Board of Pharmacy to the independent agency, the Cannabis Control Authority.

Summary:

Pursuant to Chapters 740 and 773, this action establishes Applications, Licenses, Permits, and Registrations (3VAC10-30) for the Medical Cannabis Program, which provides registration procedures for the Medical Cannabis Program, when required, for (i) practitioners; (ii) patients, parents, legal guardians, and registered agents; and (iii) a medical cannabis facility permit.

Chapter 30

Applications, Licenses, Permits, and Registrations

3VAC10-30-10. Definitions.

In addition to words and terms defined in § 4.1-600 of the Code of Virginia, the following words and terms when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise:

"90-day supply" means the amount of cannabis products reasonably necessary to ensure an uninterrupted availability of supply for a 90-day period for patients with a valid, unexpired written certification issued by a practitioner for the use of cannabis products.

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

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

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

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

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

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

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

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

packaging or repackaging of the substance or labeling or relabeling of its container.

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

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

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

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

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

3VAC10-30-20. Reserved.

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

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

B. A practitioner issuing a certification shall:

1. Conduct an assessment and evaluation of the patient in order to develop a treatment plan for the patient, which shall include an examination of the patient and the patient's medical history, prescription history, and current medical condition;

2. Diagnose the patient;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A. A practitioner who issues certifications shall not:

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

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

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

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

B. A practitioner who issues certifications and such practitioner's coworker, employee, spouse, parent, or child shall not have a direct or indirect financial interest in a pharmaceutical processor, a cannabis dispensing facility, or any other entity that may benefit from a qualifying patient's acquisition, purchase, or use of cannabis products, including any formal or informal agreement whereby a pharmaceutical processor or other person provides compensation if the practitioner issues a certification for a qualifying patient or steers a qualifying patient to a specific pharmaceutical processor or cannabis product.

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

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

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

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

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

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

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

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

5. Payment of the appropriate fees; and

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

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

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

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

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

4. Payment of the applicable fee; and

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

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

3VAC10-30-60. Denial of a patient, parent, legal guardian, or registered agent registration application.

A. The board may deny an application or renewal of the registration of a registered agent or the voluntary registration or renewal of a patient, parent, or legal guardian if the applicant:

1. Does not meet the requirements set forth in law or regulation or fails to provide complete information on the application form;

2. Does not provide acceptable proof of identity, residency or temporary residency, or age of the patient to the board;

3. Provides false, misleading, or incorrect information to the board;

4. Has had a registration request denied or registered agent status denied, suspended, or revoked by the board in the previous six months;

5. Has presented a certification issued by a practitioner who is not authorized to certify patients for cannabis products; or

6. Has a prior conviction of a violation of any law pertaining to controlled substances.

B. If the board denies an application or renewal of a patient, parent, legal guardian, or registered agent applicant, the board shall provide the applicant with notice of the grounds for the denial and shall inform the applicant of the right to request a hearing pursuant to § 2.2-4019 of the Code of Virginia.

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

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

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

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

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

E. If a patient, parent, legal guardian, or registered agent becomes aware of the loss, theft, or destruction of the registration of such patient, parent, legal guardian, or registered agent, the registrant shall notify the board not later than five business days after becoming aware of the loss, theft, or destruction and submit the fee for a replacement registration. The board shall issue a replacement registration upon receiving the applicable fee, provided the applicant continues to satisfy the requirements of law and regulation.

3VAC10-30-80. Invalidation of the voluntary registration of a patient, parent, legal guardian, or registered agent.

The board may invalidate the voluntary registration of a patient, parent, legal guardian, or registered agent under the following circumstances:

1. The patient's practitioner notifies the board that the practitioner is withdrawing the written certification submitted on behalf of the patient, and 30 days after the practitioner's withdrawal of the written certification, the patient has not obtained a valid written certification from a different practitioner;

2. The voluntarily registered patient, parent, legal guardian, or registered agent provided false, misleading, or incorrect information to the board;

3. The voluntarily registered patient is no longer a resident of Virginia or is no longer temporarily residing in Virginia;

4. The voluntarily registered patient, parent, legal guardian, or registered agent obtained more than a 90-day supply of cannabis products in a 90-day period;

5. The voluntarily registered patient, parent, legal guardian, or registered agent sold or improperly provided cannabis products to any person, including another registered agent;

6. The voluntarily registered patient, parent, legal guardian, or registered agent permitted another person to use the registration of the voluntarily registered patient, parent, legal guardian, or registered agent, except as required for a registered agent to act on behalf of a patient;

7. The voluntarily registered patient, parent, legal guardian, or registered agent tampered, falsified, altered, modified, or allowed another person to tamper, falsify, alter, or modify the registration of the voluntarily registered patient, parent, legal guardian, or registered agent;

8. The registration of the voluntarily registered patient, parent, legal guardian, or registered agent was lost, stolen, or destroyed, and the voluntarily registered patient, parent, legal guardian, or registered agent failed to notify the board or notified the board of such incident more than five business days after becoming aware that the registration was lost, stolen, or destroyed;

9. The voluntarily registered patient, parent, legal guardian, or registered agent failed to notify the board of a change in registration information or notified the board of such change more than 15 days after the change; or

10. The voluntarily registered patient, parent, legal guardian, or registered agent violated any federal or state law or regulation.

3VAC10-30-90. Medical cannabis facility employee licenses and registrations.

A. A pharmacist with a current, unrestricted license issued by the Board of Pharmacy practicing at the location of the address on the pharmaceutical processor or cannabis dispensing facility application shall be in full and actual charge of the dispensing area of a pharmaceutical processor or of a cannabis dispensing facility and shall serve as the pharmacist-in-charge.

B. A pharmacist with a current, unrestricted license issued by the Board of Pharmacy shall provide personal supervision on the premises of the dispensing area of the pharmaceutical processor or of a cannabis dispensing facility at all times during its hours of operation, unless all cannabis products are contained in a vault or other similar container to which only the pharmacist has access controls.

C. The person who is designated as the responsible party for a pharmaceutical processor shall practice at the location of the address on the pharmaceutical processor application, shall have oversight of the cultivation and production areas, and shall possess:

1. A current, unrestricted license as a pharmacist issued by the Board of Pharmacy;

2. A degree in chemistry, pharmacology, or a field related to the cultivation of plants;

3. A certification recognized by the board; or

4. At least two years of verifiable experience cultivating plants or extracting chemicals from plants.

D. A person who holds a current, unrestricted registration as a pharmacy technician pursuant to § 54.1-3321 of the Code of Virginia may perform the following duties under supervision of a pharmacist:

1. The entry of drug dispensing information and drug history into a data system or other recordkeeping system;

2. The preparation of labels for dispensing the cannabis product or patient information;

3. The removal of the cannabis product to be dispensed from inventory;

4. The measuring of the cannabis product to be dispensed;

5. The packaging and labeling of the cannabis product to be dispensed and the repackaging thereof;

6. The packaging and labeling of bulk cannabis oil, botanical cannabis, and usable cannabis intended to be wholesale distributed pursuant to 3VAC10-40-50;

7. The stocking or loading of devices used in the dispensing process;

8. The selling of the cannabis product to the patient, parent, legal guardian or registered agent; and

9. The performance of any other task restricted to pharmacy technicians by the board of pharmacy's regulations.

E. A pharmacist with a current, unrestricted license; a registered pharmacy intern who has completed the first professional year of pharmacy school; or a pharmacy technician with a current, unrestricted registration issued by the Board of Pharmacy may perform duties associated with the cultivation and extraction as authorized by the pharmaceutical processor and duties associated with the dispensing of the products as authorized by the PIC or as otherwise authorized in law.

F. A pharmaceutical processor may employ individuals with less than two years of experience to perform cultivation-related duties under the supervision of an individual who has received a degree in a field related to the cultivation of plants or a certification recognized by the board or who has at least two years of experience cultivating plants.

G. A pharmaceutical processor may employ individuals with less than two years of experience to perform extraction-related duties under the supervision of an individual who has a degree in chemistry or pharmacology or at least two years of experience extracting chemicals from plants.

H. At no time shall the dispensing area of a pharmaceutical processor operate or be accessed without a pharmacist on duty. At no time shall the cultivation and production area operate or be accessed without an employee on duty who satisfies the requirements for providing direct supervision for the activities in the respective areas.

I. No person shall be employed by or serve as an agent of a medical cannabis facility without being at least 18 years of age.

J. No person who has had a license or registration suspended or revoked or been denied issuance of such license or registration shall serve as an employee or agent of the medical cannabis facility unless such license or registration has been reinstated and is current and unrestricted.

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

A. The board shall publish a notice of open applications for pharmaceutical processor permits. Such notice shall include information on how to obtain and complete an application, the required fees, the criteria for issuance of a permit, and the deadline for receipt of applications.

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

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

3VAC10-30-110. Application process for pharmaceutical processor permits.

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

B. Submission of initial application.

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

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

b. The location within the health service area established by the State Board of Health that is to be operated under such permit;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3VAC10-30-120. Conditional approval.

A. Following the deadline for receipt of applications, the board shall evaluate each complete and timely submitted application and may grant conditional approval on a competitive basis based on compliance with requirements set forth in 3VAC10-30-110.

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

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

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

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

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

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

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

C. The board may disqualify any applicant who:

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

2. Fails to submit an application by the published deadline;

3. Fails to pay all applicable fees; or

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

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

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

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

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

1. Designation of a PIC and responsible party;

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

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

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

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

C. Before the board issues any permit, the applicant shall attest to compliance with all state and local laws and ordinances. A pharmaceutical processor permit shall not be issued to any person to operate from a private dwelling or residence.

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

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

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

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

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

A. Pursuant to § 4.1-1602 of the Code of Virginia, the board may issue up to five cannabis dispensing facility permits for each health service area. A permit may be issued to a facility that is owned, at least in part, by the pharmaceutical processor located in that health service area for the dispensing of cannabis products that have been cultivated and produced on the premises of a pharmaceutical processor. Each cannabis dispensing facility shall be located within the same health service area as the pharmaceutical processor.

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

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

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

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

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

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

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

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

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

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

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

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

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

3VAC10-30-150. Denial of a cannabis dispensing facility permit application.

A. The board may deny an application for a cannabis dispensing facility permit if the applicant:

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

2. Fails to pay all applicable fees; or

3. Fails to comply with all requirements for a cannabis dispensing facility.

B. If the board denies an application of cannabis dispensing facility permit, the board shall provide the applicant with notice of the grounds for the denial and shall inform the applicant of the right to request a hearing pursuant to § 2.2-4019 of the Code of Virginia.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3VAC10-30-170. Denial of a cannabis cultivation facility application.

A. The board may deny an application for a cannabis cultivation facility if the applicant:

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

2. Fails to pay all applicable fees; or

3. Fails to comply with all requirements for a cannabis cultivation facility.

B. If the board denies an application of cannabis cultivation facility, the board shall provide the applicant with notice of the grounds for the denial and shall inform the applicant of the right to request a hearing pursuant to § 2.2-4019 of the Code of Virginia.

3VAC10-30-180. Notification of changes by medical cannabis facility.

A. Unless otherwise provided in law or regulation, the PIC or the responsible party designated on the application of the medical cannabis facility shall provide any notification or information that is required from a medical cannabis facility with respect to its designated areas of oversight.

B. Prior to making any change to the medical cannabis facility name, the medical cannabis facility shall submit an application for such change to the board and pay the fee.

C. Any person wishing to engage in the acquisition of an existing medical cannabis facility, change the location of a medical cannabis facility, make structural changes to an existing medical cannabis facility, or make changes to a previously approved security system shall submit an application to the board and pay the required fee.

1. An authorized agent of the board shall inspect any proposed location or structural changes prior to issuance of a permit.

2. Cannabis, industrial hemp extracts, or cannabis products shall not be moved to a new location until an authorized agent of the board grants approval.

VA.R. Doc. No. R24-7764; Filed December 29, 2023, 8:41 p.m.

Final Regulation

REGISTRAR'S NOTICE: The Virginia Cannabis Control Authority is claiming an exemption from the Administrative Process Act in accordance with the fifth enactment of Chapters 740 and 773 of the 2023 Acts of Assembly, which exempts the actions of the authority relating to the adoption of regulations necessary to implement the provisions of the act.

Title of Regulation: **3VAC10-40. Regulated Operations (adding 3VAC10-40-10 through 3VAC10-40-220).**

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

Effective Date: January 1, 2024.

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

Background: Chapters 740 and 773 of the 2023 Acts of Assembly transferred regulatory authority for the Medical Cannabis Program from the Board of Pharmacy to the independent agency, the Cannabis Control Authority.

Summary:

Pursuant to Chapters 740 and 773, this action establishes Regulated Operations (3VAC10-40), for the Medical Cannabis Program, which includes requirements for (i) wholesale distribution of cannabis products, bulk cannabis oil, botanical cannabis, and usable cannabis; (ii) personnel and security for medical cannabis facilities; (iii) medical cannabis advertising; and (iv) recordkeeping and storage.

Chapter 40

Regulated Operations

Part I

General Provisions

3VAC10-40-10. Definitions.

In addition to words and terms defined in § 4.1-600 of the Code of Virginia, the following words and terms when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise:

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

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

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

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

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

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

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

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

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

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

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

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

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

3VAC10-40-20. General provisions.

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

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

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

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

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

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

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

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

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

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

I. A pharmacist shall counsel patients, parents, legal guardians, and registered agents, if applicable, regarding the use of cannabis products. Such counseling shall include information related to safe techniques for proper use and

storage of cannabis products and for disposal of the products in a manner that renders them nonrecoverable.

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

3VAC10-40-30. Facility prohibitions.

A. No pharmaceutical processor shall:

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

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

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

4. Provide cannabis products samples.

B. No cannabis dispensing facility shall:

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

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

3. Provide cannabis product samples.

C. No cannabis cultivation facility shall:

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

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

3. Provide cannabis samples.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3VAC10-40-40. Reserved.

Part II

Cannabis Production, Distribution, and Inventory

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

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

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

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

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

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

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

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

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

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

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

3VAC10-40-60. Inventory requirements.

A. Each medical cannabis facility prior to commencing business shall:

1. Conduct an initial comprehensive inventory of all cannabis plants, including the seeds, parts of plants, extracts,

and cannabis products, at the facility. If a facility commences business with no cannabis or cannabis products on hand, the pharmacist or responsible party shall record this fact as the initial inventory.

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

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

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

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

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

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

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

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

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

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

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

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

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

3VAC10-40-70. Reserved.

3VAC10-40-80. Reserved.

3VAC10-40-90. Reserved.

Part III

Personnel and Security

3VAC10-40-100. Employee training.

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

1. The proper use of security measures and controls that have been adopted for the prevention of diversion, theft, or loss of cannabis, to include the seeds, any parts or extracts of the cannabis plants, and cannabis products;

2. Procedures and instructions for responding to an emergency;

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

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

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

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

1. The name of the person receiving the training;

2. The dates of the training;

3. A general description of the topics covered;

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

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

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

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

3VAC10-40-110. Pharmacy technicians; ratio; supervision and responsibility.

A. The ratio of pharmacy technicians to pharmacists on duty in the areas of a pharmaceutical processor designated for production or dispensing or in a cannabis dispensing facility shall not exceed six pharmacy technicians to one pharmacist.

B. The pharmacist providing direct supervision of pharmacy technicians may be held responsible for the pharmacy technicians' actions. Any violations relating to the dispensing of cannabis products resulting from the actions of a pharmacy technician shall constitute grounds for action against the license of the pharmacist and the registration of the pharmacy technician. As used in this subsection, "direct supervision" means a supervising pharmacist who:

1. Is on duty where the pharmacy technician is performing routine production of cannabis products or dispensing functions; and

2. Conducts in-process and final checks on the pharmacy technician's performance.

C. Pharmacy technicians shall not:

1. Counsel a patient, a patient's parent, legal guardian, or registered agent regarding (i) cannabis products or other drugs either before or after cannabis products have been dispensed or (ii) any medical information contained in a patient medication record;

2. Consult with the practitioner who certified the patient, or the practitioner's agent, regarding a patient or any medical information pertaining to the patient's cannabis product or any other drug the patient may be taking;

3. Interpret the patient's clinical data or provide medical advice;

4. Determine whether a different formulation of cannabis product should be substituted for the cannabis product or formulation recommended by the practitioner or requested by the patient or parent or legal guardian; or

5. Communicate with a practitioner who certified a patient or the practitioner's agent to obtain a clarification on a qualifying patient's written certification or instructions.

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

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

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

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

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

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

2. All record retention requirements are met;

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

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

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

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

G. A responsible party who is absent from practice for more than 30 consecutive days shall be deemed to no longer be the responsible party. If the responsible party knows of an upcoming absence of longer than 30 days, the responsible party

shall be responsible for notifying the board and returning the permit. For unanticipated absences by the responsible party that exceed 15 days with no known return date within the next 15 days, the permit holder shall immediately notify the board and shall obtain a new responsible party.

H. An application for a permit designating the new responsible party shall be filed with the required fee within 14 days of the original date of resignation or termination of the responsible party in a manner provided by the board. It shall be unlawful for a pharmaceutical processor to operate without a new permit past the 14-day deadline unless the board receives a request for an extension prior to the deadline. The chair of the board, or the chair's designee, may grant an extension for up to an additional 14 days for good cause shown.

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

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

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

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

1. Pharmacy technicians are registered and properly trained;

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

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

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

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

a. Pharmaceutical processor permit or cannabis dispensing facility permit;

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

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

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

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

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

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

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

3VAC10-40-140. Security requirements.

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

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

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

1. Maintain all cannabis plants, seeds, parts of plants, extracts, and cannabis products in a secure area or location

accessible only by the minimum number of authorized employees essential for efficient operation;

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

3. Keep all approved safes, approved vaults, or any other approved equipment or areas used for the production, cultivation, harvesting, processing, manufacturing, or storage of cannabis products securely locked or protected from entry, except for the actual time required to remove or replace the cannabis, seeds, parts of plants, extracts, or cannabis products;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. The video system shall have:

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

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

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

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

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

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

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

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

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

3VAC10-40-150. Reportable events.

A. Upon becoming aware of (i) diversion, theft, loss, or discrepancies identified during inventory; (ii) unauthorized destruction of any cannabis products; or (iii) any loss or unauthorized alteration of records related to cannabis products or qualifying patients, a pharmacist, responsible party, or medical cannabis facility shall immediately notify appropriate law-enforcement authorities and the board.

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

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

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

2. A breach of security;

3. The failure of the security alarm system due to a loss of electrical support or mechanical malfunction that is expected to last longer than eight hours; and

4. Corrective measures taken, if any.

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

Part IV

Advertising

3VAC10-40-160. General provisions.

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

1. Include false or misleading statements;

2. Promote excessive consumption;

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

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

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

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

3VAC10-40-170. Prohibited practices.

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

B. Advertising shall not:

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

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

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

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

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

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

3. Be illuminated during nonbusiness hours.

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

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

3VAC10-40-180. Permitted practices.

A. A medical cannabis facility may list its business in public telephone books, business directories, search engines, or other places where it is reasonable for a business to maintain an informational presence of its existence and a description of the nature of the business. A medical cannabis facility shall not engage in the use of pop-up digital advertisements.

B. A medical cannabis facility may display the following information on its website or social media site:

1. Name and location of the medical cannabis facility;

2. Contact information for the medical cannabis facility;

3. Hours and days the pharmaceutical processor or cannabis dispensing facility is open for dispensing cannabis products;

4. Laboratory results;

5. Product information and pricing;

6. Directions to the medical cannabis facility; and

7. Educational materials regarding the use of cannabis products that are supported by substantial, current clinical evidence or data.

C. Medical cannabis facilities may provide communication and engagement for educational purposes with health care practitioners, patients, parents, legal guardians, registered agents, and the general public, including the dissemination of information permitted by 3VAC10-40-160 and educational materials.

3VAC10-40-190. Advertising requirements.

A. Advertising must accurately and legibly identify the medical cannabis facility responsible for its content and include a statement that cannabis products are for use by patients only. Any advertisement for cannabis products that is related to the benefits, safety, or efficacy, including therapeutic or medical claims, shall:

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

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

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

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

Part V

Records, Storage, and Administration

3VAC10-40-200. Recordkeeping requirements.

A. If a medical cannabis facility uses an electronic system for the storage and retrieval of patient information or other records related to cultivating, producing, and dispensing cannabis products, as applicable, the pharmaceutical processor or cannabis dispensing facility shall use a system that:

1. Guarantees the confidentiality of the information contained in the system;

2. Is capable of safeguarding against erasures and unauthorized changes in data after the information has been entered and verified by the pharmacist or responsible party; and

3. Is capable of being reconstructed in the event of a computer malfunction or accident resulting in the destruction of the data bank.

B. All records relating to inventory, laboratory results, and dispensing shall be maintained for a period of three years and shall be made available to the board upon request.

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

A. A medical cannabis facility shall:

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

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

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

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

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

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

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

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

1. Restrict movement between compartments;

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

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

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

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

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

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

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

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

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

F. The pharmaceutical processor or cannabis cultivation facility shall store all cannabis, including seeds, parts of plants, extracts, and cannabis products, in the process of production, transfer, or analysis in such a manner as to prevent diversion, theft, or loss; shall make cannabis, including the seeds, parts of plants, extracts, and cannabis products accessible only to the minimum number of specifically authorized employees essential for efficient operation; and shall return such items to

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

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

3VAC10-40-220. Medical cannabis facility closings; going out of business; change of ownership.

A. At least 30 days prior to the date a medical cannabis facility closes, either temporarily or permanently, the owner shall:

1. Notify the board;

2. Send written notification to patients with current certification; and

3. Post a notice on the window or door of the medical cannabis facility.

B. The proposed disposition of all cannabis, industrial hemp extracts, cannabis products, dispensing records, patient information records, and other required records, as applicable, shall be reported to the board. If the cannabis, cannabis products, and records are to be transferred to another medical cannabis facility located in Virginia, the owner shall inform the board and the patients and include on the public notice the name and address of the processor or cannabis dispensing facility to whom the cannabis, cannabis products, and records are being transferred and the date of transfer.

C. The board may approve exceptions to the public notice requirement due to exigent circumstances, including sudden closing due to fire, destruction, natural disaster, death, property seizure, eviction, bankruptcy, or other emergency circumstances. If the medical cannabis facility is not able to meet the notification requirements, the owner shall ensure that the board and public are properly notified as soon as the owner knows of the closure and shall disclose the emergency circumstances preventing the notification within the required deadlines.

D. In the event of an exception to the notice, the PIC, responsible party, or owner shall provide notice as far in advance of closing as allowed by the circumstances.

E. At least 14 days prior to any change in ownership of an existing medical cannabis facility, the owner shall notify the board of the pending change.

1. Upon any change in ownership of an existing pharmaceutical processor or cannabis dispensing facility, the dispensing records for the two years immediately preceding the date of change of ownership and other required patient information shall be provided to the new owners on the date of change of ownership in substantially the same format as previously used immediately prior to the transfer to provide continuity of services.

2. The previous owner shall be held responsible for ensuring the proper and lawful transfer of records on the date of the transfer.

3. If a new owner's share constitutes 5.0% or greater of the total ownership, the new owner shall submit to fingerprinting and the criminal history record search required of § 4.1-1602 of the Code of Virginia.

VA.R. Doc. No. R24-7732; Filed December 29, 2023, 8:40 p.m.

Final Regulation

REGISTRAR'S NOTICE: The Virginia Cannabis Control Authority is claiming an exemption from the Administrative Process Act in accordance with the fifth enactment of Chapters 740 and 773 of the 2023 Acts of Assembly, which exempts the actions of the authority relating to the adoption of regulations necessary to implement the provisions of the act.

Title of Regulation: **3VAC10-50. Cannabis Products (adding 3VAC10-50-10 through 3VAC10-50-120).**

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

Effective Date: January 1, 2024.

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

Background: Chapters 740 and 773 of the 2023 Acts of Assembly transferred regulatory authority for the Medical Cannabis Program from the Board of Pharmacy to the independent agency, the Cannabis Control Authority.

Summary:

Pursuant to Chapters 740 and 773, this action establishes Cannabis Products (3VAC10-50), which includes requirements for the Medical Cannabis Program related to (i) cultivation of cannabis; (ii) production of cannabis products; (iii) dispensing of cannabis products; and (iv) registration of cannabis products.

Chapter 50

Cannabis Products

Part I

General Provisions

3VAC10-50-10. Definitions.

In addition to words and terms defined in § 4.1-600 of the Code of Virginia, the following words and terms when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise:

"90-day supply" means the amount of cannabis products reasonably necessary to ensure an uninterrupted availability of supply for a 90-day period for patients with a valid, unexpired written certification issued by a practitioner for the use of cannabis products.

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

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

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

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

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

a. Incorrect product;

b. Incorrect product strength;

c. Incorrect dosage form;

d. Incorrect patient; or

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

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

a. Known therapeutic duplication;

b. Known drug-disease contraindications;

c. Known drug-drug interactions;

d. Incorrect drug dosage or duration of drug treatment;

e. Known drug-allergy interactions;

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

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

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

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

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

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

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

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

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

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

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

3VAC10-50-20. Reserved.

3VAC10-50-30. Reserved.

3VAC10-50-40. Reserved.

Part II

Cultivation, Production, and Dispensing of Cannabis Products

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

A. No cannabis products shall have had pesticide chemicals or petroleum-based solvents, except for hydrocarbon-based solvents described in this chapter, used during the cultivation,

extraction, production, or manufacturing process, except that the board may authorize the use of pesticide chemicals for purposes of addressing an infestation that could result in a catastrophic loss of cannabis crops.

B. Cultivation methods for cannabis plants, extraction methods used to produce the cannabis products, and the manufacturing of cannabis products shall be performed in a manner deemed safe and effective based on current standards or scientific literature.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

a. Ventilation requirements;

b. Air contaminants; and

c. Hazard communication.

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

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

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

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

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

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

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

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

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

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

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

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

b. Safe and proper operation of machinery and equipment;

c. Adequate cleaning and maintenance of machinery and equipment;

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

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

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

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

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

c. Handles and stores the solvents safely.

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

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

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

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

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

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

D. If a pharmaceutical processor makes a material change to its use of flammable solvents in any part of the manufacturing process, a designated industrial hygienist or professional engineer who is not an employee of the pharmaceutical

processor must recertify the standard operating procedures for use of flammable solvents determined under subsection C of this section.

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

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

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

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

3VAC10-50-70. Registration of products.

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

1. Tetrahydrocannabinol (THC);

2. Tetrahydrocannabinol acid (THC-A);

3. Cannabidiols (CBD); and

4. Cannabidiolic acid (CBDA).

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

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

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

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

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

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

4. Is obscene or indecent;

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

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

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

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

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

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

1. Prior to the initial dispensing of cannabis products pursuant to each written certification, the pharmacist or pharmacy technician at the location of the pharmaceutical processor or cannabis dispensing facility shall view in person or by audiovisual means a current photo identification of the patient, parent, legal guardian, or registered agent. The pharmacist or pharmacy technician shall verify in the Virginia Prescription Monitoring Program of the Department of Health Professions or other program recognized by the board that any registrations, if applicable, are current, the written certification has not expired, and the date and quantity of the last dispensing of cannabis products to the patient.

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

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

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

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

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

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

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

4. The date of dispensing the cannabis product;

5. The quantity of cannabis products dispensed;

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

a. Tetrahydrocannabinol (THC);

b. Tetrahydrocannabinol acid (THC-A);

c. Cannabidiol (CBD); and

d. Cannabidiolic acid (CBDA);

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

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

8. The name of the patient;

9. The name of the certifying practitioner;

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

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

12. The name or initials of the dispensing pharmacist;

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

14. Any necessary cautionary statement;

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

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

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

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

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

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

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

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

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

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

3VAC10-50-90. Dispensing error review and reporting; quality assurance program.

A. A pharmaceutical processor or cannabis dispensing facility shall implement and comply with a quality assurance program that describes, in writing, policies and procedures to detect, identify, and prevent dispensing errors.

B. A pharmaceutical processor or cannabis dispensing facility shall distribute the written policies and procedures to all employees and shall make the written policies and procedures readily available on the premises of the pharmaceutical processor or cannabis dispensing facility.

C. The policies and procedures shall include:

1. Directions for communicating the details of a dispensing error to the practitioner who certified a qualifying patient and to the qualifying patient, the patient's parent or legal guardian, the patient's registered agent, or appropriate family member if the patient is deceased or is unable to fully comprehend the communication. The communication shall describe methods of correcting the dispensing error or reducing the negative impact of the error on the qualifying patient; and

2. A process to document and assess dispensing errors to determine the cause of the error and an appropriate response.

D. A pharmaceutical processor or cannabis dispensing facility shall use the findings of its quality assurance program to develop systems and workflow processes designed to prevent dispensing errors. A pharmaceutical processor or cannabis dispensing facility PIC shall:

1. Inform pharmaceutical processor or cannabis dispensing facility employees of changes to policy, procedure, systems, or processes made as a result of recommendations generated by the quality assurance program;

2. Notify all processor or facility employees that the discovery or reporting of a dispensing error shall be relayed immediately to a pharmacist on duty;

3. Ensure that a pharmacist performs a quality assurance review for each dispensing error. A pharmacist shall commence such review as soon as is reasonably possible, but no later than two business days from the date the dispensing error is discovered; and

4. Create a record of every quality assurance review. This record shall contain at least the following:

a. The date of the quality assurance review and the names and titles of the persons performing the review;

b. The pertinent data and other information relating to the dispensing error reviewed;

c. Documentation of contact with the patient, parent, legal guardian, or registered agent, where applicable, and the practitioner who certified the patient;

d. The findings and determinations generated by the quality assurance review; and

e. Recommended changes to pharmaceutical processor or cannabis dispensing facility policy, procedure, systems, or processes if any.

E. A pharmaceutical processor or cannabis dispensing facility shall maintain for three years a copy of the pharmaceutical processor's or cannabis dispensing facility's quality assurance program and records of all reported dispensing errors and quality assurance reviews in an orderly manner and filed by date.

3VAC10-50-100. Product samples.

The pharmaceutical processor or cannabis dispensing facility may use and distribute inert product samples that do not contain any active cannabinoids for patient demonstration exclusively at the pharmaceutical processor or cannabis dispensing facility without the need for a written certification. Such inert product samples may not be sold or further distributed.

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

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

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

1. The date and time of destruction and disposal;

2. The manner of destruction and disposal;

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

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

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

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

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

3VAC10-50-120. Disposal of chemical, dangerous, and hazardous waste.

Disposal of chemical, dangerous, and hazardous waste must be conducted in a manner consistent with federal, state, and local statutes and regulations. This includes any waste product soaked in a flammable solvent.

1. Any waste that may be hazardous must be treated as hazardous waste in regard to storage, labeling, and disposal.

2. The pharmaceutical processor can, alternatively, test waste that may be hazardous for elemental impurities content.

a. When tested for elemental impurities content, materials that meet the definition of hazardous waste, as defined by the Resource Conservation and Recovery Act (RCRA) or other applicable federal, state, or local statutes and regulations, must be treated as hazardous waste. Such materials must be properly labeled, contained, stored, and disposed of in accordance with the Environmental Protection Agency, RCRA, and other applicable regulations for hazardous waste.

b. Materials that contain elemental impurities concentrations less than the allowable concentration limits specified in RCRA and are not designated hazardous waste by other applicable federal, state, or local statutes and regulations, may be disposed of in accordance with 3VAC10-50-110.

VA.R. Doc. No. R24-7733; Filed December 29, 2023, 8:40 p.m.

Final Regulation

REGISTRAR'S NOTICE: The Virginia Cannabis Control Authority is claiming an exemption from the Administrative Process Act in accordance with the fifth enactment of Chapters 740 and 773 of the 2023 Acts of Assembly, which exempts the actions of the authority relating to the adoption of regulations necessary to implement the provisions of the act.

Title of Regulation: **3VAC10-60. Testing of Cannabis Products (adding 3VAC10-60-10, 3VAC10-60-20, 3VAC10-60-30).**

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

Effective Date: January 1, 2024.

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

Background: Chapters 740 and 773 of the 2023 Acts of Assembly transferred regulatory authority for the Medical Cannabis Program from the Board of Pharmacy to the independent agency, the Cannabis Control Authority.

Summary:

Pursuant to Chapters 740 and 773, this action establishes Testing of Cannabis Products (3VAC10-60) for the Medical Cannabis Program, which provides laboratory requirements for the testing and possible remediation of medical cannabis and medical cannabis products.

Chapter 60

Testing of Cannabis Products

3VAC10-60-10. Definitions.

In addition to words and terms defined in § 4.1-600 of the Code of Virginia, the following words and terms when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise:

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

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

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

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

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

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

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

3VAC10-60-20. Laboratory requirements.

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

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

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

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

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

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

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

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

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

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

B. After processing and before dispensing the cannabis oil product, a pharmaceutical processor shall make a sample available from each homogenized batch of product for a laboratory to (i) test for microbiological contaminants, mycotoxins, heavy metals, residual solvents, and pesticide chemical residue; and (ii) conduct an active ingredient analysis and terpenes profile. Each laboratory shall determine a valid sample size for testing, which may vary due to sample matrix, analytical method, and laboratory-specific procedures. A minimum sample size of 0.5% of individual units for dispensing or distribution from each homogenized batch of cannabis oil is required to achieve a representative sample for analysis.

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

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

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

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

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

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

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

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

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

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

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

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

a. Tetrahydrocannabinol (THC);

b. Tetrahydrocannabinol acid (THC-A);

c. Cannabidiols (CBD); and

d. Cannabidiolic acid (CBDA).

6. For the purposes of the residual solvent test, a sample of the cannabis oil product shall be deemed to have passed if it meets the standards and limits recommended by the American Herbal Pharmacopia for Cannabis Inflorescence.

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

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

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

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

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

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

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

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

a. Total tetrahydrocannabinol (THC); and

b. Total cannabidiol (CBD).

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

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

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

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

3VAC10-60-30. Remediation.

A. If a sample of cannabis oil product does not pass the microbiological, mycotoxin, heavy metal, or residual solvent test based on the standards set forth in 3VAC10-60-20 G, the batch may be remediated with further processing. After further processing, the batch shall be retested for microbiological, mycotoxin, heavy metal, pesticide chemical residue, and residual solvent, and an active ingredient analysis and terpenes profile shall be conducted.

B. A cannabis oil product that does not pass the pesticide chemical residue test cannot be remediated.

C. If a sample of botanical cannabis product does not pass the microbiological, mycotoxin, heavy metal, water activity, or moisture content test based on the standards set forth in 3VAC10-60-20 H, the batch may be remediated.

1. Once remediated, the batch shall be retested for microbiological, mycotoxin, heavy metal, pesticide chemical residue, water activity, and moisture content, and an active ingredient analysis and terpenes profile shall be conducted.

2. If the botanical cannabis batch fails retesting, it shall be considered usable cannabis and may be processed into cannabis oil, unless the failure is related to pesticide requirements, in which case the batch shall not be considered usable cannabis and shall not be processed into cannabis oil.

3. Any batch processed into cannabis oil shall comply with all testing standards set forth in 3VAC10-60-20 G.

D. A botanical cannabis product that does not pass the pesticide chemical residue test cannot be remediated.

DOCUMENTS INCORPORATED BY REFERENCE (3VAC10-60)

Cannabis Inflorescence Standards of Identity, Analysis, and Quality Control, Revision 2014, American Herbal Pharmacopoeia, P.O. Box 66809, Scotts Valley, CA 95067

Section 1111 of The United States Pharmacopeia and National Formulary, revised November 1, 2016, U.S. Pharmacopeia Convention, 12601 Twinbrook Parkway Rockville, MD 20852-1790

VA.R. Doc. No. R24-7734; Filed December 29, 2023, 8:40 p.m.

Final Regulation

REGISTRAR'S NOTICE: The Virginia Cannabis Control Authority is claiming an exemption from the Administrative Process Act in accordance with the fifth enactment of Chapters 740 and 773 of the 2023 Acts of Assembly, which exempts the actions of the authority relating to the adoption of regulations necessary to implement the provisions of the act.

Title of Regulation: **3VAC10-70. Labeling and Packaging (adding 3VAC10-70-10, 3VAC10-70-20, 3VAC10-70-30).**

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

Effective Date: January 1, 2024.

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

Background: Chapters 740 and 773 of the 2023 Acts of Assembly transferred regulatory authority for the Medical Cannabis Program from the Board of Pharmacy to the independent agency, the Cannabis Control Authority.

Summary:

Pursuant to Chapters 740 and 773, this action establishes Labeling and Packaging (3VAC10-70), which includes the necessary information and requirements for labeling of Medical Cannabis Program batch cannabis products, bulk cannabis oil, botanical cannabis, and usable cannabis.

Chapter 70

Labeling and Packaging

3VAC10-70-10. Definitions.

In addition to words and terms defined in § 4.1-600 of the Code of Virginia, the following words and terms when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise:

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

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

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

3VAC10-70-20. Labeling of batch of cannabis products.

A. Cannabis products produced as a batch shall not be adulterated.

B. Cannabis products produced as a batch shall be:

1. Processed, packaged, and labeled according to the U.S. Food and Drug Administration's Current Good Manufacturing Practice in Manufacturing, Packaging, Labeling, or Holding Operations for Dietary Supplements (21 CFR Part 111); and

2. Labeled with:

a. The name and address of the pharmaceutical processor;

b. The cannabis product name that was registered with the board pursuant to 18VAC110-20-285;

c. A unique serial number that matches the product with the pharmaceutical processor batch and lot number, including the cultivator and manufacturer if produced from bulk cannabis oil, botanical cannabis, or usable cannabis obtained through distribution from another pharmaceutical processor, so as to facilitate any warnings or recalls the board or pharmaceutical processor deem appropriate;

d. The date of testing and packaging;

e. For products produced from bulk cannabis oil, botanical cannabis, or usable cannabis obtained through distribution from another pharmaceutical processor, the name and address of the testing laboratory;

f. The expiration date, which shall be six months or less from the date of the cannabis product registration approval, unless supported by stability testing;

g. The quantity of cannabis products contained in the batch;

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

(1) Tetrahydrocannabinol (THC);

(2) Tetrahydrocannabinol acid (THC-A);

(3) Cannabidiol (CBD); and

(4) Cannabidiolic acid (CBDA);

i. For botanical cannabis products, list of only total cannabidiol (CBD) and total tetrahydrocannabinol (THC);

j. For cannabis oil products, pass or fail rating based on the laboratory's microbiological, mycotoxins, heavy metals, residual solvents, and pesticide chemical residue analysis; and

k. For botanical cannabis products, a pass or fail rating based on the laboratory's microbiological, mycotoxins, heavy metals, pesticide chemical residue analysis, water activity, and moisture content.

3VAC10-70-30. Labeling of bulk cannabis oil, botanical cannabis, and usable cannabis.

A. Bulk cannabis oil, botanical cannabis, and usable cannabis shall not be adulterated.

B. Bulk cannabis oil, botanical cannabis, and usable cannabis produced for wholesale distribution shall be:

1. Processed, packaged, and labeled according to the U.S. Food and Drug Administration's Current Good Manufacturing Practice in Manufacturing, Packaging, Labeling, or Holding Operations for Dietary Supplements (21 CFR Part 111), except as exempted in this section;

2. Packaged in a tamper-evident container; and

3. Labeled with:

a. The name and addresses of the pharmaceutical processor distributing the product and the pharmaceutical processor receiving the product;

b. The quantity or weight of the cannabis oil, botanical cannabis, or usable cannabis in the container;

c. Identification of the contents of the container, including a brief description of the type or form of cannabis oil, botanical cannabis, or usable cannabis and the strain name, as appropriate;

d. The prominent statement "Not Packaged for Final Sale";

e. A unique serial number that will match a cannabis product with the cultivator and manufacturer and lot or batch number so as to facilitate any warnings or recalls the board or pharmaceutical processor deem appropriate; and

f. The dates of harvest and packaging.

C. Cannabis products produced from bulk cannabis oil, botanical cannabis, and usable cannabis shall comply with all laboratory testing and labeling requirements prior to dispensing.

VA.R. Doc. No. R24-7735; Filed December 29, 2023, 8:39 p.m.

Final Regulation

REGISTRAR'S NOTICE: The Virginia Cannabis Control Authority is claiming an exemption from the Administrative Process Act in accordance with the fifth enactment of Chapters 740 and 773 of the 2023 Acts of Assembly, which exempts the actions of the authority relating to the adoption of regulations necessary to implement the provisions of the act.

Title of Regulation: **3VAC10-80. Enforcement (adding 3VAC10-80-10, 3VAC10-80-20).**

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

Effective Date: January 1, 2024.

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

Background: Chapters 740 and 773 of the 2023 Acts of Assembly transferred regulatory authority for the Medical Cannabis Program from the Board of Pharmacy to the independent agency, the Cannabis Control Authority.

Summary:

Pursuant to Chapters 740 and 773, this action establishes Enforcement (3VAC10-80) for the Medical Cannabis Program, which includes grounds for the Board of Directors of the Cannabis Control Authority to take action against a medical cannabis facility, including activities consistent with prohibited acts for other medical professional boards.

Chapter 80

Enforcement

3VAC10-80-10. Definitions.

In addition to words and terms defined in § 4.1-600 of the Code of Virginia, the following words and terms when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise:

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

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

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

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

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

3VAC10-80-20. Grounds for action against a medical cannabis facility.

The board may suspend, revoke, or refuse to grant or renew a permit issued; place such permit on probation; place conditions on such permit; or take other actions permitted by statute or regulation on the following grounds:

1. Any criminal conviction under federal or state statutes or regulations or local ordinances, unless the conviction was based on a federal statute or regulation related to the possession, purchase, or sale of cannabis products that is authorized under state law and regulations;

2. Any civil action under any federal or state statute or regulation or local ordinance (i) relating to the applicant's, licensee's, permit holder's, or registrant's profession or (ii) involving drugs, medical devices, or fraudulent practices, including fraudulent billing practices;

3. Failure to maintain effective controls against diversion, theft, or loss of cannabis, cannabis products, or other controlled substances;

4. Intentionally or through negligence obscuring, damaging, or defacing a permit or registration card;

5. Permitting another person to use the permit of a permit holder, the written certification of a qualifying patient, parent, or legal guardian, the registration of a qualifying patient, parent, legal guardian, or registered agent that has voluntarily registered with the board;

6. Failure to cooperate or give information to the board on any matter arising out of conduct at a medical cannabis facility;

7. Discontinuance of business for more than 60 days, unless the board approves an extension of such period for good cause shown upon a written request from a medical cannabis facility.

a. Good cause includes exigent circumstances that necessitate the closing of the facility; or

b. Good cause shall not include a voluntary closing of the medical cannabis facility;

8. Failure to comply with requirements of Chapter 16 (§ 4.1-1600 et seq.) of Title 4.1 of the Code of Virginia or any regulation of the board relating to medical cannabis facilities; or

9. Engaging in or attempting any fraud or deceit in connection with the operation of a medical cannabis facility,

including any application to the board related to the operation of a medical cannabis facility.

VA.R. Doc. No. R24-7736; Filed December 29, 2023, 8:39 p.m.

TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

STATE BOARD OF LOCAL AND REGIONAL JAILS

Fast-Track Regulation

Title of Regulation: **6VAC15-11. Public Participation Guidelines (amending 6VAC15-11-10, 6VAC15-11-20, 6VAC15-11-50).**

Statutory Authority: §§ 2.2-4007.02 and 53.1-5 of the Code of Virginia.

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: February 14, 2024.

Effective Date: February 29, 2024.

Agency Contact: Mary-Huffard Kegley, Policy Analyst, Department of Corrections, 6900 Atmore Drive, Richmond, VA 23225, telephone (804) 887-9589, FAX (804) 674-3587, or email mary-huffard.kegley@vadoc.virginia.gov.

Basis: Section 2.2-4007.02 of the Code of Virginia requires state agencies to develop, adopt, and use public participation guidelines in order to ensure the involvement of interested persons in the formation and development of the agency's regulations. Section 53.1-5 of the Code of Virginia authorizes the State Board of Local and Regional Jails to promulgate such regulations as may be necessary to carry out the provisions of Title 53.1 of the Code of Virginia.

Purpose: This regulatory action is necessary to reference the proper regulatory authority and to comply with Chapter 795 of the 2012 Acts of Assembly. The amendments benefit the public welfare by affording interested parties an opportunity to be accompanied and represented by counsel or other representatives as part of the regulation formation process.

Rationale for Using the Fast-Track Rulemaking Process: The proposed amendments are mandated by statute and will ensure the board's compliance with the statutory provisions; therefore, the amendments are not expected to be controversial.

Substance: The amendments change the name of the agency to Board of Local and Regional Jails to reflect the correct title of the regulatory agency and provide that interested parties will have an opportunity to be accompanied and represented by counsel or other representatives as part of the regulatory process.

Issues: There are no disadvantages for the public or the agency associated with the regulatory change. The regulatory change will clarify the board's independence from the Department of Corrections, which will benefit the public by making it clear that the board promulgates its own regulations and ensuring that, with respect to regulatory development, repeal, and amendment, interested persons are able to have adequate representation throughout the regulatory formation process, which benefits the agency and Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

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

Summary of the Proposed Amendments to Regulation. The State Board of Local and Regional Jails proposes to specify in this regulation that "An interested person may be accompanied by counsel or another representative when providing public comment to the agency." Additionally, the board proposes to change "Department of Corrections" to "State Board of Local and Regional Jails" where the former currently appears in the regulation.

Background. Pursuant to Chapter 795 of the 2012 Acts of Assembly (Chapter 795),[2] the board proposes to specify in this regulation that "An interested person may be accompanied by counsel or another representative when providing public comment to the agency." Prior to Chapter 795, part B of § 2.2-4007.02 of the Code of Virginia was as follows:

> "B. In formulating any regulation, including but not limited to those in public assistance and social services programs, the agency pursuant to its public participation guidelines shall afford interested persons an opportunity to submit data, views, and arguments, either orally or in writing, to the agency, to include an on-line public comment forum on the Virginia Regulatory Town Hall, or other specially designated subordinate. However, the agency may begin drafting the proposed regulation prior to or during any opportunities it provides to the public to submit comments."

Chapter 795 amended this text to:[3]

> "B. In formulating any regulation, including but not limited to those in public assistance and social services programs, the agency pursuant to its public participation guidelines shall afford interested persons an opportunity to (i) submit data, views, and arguments, either orally or in writing, to the agency, to include an online public comment forum on the Virginia Regulatory Town Hall, or other specially designated subordinate and (ii) be accompanied by and represented by counsel or other representative. However, the agency may begin drafting the proposed regulation prior to or during any opportunities it provides to the public to submit comments."

Chapter 759 of the of the 2020 Acts of Assembly (Chapter 759)[4] renamed the State Board of Corrections as the State Board of Local and Regional Jails.

Estimated Benefits and Costs. Since the Code of Virginia already specifies that interested persons shall be afforded an opportunity to be accompanied by and represented by counsel or other representative, the board's proposal to add this language to the regulation would not change the law in effect, but would be beneficial in that it would inform interested parties who read this regulation but not the statute of their legal rights concerning representation.

Public Participation Guidelines (6VAC15-11) pertains to the public's involvement in the development, amendment, or repeal of the regulations of the board. Updating the name of the rule-making authority pursuant to Chapter 759 improves clarity, but otherwise should not have substantive impact.

Businesses and Other Entities Affected. The proposed amendments potentially affect all individuals who comment on pending regulatory changes. Individuals who are interested in being accompanied by and represented by counsel or other representative, and were not previously aware of this right, would be particularly affected.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation. An adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined. Since the proposed amendments do not introduce cost nor reduce revenue, no adverse impact is indicated.

Small Businesses[5] Affected:[6]The proposed amendments do not adversely affect small businesses.

Localities[7] Affected:[8] The proposed amendments neither disproportionately affect any particular locality, nor introduce costs for local governments.

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

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

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

[2]See http://leg1.state.va.us/cgi-bin/legp504.exe?121+ful+CHAP0795+hil

[3]Bold added for emphasis in original document.

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

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

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

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

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

Agency's Response to Economic Impact Analysis: The State Board of Local and Regional Jails concurs with the economic impact analysis prepared by the Department of Planning and Budget.

Summary:

The amendments (i) define "agency" as the "State Board of Local and Regional Jails" and (ii) pursuant to Chapter 795 of the 2012 Acts of the Assembly, provide that interested persons submitting data, views, and arguments on a regulatory action may be accompanied by and represented by counsel or another representative.

6VAC15-11-10. Purpose.

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

6VAC15-11-20. Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6VAC15-11-50. Public comment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

VA.R. Doc. No. R24-6915; Filed December 21, 2023, 11:27 a.m.

CRIMINAL JUSTICE SERVICES BOARD

Fast-Track Regulation

Title of Regulation: **6VAC20-70. Rules Relating to Compulsory Minimum Training Standards for Noncustodial Employees of the Department of Corrections (repealing 6VAC20-70-10 through 6VAC20-70-130).**

Statutory Authority: § 9.1-102 of the Code of Virginia.

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: February 14, 2024.

Effective Date: March 1, 2024.

Agency Contact: Kristi Shalton, Law-Enforcement Program Coordinator, Department of Criminal Justice Services, 1100 Bank Street, Richmond, VA 23219, telephone (804) 786-7801, FAX (804) 786-0410, or email kristi.shalton@dcjs.virginia.gov.

Basis: Section 9.1-102 of the Code of Virginia provides the Department of Criminal Justice Services, under the direction of the Criminal Justice Services Board, duties and powers, including the authority to promulgate regulations; however, none of that authority is applicable to Rules Relating to Compulsory Minimum Training Standards for Noncustodial Employees of the Department of Corrections (6VAC20-70).

Purpose: The purpose of this regulatory change and the repeal of 6VAC20-70 is to eliminate confusion and unnecessary regulations. DCJS and the Office of the Attorney General concur that DCJS does not have the statutory authority to regulate the compulsory minimum training standards for noncustodial employees with the Department of Corrections. The repeal of this regulation in its entirety provides better clarity for the Department of Corrections (DOC) and to members of the public who may inquire as to the role of DCJS and its regulatory responsibilities. The repeal of the regulation will have no impact on the health, safety, or welfare of citizens.

Rationale for Using Fast-Track Rulemaking Process: The repeal of 6VAC20-70 is expected to be noncontroversial because all parties involved, including DOC, are in favor of this regulatory change.

Substance: The action repeals 6VAC20-70 in its entirety.

Issues: The primary advantage of the repeal of 6VAC20-70 to DCJS, the public, and DOC is better clarity in the roles and responsibilities of those agencies. There are no known disadvantages of the repeal to the public, DCJS, DOC, or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis: Summary of the Proposed Amendments to Regulation. The Criminal Justice Services Board proposes to repeal Rules Relating to Compulsory Minimum Training Standards for Noncustodial Employees of the Department of Corrections (6VAC20-70).

Background. According to the Department of Criminal Justice Services (DCJS), these regulations have been in place since 1987. However, both the Attorney General's Office and DCJS currently believe the agency does not have statutory authority for the regulation. Thus, the board proposes the repeal.

As the title of the regulation indicates, the regulation contains the compulsory minimum training standards for noncustodial employees of the Department of Corrections (DOC). Noncustodial employees are DOC employees who are not correctional officers, but nevertheless are required by the DOC Director to carry a weapon. Examples of noncustodial employees would include the DOC director, chief of correctional operations, deputy director, wardens, and regional administrators.[1] The compulsory minimum training standards for noncustodial employees consist of: (i) firearms training and evaluation, (ii) training on corrections and related law, and (iii) training on legal responsibility and authority of employees.[2]

Estimated Benefits and Costs. Section 53.1-29 of the Code of Virginia,[3] allows noncustodial employees who complete the basic course in firearms for correctional officers "to carry and use sufficient weapons to prevent escapes, suppress rebellion, and defend or protect himself or others in the course of his assigned duties."[4] This statute applies regardless of whether or not the regulation is repealed. Moreover, DOC reports that the agency plans to continue to use internal training to meet or exceed all requirements currently found in the compulsory minimum training standards, including the non-firearms training, and would not change any of their training if the regulation is repealed. To the extent that noncustodial employees continue to be required to receive training that is at or above the current standards, the proposed repeal of the regulation does not appear to have substantive impact on training of noncustodial employees.

In repealing the regulation, however, there would be less transparency for the public to be knowledgeable about the training of noncustodial employees. Although the firearms training required by § 53.1-29 is available online,[5] DOC reports that the internal training they require of noncustodial officers is not publicly available. In addition, by repealing the regulation there would be less opportunity for public participation in determining the training requirements. The Administrative Process Act requires public notice of proposed changes to regulations and the opportunity for public comment; these requirements would not apply to internal training. Similarly, the Executive Order on Rulemaking[6] requires all regulations to be reviewed every four years, a process that would not be applicable to internal training. Thus, to the extent that the board's review of the training undertaken by DOC has been beneficial, the repeal of the regulation would diminish the external oversight of the training taken by noncustodial officers.

Businesses and Other Entities Affected. The regulation affects the Department of Corrections.

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

Localities[8] Affected.[9] The proposed repeal of the regulation does not disproportionately affect particular localities or affect costs for localities.

Projected Impact on Employment. The proposed repeal of the regulation does not appear to affect total employment.

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

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[1] Source: DOC

[2] See https://law.lis.virginia.gov/admincode/title6/agency20/chapter70/section20/

[3] See https://law.lis.virginia.gov/vacode/53.1-29/

[4] See the following for correctional officers' firearms training: https://law.lis.virginia.gov/admincode/title6/agency20/chapter30/section80/

[5] See https://www.dcjs.virginia.gov/law-enforcement/manual/standards-performance-outcomes/basic-corrections-officer/basic-corrections-officer-firearms-training

[6] See https://townhall.virginia.gov/EO-14.pdf

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

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

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

Agency's Response to Economic Impact Analysis: The Department of Corrections, which currently employs 32 noncustodial officers, is in agreement with the Department of Criminal Justice Services (DCJS) and the Office of the Attorney General that DCJS does not have statutory authority to establish training standards for these individuals. As stated in the Department of Planning and Budget's Economic Impact Analysis, the Department of Criminal Justice Services concurs that this action to repeal Rules Relating to Compulsory Minimum Training Standards for Noncustodial Employees of the Department of Corrections (6VAC20-70) in its entirety does not adversely affect small businesses. Similarly, the proposed repeal does not disproportionately affect localities or affect costs for localities and does not affect total employment or the use or value of private property or real estate development costs. The regulation only pertains to a very small population within the Department of Corrections.

Summary:

This action repeals in entirety Rules Relating to Compulsory Minimum Training Standards for Noncustodial Employees of the Department of Corrections (6VAC20-70), which, upon review by the Office of the Attorney General and in concurrence with the Department of Criminal Justice Services (DCJS), DCJS does not have the statutory authority under § 9.1-102 of the Code of Virginia to regulate.

VA.R. Doc. No. R24-6814; Filed December 18, 2023, 3:01 p.m.

TITLE 9. ENVIRONMENT

STATE WATER CONTROL BOARD

Forms

REGISTRAR'S NOTICE: Forms used in administering the regulation have been filed by the agency. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name of a form with a hyperlink to access it. The forms are also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, General Assembly Building, 201 North Ninth Street, 4th Floor, Richmond, Virginia 23219.

Title of Regulation: **9VAC25-151. Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Discharges of Stormwater Associated with Industrial Activity.**

Agency Contact: Erica Duncan, Manager, Office of Virginia Pollutant Discharge Elimination System Permits, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 337-5407, or email erica.duncan@deq.virginia.gov.

FORMS (9VAC25-151)

Chesapeake Bay TMDL Action Plan Form SWGP-VAR05-CBAP (eff. 7/2019)

Department of Environmental Quality Water Division Permit Application Fee Form, Form 5 (rev. 10/2018)

~~VPDES General Permit for Industrial Activity Stormwater Discharges (VAR05) Registration Statement, SWGP VAR05-RS (eff. 7/2014)~~

VPDES General Permit for Industrial Activity Stormwater Discharges (VAR05) Registration Statement, SWGP VAR05-RS (eff. 12/2023)

VPDES General Permit for Industrial Activity Stormwater Discharges (VAR05) Notice of Termination, SWGP VAR05-NOT (eff. 7/2014)

Virginia Pollutant Discharge Elimination System (VPDES) Discharge Monitoring Report (DMR) (eff. 7/2014)

Virginia Pollutant Discharge Elimination System Change of Ownership Form (undated)

VA.R. Doc. No. R24-7774; Filed December 22, 2023, 9:41 a.m.

Forms

REGISTRAR'S NOTICE: Forms used in administering the regulation have been filed by the agency. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name of a form with a hyperlink to access it. The forms are also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, General Assembly Building, 201 North Ninth Street, 4th Floor, Richmond, Virginia 23219.

Title of Regulation: **9VAC25-190. Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Nonmetallic Mineral Mining.**

Agency Contact: Erica Duncan, Manager, Office of Virginia Pollutant Discharge Elimination System Permits, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 337-5407, or email erica.duncan@deq.virginia.gov.

FORMS (9VAC25-190)

Department of Environmental Quality Water Division Permit Application Fee Form, Form 5 (rev. 10/2018)

Virginia Pollutant Discharge Elimination System Change of Ownership Agreement Form (rev. 4/2018)

VPDES General Permit for Nonmetallic Mineral Mining (VAG84) - Notice of Termination (eff. 7/2014)

~~Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Nonmetallic Mineral Mining (VAG84) Registration Statement, Form VAG84-RS (rev. 7/2019)~~

Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Nonmetallic Mineral Mining (VAG84) - Registration Statement, Form VAG84-RS (eff. 12/2023)

VA.R. Doc. No. R24-7773; Filed December 22, 2023, 9:39 a.m.

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: **9VAC25-192. Virginia Pollution Abatement (VPA) Regulation and General Permit for Animal Feeding Operations and Animal Waste Management (amending 9VAC25-192-10, 9VAC25-192-20, 9VAC25-192-25, 9VAC25-192-50 through 9VAC25-192-90; adding 9VAC25-192-15).**

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

Public Hearing Information:

March 5, 2024 - 6 p.m. - Department of Environmental Quality, Piedmont Regional Office, Training Room, 4949-A Cox Road, Glen Allen, VA 23060

Public Comment Deadline: March 15, 2024.

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, or email betsy.bowles@deq.virginia.gov.

Background: The State Water Control Board is proposing this action to reissue and amend, as necessary, the existing Virginia Pollution Abatement (VPA) Regulation and General Permit for Animal Feeding Operations and Animal Waste Management (9VAC25-192). Section 62.1-44.17:1 of the Code of Virginia states that the board shall adopt a general VPA permit to cover animal feeding operations having 300 or more animal units utilizing a liquid manure collection and storage system. 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 across the Commonwealth.

Summary:

The proposed amendments include (i) adding definitions; (ii) adding a permit condition describing when a permittee is required to submit a groundwater monitoring action plan and amending a permit condition to state which parameters must be analyzed by a laboratory accredited under the Virginia Environmental Laboratory Accreditation Program; (iii) changing animal waste storage conditions to clarify which tools are to be used to determine the floodplain when siting waste storage facilities, to adjust what is considered adequate storage of semi-solid and solid waste, to address situations where animal waste storage can be threatened by emergencies such as fire or flood, and to require notification to the department prior to the closure of a liquid waste storage facility; (iv) adding a requirement for the permittee to submit nutrient management plan revisions approved by the Department of Conservation and Recreation to the Department of Environmental Quality before the

expiration date of the previous nutrient management plan; (v) reorganizing and renumbering the contents of the general permit to make it consistent with Virginia Pollution Abatement Regulation and General Permit for Poultry Waste Management (9VAC25-630); and (vi) updating the incorporation by reference date of Title 40 of the Code of Federal Regulations.

9VAC25-192-10. Definitions.

The following words and terms when used in this chapter shall have the meanings defined in the State Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia) and the Virginia Pollution Abatement (VPA) Permit Regulation (9VAC25-32) unless the context clearly indicates otherwise, except that for the purposes of this chapter:

"300 animal units" means 300,000 pounds of live animal weight, or the following numbers and types of animals:

a. 300 slaughter and feeder cattle;

b. 200 mature dairy cattle (whether milked or dry cows);

c. 750 swine each weighing over 25 kilograms (approximately 55 pounds);

d. 150 horses;

e. 3,000 sheep or lambs;

f. 16,500 turkeys;

g. 30,000 laying hens or broilers.

"Agricultural stormwater discharge" means a precipitation-related discharge of manure, litter, or process wastewater that has been applied on land areas under the control of an animal feeding operation or under the control of an animal waste end-user in accordance with a nutrient management plan approved by the Virginia Department of Conservation and Recreation and in accordance with site specific nutrient management practices that ensure appropriate agricultural land utilization of the nutrients in the manure, litter, or process wastewater.

"Animal feeding operation" means a lot or facility, together with any associated treatment works, where both of the following conditions are met:

1. Animals have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period; and

2. Crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the operation of the lot or facility.

Two or more animal feeding operations under common ownership are a single animal feeding operation for the purposes of determining the number of animals at an operation, if they adjoin each other, or if they use a common area or system for the disposal of ~~wastes~~ liquid waste.

"Animal waste" means liquid, semi-solid, and solid animal manure and process wastewater, compost, or sludges associated with animal feeding operations including the final treated wastes generated by a digester or other manure treatment technologies.

"Animal waste end-user" or "end-user" means any recipient of transferred animal waste who stores or who utilizes the waste as fertilizer, fuel, feedstock, livestock feed, or other beneficial use for an operation under ~~his~~ the recipient's control.

"Animal waste fact sheet" means the document that details the requirements regarding utilization, storage, and management of animal waste by end-users. The fact sheet is approved by the department.

"Beneficial use" means a use that is of benefit as a substitute for natural or commercial products and does not contribute to adverse effects on health or environment.

"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.

"Confined animal feeding operation~~,~~" ~~for the purposes of this regulation, has~~ means the same ~~meaning~~ as ~~an~~ "animal feeding operation."

"Department" means the Department of Environmental Quality.

"Director" means the Director of the Virginia Department of Environmental Quality, or ~~his designee~~ an authorized representative.

"General permit" means this chapter.

"Land application" means the distribution of animal waste by spreading or spraying on the surface of the land, injecting below the surface of the land, or incorporating into the soil with a uniform application rate for the purpose of fertilizing crops or vegetation or conditioning the soil. The fields or sites used for the land application of animal waste in accordance with this chapter are not considered to be treatment works. Deposition of animal waste by an animal is not land application.

"Local government ordinance form" means a notification from the governing body of the county, city, or town where the animal feeding operation is located that the animal feeding operation is consistent with all ordinances adopted pursuant to Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2 of the Code of Virginia.

"Nutrient management plan" or "NMP" means a plan developed or approved by the Department of Conservation and Recreation that requires proper storage, treatment, and management of animal waste and limits accumulation of excess nutrients in soils and leaching or discharge of nutrients into state waters; except that for an animal waste end-user who

is not covered under ~~the~~ this general permit, the requirements of 9VAC25-192-90 constitute the NMP.

"Organic source" means any nutrient source including~~, but not limited to,~~ manures, biosolids, compost, and waste or sludges from animals, humans, or industrial processes, but for the purposes of this regulation it excludes waste from wildlife.

"Permittee" means the owner or operator of an animal feeding operation or animal waste end-user whose animal waste management activities are covered under this general permit.

"Seasonal high water table" means that portion of the soil profile where a color change has occurred in the soil as a result of saturated soil conditions or where soil concretions have formed. Typical colors are gray mottlings, solid gray, or black. The depth in the soil at which these conditions first occur is termed the seasonal high water table.

"State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 et.seq.) of Title 62.1 of the Code of Virginia.

"Treatment works" means (i) a waste holding pond or tank used to store manure prior to land application or (ii) a lagoon or treatment facility used to digest or reduce the solids or nutrients.

"Vegetated buffer" means a permanent strip of dense perennial vegetation established parallel to the contours of and perpendicular to the dominant slope of the field for the purposes of slowing water runoff, enhancing water infiltration, and minimizing the risk of any potential nutrients or pollutants from leaving the field and reaching surface waters.

"Waste nutrient analysis rate" means a land application rate for animal waste approved by the board as specified in this regulation.

"Waste storage facility" means (i) a waste holding pond or tank used to store manure prior to land application, (ii) a lagoon or treatment facility used to digest or reduce the solids or nutrients, or (iii) a structure used to store manure or waste.

~~"Vegetated buffer" means a permanent strip of dense perennial vegetation established parallel to the contours of and perpendicular to the dominant slope of the field for the purposes of slowing water runoff, enhancing water infiltration, and minimizing the risk of any potential nutrients or pollutants from leaving the field and reaching surface waters.~~

~~"300 animal units" means 300,000 pounds of live animal weight, or the following numbers and types of animals:~~

~~a. 300 slaughter and feeder cattle;~~

~~b. 200 mature dairy cattle (whether milked or dry cows);~~

~~c. 750 swine each weighing over 25 kilograms (approximately 55 pounds);~~

~~d. 150 horses;~~

~~e. 3,000 sheep or lambs;~~

~~f. 16,500 turkeys;~~

~~g. 30,000 laying hens or broilers.~~

9VAC25-192-15. Applicability of incorporated references based on the dates that they became effective.

Except as noted, when a regulation of the U.S. Environmental Protection Agency (EPA) set forth in Title 40 of the Code of Federal Regulations is referenced or adopted in this chapter and incorporated by reference, that regulation shall be as it exists and has been published as of July 1, 2023.

9VAC25-192-20. Purpose; effective date of the general permit.

A. This ~~general permit regulation~~ chapter governs the pollutant management activities at animal feeding operations having 300 or more animal units utilizing a liquid manure collection and storage system not covered by a Virginia Pollutant Discharge Elimination System (VPDES) permit and animal waste utilized or stored by animal waste end-users. ~~These~~ The owners of animal feeding operations may ~~operate~~ run and maintain treatment works for waste storage, treatment, or recycling and may perform land application of manure, wastewater, compost, or sludges.

B. This general permit will become effective on November 16, ~~2014~~ 2024. This general permit will expire ~~10 years from the effective date~~ on November 15, 2034.

9VAC25-192-25. Duty to comply.

A. ~~Any~~ No person ~~who manages or proposes to manage pollutants regulated by 9VAC25-192~~ shall ~~comply with the applicable requirements of this chapter~~ operate an animal feeding operation with 300 or more animal units utilizing a liquid manure collection and storage system after July 1, 2000, without having submitted a registration statement as provided in 9VAC25-192-60 or being covered by a Virginia Pollutant Discharge Elimination System (VPDES) permit or an individual Virginia Pollution Abatement (VPA) permit.

B. ~~In order to manage pollutants from an animal feeding operation, the owner shall be required to obtain coverage under the Virginia Pollution Abatement (VPA) general permit or an individual VPA permit provided that the owner has not been required to obtain a Virginia Pollutant Discharge Elimination System (VPDES) permit.~~ The owner shall comply with the requirements of this chapter ~~and the permit~~.

C. An animal waste end-user shall comply with the technical requirements outlined in 9VAC25-192-80 and 9VAC25-192-90.

9VAC25-192-50. Authorization to manage pollutants.

A. Owner of an animal feeding operation. ~~Any~~ An owner ~~governed by~~ of an animal feeding operation that is subject to this general permit is hereby authorized to manage pollutants at the animal feeding operations provided that the owner files

~~the~~ a registration statement ~~of~~ in accordance with 9VAC25-192-60, complies with the requirements of 9VAC25-192-70, and provided that:

1. The owner has not been required to obtain a Virginia Pollutant Discharge Elimination System (VPDES) permit or an individual Virginia Pollution Abatement (VPA) permit according to subdivision 2 of 9VAC25-32-260.

2. The operation of the animal feeding operation shall not contravene the Water Quality Standards~~, as amended, and adopted by the board,~~ (9VAC25-260) or any provision of the State Water Control Law. There shall be no point source discharge of wastewater to surface waters of the state except in the case of a storm event greater than the 25-year, 24-hour storm. Agricultural stormwater discharges are permitted. Domestic sewage shall not be managed under this general permit. Industrial ~~waste~~ wastes shall not be managed under this general permit, except for wastes that have been approved by the department and are managed in accordance with 9VAC25-192-70.

3. The owner of any proposed pollutant management activities or those which have not previously been issued a valid ~~Virginia Pollution Abatement (VPA)~~ general permit or an individual VPA permit or ~~Virginia Pollutant Discharge Elimination System (~~VPDES~~)~~ permit must attach a Local Government Ordinance Form to the registration statement~~, the Local Government Ordinance Form (a notification from the governing body of the county, city or town where the operation is located that the operation is consistent with all ordinances adopted pursuant to Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2 of the Code of Virginia)~~.

4. The owner shall obtain Department of Conservation and Recreation approval of a nutrient management plan for the animal feeding operation prior to the submittal of the registration statement. The owner shall attach to the registration statement a copy of the approved nutrient management plan and a copy of the letter from the Department of Conservation and Recreation certifying approval of the nutrient management plan that was developed by a certified nutrient management planner in accordance with § 10.1-104.2 of the Code of Virginia. The owner shall implement the approved nutrient management plan.

5. ~~a.~~ The owner shall give notice of the registration statement to all owners or residents of property that adjoins the property on which the animal feeding operation will be located.

a. Such notice shall include (i) the types and maximum number of animals ~~which~~ that will be maintained at the animal feeding operation and (ii) the address and phone number of the appropriate department regional office to which comments relevant to the registration statement may be submitted. This notice requirement is waived whenever registration is for the purpose of renewing coverage under this general permit and no expansion is proposed and the department has not issued any special order or consent order relating to violations under this existing general permit.

b. Any person may submit written comments on the proposed operation to the department within 30 days of the date of the filing of the registration statement. If, ~~on the basis of~~ based on such written comments or ~~his~~ the director's review, the director determines that the proposed operation will not be capable of complying with the provisions of ~~the~~ this general permit, then the director shall require the owner to obtain an individual VPA permit for the operation. Any such determination by the director shall be made in writing and mailed to the owner not more than 45 days after the filing of the registration statement, or~~,~~ if in the director's sole discretion additional time is necessary to evaluate comments received from the public, then not more than 60 days after the filing of the registration statement.

6. ~~As required by § 62.1-44.17:1 F of the Code of Virginia, each~~ Each owner of ~~a facility~~ an animal feeding operation covered by this general permit shall have completed the training program offered or approved by the department in the two years prior to submitting the registration statement for general permit coverage~~,~~ or shall complete such training within one year after the registration statement has been submitted for general permit coverage. All permitted owners shall complete the training program at least once every three years.

B. Animal waste end-user. An animal waste end-user shall comply with the requirements outlined in 9VAC25-192-80 and 9VAC25-192-90.

1. When an animal waste end-user does not comply with the requirements of 9VAC25-192-80 and 9VAC25-192-90, the department may choose to do ~~any or all of~~ the following:

a. Initiate enforcement action based upon the violation of the regulation;

b. Require the animal waste end-user to register for coverage under ~~the~~ this general permit or apply for an individual VPA permit; and

c. ~~Require the animal waste end-user to apply for the VPA individual permit; or~~

~~d.~~ Take other actions set forth in the VPA Permit Regulation (9VAC25-32).

2. ~~An~~ When an animal waste end-user ~~governed by~~ is required to register for coverage under this general permit, the end-user is hereby authorized to manage ~~pollutants relating to the utilization~~ and ~~storage of~~ store animal waste provided that the animal waste end-user files the registration statement of 9VAC25-192-60, complies with the requirements of 9VAC25-192-70, and:

a. The animal waste end-user has not been required to obtain ~~a~~ an individual VPA ~~individual~~ permit according to subdivision 2 of 9VAC25-32-260;

b. The activities of the animal waste end-user shall not contravene the Water Quality Standards~~, as amended, and adopted by the board,~~ (9VAC25-20-260) or any provision of the State Water Control Law ~~(§ 62.1-44 et seq. of the Code of Virginia)~~. There shall be no point source discharge of wastewater to surface waters of the state except in the case of a storm event greater than the 25-year, 24-hour storm. Agricultural stormwater discharges are permitted. Domestic sewage shall not be managed under this general permit. Industrial ~~waste~~ wastes shall not be managed under this general permit, except for wastes that have been approved by the department and are managed in accordance with 9VAC25-192-70;

c. The animal waste end-user shall obtain Department of Conservation and Recreation approval of a nutrient management plan for land application sites where animal waste will be utilized or stored and managed prior to the submittal of the registration statement. The animal waste end-user shall attach to the registration statement a copy of the approved nutrient management plan and a copy of the letter from the Department of Conservation and Recreation certifying approval of the nutrient management plan that was developed by a certified nutrient management planner in accordance with § 10.1-104.2 of the Code of Virginia. The animal waste end-user shall implement the approved nutrient management plan; and

d. ~~As required by § 62.1-44.17:1 F of the Code of Virginia, each~~ Each permitted animal waste end-user shall complete a training program offered or approved by the department within one year of filing the registration statement for general permit coverage. All permitted animal waste end-users shall complete a training program at least once every three years.

C. Continuation of general permit coverage.

1. In any case where the board, through no fault of the owner or permittee, does not issue the next consecutive general permit with an effective date on or before the expiration date of the expiring general permit, the following applies. Any owner that was authorized to manage pollutants under ~~the~~ this general permit ~~issued in 2004~~ and that submits a complete registration statement ~~on or before November 15, 2014, is authorized to continue to manage pollutants under the terms of the 2004 general permit~~ in accordance with 9VAC25-192-60 on or before the expiration date of the expiring general permit coverage, is authorized to continue to manage pollutants under the terms of the previously issued general permit. The conditions of the expiring general permit and any requirements of coverage granted under it shall continue in force until the effective date of the next consecutive general permit and until such time as the board either:

a. Issues coverage to the owner or permittee under ~~this~~ the next consecutive general permit; or

b. Notifies the owner or permittee that coverage under ~~this~~ the next consecutive general permit is denied.

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

a. Initiate enforcement action based upon the expiring or expired general permit;

b. Issue a notice of intent to deny coverage under the reissued general permit. If the general permit coverage is denied, then the owner ~~would then~~ will be required to cease the activities authorized by the expiring or expired general permit or be subject to enforcement action for operating without a general permit;

c. Issue an individual VPA permit with appropriate conditions; ~~or~~ and

d. Take other actions set forth in the VPA Permit Regulation (9VAC25-32).

D. Receipt of this general permit does not relieve any permittee of the responsibility to comply with any other applicable federal, state, or local statute, ordinance, or regulation.

9VAC25-192-60. Registration statement.

A. The owner of an animal feeding operation. ~~In order to~~ To be covered under ~~the~~ this general permit, the owner shall file a complete VPA General Permit Registration Statement for the management of pollutants at animal feeding operations in accordance with this chapter. The registration statement shall be deemed complete for registration under ~~the VPA General Permit~~ this general permit if it contains the following information:

1. The animal feeding operation owner's name, mailing address, email address (if available), and telephone number;

2. The name, mailing address, email address (if available), and telephone number of the operator or contact person other than the owner, if applicable;

3. The farm name (if applicable) and location of the animal feeding operation;

4. The best time of day and day of the week to contact the operator or the contact person;

5. ~~If~~ The permit number, if the ~~facility~~ animal feeding operation has an existing general permit, individual VPA permit, or VPDES permit ~~number, the permit number~~;

6. The ~~type or~~ types of animals (e.g., dairy cattle, slaughter and feeder cattle, swine, other) and the maximum number

and average weight of the ~~type or~~ types of animals to be maintained at the animal feeding operation;

7. The types of wastes that will be managed at the ~~facility~~ animal feeding operation and how much of each type of waste will be managed;

8. If waste will be transferred off-site, then the type of waste and how much will be transferred;

9. The owner of any ~~proposed pollutant management activities~~ animal feeding operation that will manage animal waste or those ~~which~~ that have not previously been issued a valid general permit, an individual VPA permit, or a VPDES permit must attach the Local Government Ordinance Form to the registration statement~~, the Local Government Ordinance Form (the notification from the governing body of the county, city or town where the operation is located that the operation is consistent with all ordinances adopted pursuant to Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2 of the Code of Virginia)~~;

10. A copy of the nutrient management plan approved by the Department of Conservation and Recreation;

11. A copy of the Department of Conservation and Recreation nutrient management plan approval letter that also certifies that the plan was developed by a certified nutrient management planner in accordance with § 10.1-104.2 of the Code of Virginia; and

12. The following certification: "I certify that notice of the registration statement has been given to all owners or residents of property that adjoins the property on which the animal feeding operation will be located. This notice included the types and numbers of animals ~~which~~ that will be maintained at the ~~facility~~ animal feeding operation and the address and phone number of the appropriate Department of Environmental Quality regional office to which comments relevant to ~~the~~ this general permit may be submitted. (The preceding certification is waived if the registration is for renewing coverage under ~~the~~ this general permit, and no expansion of the operation is proposed, and the department has not issued any special order or consent order relating to violations under the existing general permit.) I certify under penalty of law that all the requirements of the board for ~~the~~ this general permit are being met and that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to ~~assure~~ ensure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering 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."

B. The animal waste end-user. ~~In order to~~ To be covered under ~~the~~ this general permit, the animal waste end-user shall file a complete VPA General Permit Registration Statement in accordance with this chapter. The registration statement shall be deemed complete for registration under ~~the VPA General Permit~~ this general permit if it contains the following information:

1. The animal waste end-user's name, mailing address, email address (if available), and telephone number;

2. The name (if applicable) and location ~~of the facility~~ where the animal waste will be utilized, stored, or managed;

3. The best time of day and day of the week to contact the animal waste end-user;

4. ~~If~~ The permit number if the ~~facility~~ animal waste end-user has an existing general permit, an individual VPA permit, or a VPDES permit ~~number, the permit number~~;

5. If ~~confined~~ animals are ~~located at the facility~~ also confined, then indicate the ~~type or~~ types of animals (e.g., dairy cattle, slaughter and feeder cattle, swine, other) and the maximum number and average weight of the ~~type or~~ types of animals;

6. The types of wastes that will be managed ~~at the facility~~ by the animal waste end-user and how much of each type of waste will be managed;

7. If waste will be transferred off-site, then the type of waste and how much will be transferred;

8. A copy of the nutrient management plan approved by the Department of Conservation and Recreation;

9. A copy of the Department of Conservation and Recreation nutrient management plan approval letter that also certifies that the plan was developed by a certified nutrient management planner in accordance with § 10.1-104.2 of the Code of Virginia; and

10. The following certification: "I certify under penalty of law that all the requirements of the board for ~~the~~ this general permit are being met and that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to ~~assure~~ ensure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering 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."

C. The registration statement shall be signed in accordance with ~~Part II F of~~ subdivision 1 of 9VAC25-32-70.

9VAC25-192-70. Contents of the general permit.

Any owner or animal waste end-user whose registration statement is accepted by the ~~board~~ department will receive the following general permit and shall comply with the requirements ~~therein~~ of the general permit and be subject to the VPA ~~permit regulation~~ Permit Regulation, 9VAC25-32.

General Permit No.: VPG1
Effective Date: November 16, ~~2014~~ 2024
Expiration Date: November 15, ~~2024~~ 2034

GENERAL PERMIT FOR POLLUTANT MANAGEMENT ACTIVITIES FOR ANIMAL FEEDING OPERATIONS AND ANIMAL WASTE MANAGEMENT

AUTHORIZATION TO MANAGE POLLUTANTS UNDER THE VIRGINIA POLLUTION ABATEMENT PROGRAM AND THE VIRGINIA STATE WATER CONTROL LAW

In compliance with the provisions of the State Water Control Law and State Water Control Board regulations adopted pursuant thereto, owners of animal feeding operations having 300 or more animal units utilizing a liquid manure collection and storage system~~,~~ and animal waste end-users are authorized to manage pollutants within the boundaries of the Commonwealth of Virginia, except where board regulations prohibit such activities.

The authorized pollutant management activities shall be in accordance with the registration statement, supporting documents submitted to the Department of Environmental Quality, this cover page, Part I-Pollutant Management and Monitoring Requirements for Animal Feeding Operations, Part II-Conditions Applicable to ~~all VPA Permits~~ this General Permit, and Part III-Pollutant Management and Monitoring Requirements for Animal Waste End-Users, as set forth ~~herein~~ in this section.

Part I

Pollutant Management and Monitoring Requirements for Animal Feeding Operations

A. Pollutant management and monitoring requirements.

1. During the period beginning with ~~the~~ this general permit's effective date and lasting until ~~the~~ this general permit's expiration date, the permittee is authorized to manage pollutants at the location ~~or locations~~ identified in the registration statement and the ~~facility's~~ approved nutrient management plan written for the animal feeding operation.

2. At earthen liquid waste storage facilities constructed after December 1, 1998, to an elevation below the seasonal high water table or within one foot thereof, groundwater monitoring wells shall be installed. A minimum of one up gradient and one down gradient well shall be installed at each earthen waste storage facility that requires groundwater monitoring. Existing wells may be utilized to meet this requirement if properly located and constructed.

3. All ~~facilities~~ animal feeding operations previously covered under a general permit, an individual VPA permit, or a VPDES permit that required groundwater monitoring shall continue monitoring consistent with the requirements listed ~~below~~ in this part regardless of where ~~they~~ the animal feeding operations are located relative to the seasonal high water table.

4. At ~~facilities~~ animal feeding operations where groundwater monitoring is required, the following conditions apply:

a. One data set shall be collected from each well prior to any waste being placed in the storage facility.

b. The static water level shall be measured prior to bailing well water for sampling.

c. At least three well volumes of groundwater shall be withdrawn immediately prior to sampling each monitoring well.

5. In accordance with subdivisions 2 and 3 of this subsection, the groundwater shall be monitored by the permittee at the monitoring wells as specified ~~below~~ in Table 1 of Part I. Additional groundwater monitoring may be required in the ~~facility's~~ approved nutrient management plan written for the animal feeding operation.

6. If groundwater monitoring results for any monitored parameter demonstrate potential noncompliance with this general permit related to the waste storage facility, then the permittee shall submit an approvable groundwater monitoring action plan that outlines appropriate measures to be taken to address the noncompliance. The groundwater monitoring action plan shall be submitted to the department within 30 days of obtaining the monitoring results.

7. The analysis of the groundwater samples for ammonia nitrogen and nitrate nitrogen shall be performed by a laboratory accredited under the Virginia Environmental Laboratory Accreditation Program (VELAP) in accordance with 1VAC30-46-20. Field sampling, testing, and measurement of the static water level, pH, and conductivity where the sample is taken are not subject to the VELAP requirement.

TABLE 1
GROUNDWATER MONITORING

PARAMETERS	LIMITATIONS	UNITS	MONITORING REQUIREMENTS	
			Frequency	Sample Type
Static Water Level	NL	Ft	1/3 years	Measured
Ammonia Nitrogen	NL	mg/L	1/3 years	Grab
Nitrate Nitrogen	NL	mg/L	1/3 years	Grab

pH	NL	SU	1/3 years	Grab
Conductivity	NL	~~umhos/cm~~ µmhos/cm	1/3 years	Grab
NL = No limit, this is a monitoring requirement only.				

~~6.~~ 8. Soil at the land application sites shall be monitored as specified ~~below~~ in Table 2 of Part I. Additional soils monitoring may be required in the ~~facility's~~ approved nutrient management plan written for the animal feeding operation.

TABLE 2
SOILS MONITORING

PARAMETERS	LIMITATIONS	UNITS	MONITORING REQUIREMENTS	
			Frequency	Sample Type
pH	NL	SU	1/3 years	Composite
Phosphorus	NL	ppm or lbs/ac	1/3 years	Composite
Potash	NL	ppm or lbs/ac	1/3 years	Composite
Calcium	NL	ppm or lbs/ac	1/3 years	Composite
Magnesium	NL	ppm or lbs/ac	1/3 years	Composite

NL = No limit, this is a monitoring requirement only.
SU = Standard Units

~~7.~~ 9. Soil monitoring shall be conducted at a depth of between 0-6 inches, unless otherwise specified in the ~~facility's~~ approved nutrient management plan written for the animal feeding operation.

~~8.~~ 10. Waste shall be monitored as specified ~~below~~ in Table 3 of Part I. Additional waste monitoring may be required in the ~~facility's~~ approved nutrient management plan written for the animal feeding operation.

TABLE 3
WASTE MONITORING

PARAMETERS	LIMITATIONS	UNITS	MONITORING REQUIREMENTS	
			Frequency	Sample Type
Total Kjeldahl Nitrogen	NL	*	1/year	Composite
Ammonia Nitrogen	NL	*	1/year	Composite
Total Phosphorus	NL	*	1/year	Composite
Total Potassium	NL	*	1/year	Composite
Calcium	NL	*	1/year	Composite
Magnesium	NL	*	1/year	Composite
Moisture Content	NL	%	1/year	Composite

NL = No limit, this is a monitoring requirement only.
*Parameters for waste may be reported as a percent, as lbs/ton or lbs/1000 gallons, or as ppm where appropriate.

~~9.~~ 11. Analysis of soil and waste shall be according to methods specified in the ~~facility's~~ approved nutrient management plan written for the animal feeding operation.

~~10.~~ 12. All monitoring data collected as required by this section and any additional monitoring shall be maintained on site for a period of five years and shall be made available to department personnel upon request.

B. ~~Other~~ Site design, storage, and operations requirements ~~or special conditions~~.

1. Any liquid manure collection and storage facility shall be designed and operated to (i) prevent point source discharges of pollutants to state waters except in the case of a storm event greater than the 25-year, 24-hour storm and (ii) provide adequate waste storage capacity to accommodate periods when the ground is frozen or saturated, periods when land application of nutrients should not occur due to limited or nonexistent crop nutrient uptake, and periods when physical limitations prohibit the land application of waste.

2. Waste storage facilities constructed after December 1, 1998, shall not be located on a 100-year floodplain. For the purposes of determining the 100-year floodplain, a Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map (FIRM), a FEMA Letter of Map Amendment (LOMA), or a FEMA Letter of Map Revision (LOMR) shall be used.

3. Earthen waste storage facilities constructed after December 1, 1998, shall include a properly designed and installed liner. Such liner shall be either a synthetic liner of at least 20 mils thickness or a compacted soil liner of at least one foot thickness with a maximum permeability rating of 0.0014 inches per hour. A Virginia licensed professional engineer or an employee of the Natural Resources Conservation Service of the ~~United States~~ U.S. Department of Agriculture with appropriate engineering approval authority shall certify that the siting, design, and construction of the waste storage facility comply with the requirements of this general permit. This certification shall be maintained on site.

4. At earthen waste storage facilities constructed below the seasonal high water table, the top surface of the waste must be maintained at a level of at least two feet above the water table.

5. All liquid waste storage ~~or treatment~~ facilities shall maintain at least one foot of freeboard at all times, up to and including a 25-year, 24-hour storm.

6. For new waste storage ~~or treatment~~ facilities constructed after November 16, 2014, the facilities shall be constructed, operated, and maintained in accordance with the applicable practice standard adopted by the Natural Resources Conservation Service of the U.S. Department of Agriculture and approved by the department. A Virginia licensed professional engineer or an employee of the Natural Resources Conservation Service of the U.S. Department of Agriculture with appropriate engineering approval authority shall certify that the siting, design, and construction of the waste storage facility comply with the requirements of this general permit. This certification shall be maintained on site.

7. The permittee shall notify the department's regional office at least 14 days prior to (i) animals being initially placed in the confined ~~facility~~ animal feeding operation or (ii) the utilization of any new waste storage ~~or treatment~~ facilities.

8. Semi-solid and solid waste shall be stored in a manner that prevents contact with surface water and groundwater. Waste that is stockpiled outside for more than 14 days shall be kept in a waste storage facility or at a site that provides adequate storage. Adequate storage shall, at a minimum, include the following:

a. Waste shall be covered to protect it from precipitation and wind;

b. Stormwater shall not run onto or under the stored waste;

c. A minimum of two feet separation distance to the seasonal high water table or an impermeable barrier shall be used under the stored waste. All waste storage facilities that use an impermeable barrier shall maintain a minimum of one foot separation between the seasonal high water table and the impermeable barrier. ~~"Seasonal high water table" means that portion of the soil profile where a color change has occurred in the soil as a result of saturated soil conditions or where soil concretions have formed. Typical colors are gray mottlings, solid gray, or black. The depth in the soil at which these conditions first occur is termed the seasonal high water table.~~ Impermeable barriers shall be constructed of at least 12 inches of compacted clay, at least four inches of reinforced concrete, or another material of similar structural integrity that has a minimum permeability rating of 0.0014 inches per hour ($1X10^{-6}$ centimeters per second); and

d. For waste that is not stored in a waste storage facility or under roof, the storage site must be at least 100 feet from any surface water, intermittent drainage, wells, sinkholes, rock outcrops, and springs. For semi-solid and solid waste that is stored on an impermeable barrier and where any stormwater runoff is collected in the waste storage facility, the semi-solid and solid waste can be stored adjacent to the waste storage facility regardless of the location of the waste storage facility so long as any surface water, intermittent drainage, wells, sinkholes, rock outcrops, and springs are protected from runoff from the stored semi-solid and solid waste.

Semi-solid and solid waste that is stored on an impermeable barrier and where any stormwater runoff is collected in a waste storage facility is considered adequate storage and is therefore not required to be covered.

9. All equipment needed for the proper operation of the permitted ~~facilities~~ animal feeding operations shall be maintained in good working order. The manufacturer's operating and maintenance manuals shall be retained for references to allow for timely maintenance and prompt repair of equipment when appropriate. The permittee shall periodically inspect for leaks on equipment used for land application of waste.

10. When wastes are treated by a digester or other manure treatment technologies, the waste treatment process shall be approved by the department and shall be managed by ~~a facility~~ the owner of an animal feeding operation covered under this general permit and in accordance with the following conditions:

a. All treated wastes generated by a digester or other manure treatment technologies must be managed through an approved nutrient management plan or transferred to another entity in accordance with animal waste transfer requirements in Part 1 ~~B 15~~ C 6 and ~~16~~ 7.

b. When ~~a facility~~ an animal feeding operation covered under this general permit generates a treated waste from animal waste and other feedstock, the permittee shall maintain records related to the production of the treated waste.

(1) If off-site wastes are added to generate the treated waste, then the permittee shall record the following items:

(a) The amount of waste brought to the ~~facility~~ animal feeding operation; and

(b) From whom and where the waste originated.

(2) For all treated wastes generated by the ~~facility~~ animal feeding operation, the permittee shall record the following items:

(a) The amount of treated waste generated;

(b) The nutrient analysis of the treated waste; and

(c) The final use of the treated waste.

(3) Permittees shall maintain the records required by Part I B 10 b (1) and (2) on site for a period of three years. All records shall be made available to department personnel upon request.

11. When the waste storage facility is no longer needed, the permittee shall close it in a manner that (i) minimizes the need for further maintenance and (ii) controls, minimizes, or eliminates, to the extent necessary to protect human health and the environment, the postclosure escape of uncontrolled leachate, surface runoff, or waste decomposition products to the groundwater, surface water, or the atmosphere. Prior to closure, the permittee shall notify the department of any plans to close a liquid waste storage facility. At closure, the permittee shall remove all waste residue from the animal waste storage facility. Removed waste materials shall be utilized according to the approved NMP.

C. Animal waste use and transfer requirements.

1. Animal waste generated by ~~this facility~~ an animal feeding operation that is subject to this general permit shall not be applied to fields owned by or under the operational control of either the permittee or a legal entity in which the permittee has an ownership interest unless the fields are included in the ~~facility's~~ approved nutrient management plan written for the animal feeding operation.

~~12.~~ 2. The permittee shall implement a nutrient management plan (NMP) developed by a certified nutrient management planner in accordance with § 10.1-104.2 of the Code of Virginia and approved by the Department of Conservation and Recreation and maintain the ~~plan~~ NMP on site. All revised and Department of Conservation and Recreation approved NMPs shall be submitted to the department prior to the expiration of the previous NMP. The NMP shall address the form, source, amount, timing, and method of application of nutrients on each field to achieve realistic production goals, while minimizing nitrogen and phosphorus loss to ground waters and surface waters. The terms of the NMP shall be enforceable through this general permit. The NMP shall contain at a minimum the following information:

a. Site map indicating the location of the waste storage facilities and the fields where waste will be applied;

b. Site evaluation and assessment of soil types and potential productivities;

c. Nutrient management sampling, including soil and waste monitoring;

d. Storage and land area requirements;

e. Calculation of waste application rates; and

f. Waste application schedules.

~~13.~~ 3. Waste shall not be land applied within buffer zones. Buffer zones at waste application sites shall, at a minimum, be maintained as follows:

a. Distance from occupied dwellings not on the permittee's property: 200 feet (unless the occupant of the dwelling signs a waiver of the buffer zone);

b. Distance from water supply wells or springs: 100 feet;

c. Distance from surface water courses: 100 feet (without a ~~permanent~~ vegetated buffer) or 35 feet (if a ~~permanent~~ vegetated buffer exists). Other site-specific conservation practices may be approved by the department that will provide pollutant reductions equivalent or better than the reductions that would be achieved by the 100-foot buffer or 35-foot wide vegetated buffer;

d. Distance from rock outcropping (except limestone): 25 feet;

e. Distance from limestone outcroppings: 50 feet; and

f. Waste shall not be applied in such a matter that it would discharge to sinkholes that may exist in the area.

~~14.~~ 4. The following land application records shall be maintained:

a. The identification of the land application field sites where the waste is utilized or stored;

b. The application rate;

c. The application dates; and

d. What crops have been planted.

These records shall be maintained on site for a period of five years after the date the application is made and shall be made available to department personnel upon request.

5. In cases where a waste storage facility is threatened by emergencies such as fire or flood or where these conditions are imminent, animal waste can be land applied outside of the spreading schedule outlined in the NMP written for an animal feeding operation. If this occurs, then the owner of the animal feeding operation shall document the land application information in accordance with Part I C 4 and notify the department in accordance with Part II F 3.

~~15.~~ 6. Animal waste generated by ~~this facility~~ an animal feeding operation that is subject to this general permit may be transferred from the permittee to another person if one or more of the following conditions are met:

a. Animal waste generated by ~~this facility~~ an animal feeding operation that is subject to this general permit may be transferred off-site for land application or another acceptable use approved by the department, if:

(1) The sites where the animal waste will be utilized are included in ~~this permitted facility's~~ the animal feeding operation's approved nutrient management plan; or

(2) The sites where the animal waste will be utilized are included in another permitted ~~facility's~~ entity's approved nutrient management plan.

b. Animal waste generated by ~~this facility~~ an animal feeding operation that is subject to this general permit may be transferred off-site without identifying in the permittee's approved nutrient management plan the fields where such waste will be utilized, if one of the following conditions are met:

(1) The animal waste is registered with the Virginia Department of Agriculture and Consumer Services in accordance with regulations adopted pursuant to ~~subdivision A 2 of~~ § 3.2-3607 A 2 of the Code of Virginia; or

(2) When the permittee transfers to another person more than 10 tons of solid or semi-solid animal waste (solid or semi-solid animal waste contains less than 85% moisture) or more than 6,000 gallons of liquid animal waste (liquid animal waste contains 85% or more moisture) in any 365-day period, the permittee shall maintain records in accordance with Part I ~~B 16~~ C 7.

~~16.~~ 7. Animal waste may be transferred from a permittee to another person without identifying the fields where such waste will be utilized in the permittee's approved nutrient management plan if the following conditions are met:

a. When a permittee transfers to another person more than 10 tons of solid or semi-solid animal waste (solid or semi-solid animal waste contains less than 85% moisture) or more than 6,000 gallons of liquid animal waste (liquid animal waste contains 85% or more moisture) in any 365-day period, the permittee shall provide that person with:

(1) Permittee's name, address, and permit number;

(2) A copy of the most recent nutrient analysis of the animal waste; and

(3) An animal waste fact sheet.

b. When a permittee transfers to another person more than 10 tons of solid or semi-solid animal waste (solid or semi-solid animal waste contains less than 85% moisture) or more than 6,000 gallons of liquid animal waste (liquid animal waste contains 85% or more moisture) in any 365-day period, the permittee shall keep a record of the following:

(1) The ~~recipient~~ recipient's name and address;

(2) The amount of animal waste received by the person;

(3) The date of the transaction;

(4) The nutrient analysis of the animal waste;

(5) The locality in which the recipient intends to utilize the animal waste (i.e., nearest town or city and zip code);

(6) The name of the stream or waterbody, if known, to the recipient that is nearest to the animal waste utilization or storage site; and

(7) The signed waste transfer records form acknowledging the receipt of the following:

(a) The animal waste;

(b) The nutrient analysis of the animal waste; and

(c) An animal waste fact sheet.

c. Permittees shall maintain the records required by Part I ~~B 16~~ C 7 a and b for at least three years after the date of the transaction and shall make them available to department personnel upon request.

~~17. When the waste storage or treatment facility is no longer needed, the permittee shall close it in a manner that (i) minimizes the need for further maintenance and (ii) controls, minimizes, or eliminates, to the extent necessary to protect human health and the environment, the postclosure escape of uncontrolled leachate, surface runoff, or waste decomposition products to the groundwater, surface water, or the atmosphere. At closure, the permittee shall remove all waste residue from the animal waste storage or treatment facility. Removed waste materials shall be utilized according to the approved NMP.~~

~~18. As required by § 62.1-44.17:1-F of the Code of Virginia, each~~ D. Each permittee covered under this general permit shall have completed the training program offered or approved by the department in the two years prior to submitting the registration statement for this general permit coverage~~,~~ or shall complete such training within one year after the registration statement has been submitted for this general permit coverage. All permittees shall complete the training program at least once every three years.

Part II

Conditions Applicable to ~~all VPA Permits~~ this General Permit

A. ~~Sampling and analysis methods~~ Monitoring.

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

2. ~~Unless otherwise specified in this permit all sample preservation methods, maximum holding times and analysis methods for pollutants~~ Groundwater monitoring shall ~~comply with requirements set forth in Guidelines Establishing Test Procedures for the Analysis of Pollutants (40 CFR Part 136)~~ be conducted according to procedures listed under 40 CFR Part 136 unless otherwise specified in this general permit.

3. ~~The sampling and analysis program to demonstrate compliance with the permit shall at a minimum, conform to Part I of this permit.~~

~~4.~~ The permittee shall periodically calibrate and perform maintenance procedures on all monitoring and analytical instrumentation at intervals that will ensure accuracy of measurements.

4. If the permittee monitors any pollutant at the locations designated in this general permit more frequently than required by this general permit, using approved analytical methods as specified in this part, the results of such monitoring shall be included in the calculation and reporting of the values required in the project report. Such increased frequency shall also be reported.

B. ~~Recording of results~~ Records. ~~For each measurement or sample taken pursuant to the requirements of this permit, the permittee shall record the following~~

1. Records of monitoring information shall include:

~~1.~~ a. The date, exact place, and time of sampling or measurements;

~~2.~~ b. The ~~persons~~ name of the individuals who performed the sampling or measurements;

~~3.~~ c. The dates analyses were performed;

~~4.~~ d. The ~~persons~~ name of the individuals who performed each analysis;

~~5.~~ e. The analytical techniques or methods used with supporting information such as observations, readings, calculations, and bench data; and

~~6.~~ f. The results of such analyses ~~and measurements~~.

2. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this general permit, and records of all data used to complete the application for this general permit for a period of at least three years from the date of the sample, measurement, report, or application. This period of retention may be extended by request of the department at any time.

C. ~~Records retention~~ Reporting monitoring results. ~~All records and information resulting from the monitoring activities~~ If reporting is required by Part I or Part III of this general permit, ~~including all records of analyses performed and calibration and maintenance of instrumentation and recording from continuous monitoring instrumentation~~ the permittee shall ~~be retained on site for five years from the date of the sample, measurement or report. 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 director~~ follow the requirements of this subsection.

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

2. Monitoring results shall be reported on forms provided or specified by the department.

3. If the permittee monitors the pollutant management activity, at a sampling location specified in this general permit, for any pollutant more frequently than required by this general permit using approved analytical methods, the permittee shall report the results of this monitoring on the monitoring report.

4. If the permittee monitors the pollutant management activity, at a sampling location specified in this general permit, for any pollutant that is not required to be monitored by the general permit, and uses approved analytical methods, the permittee shall report the results with the monitoring report.

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

D. ~~Additional monitoring by permittee~~ Duty to provide information. ~~If the permittee monitors any pollutant at the locations designated herein more frequently than required by~~

~~this permit, using approved analytical methods as specified above, the results of such monitoring shall be included in the calculation and reporting of the values required in the project report. Such increased frequency shall also be reported.~~ The permittee shall furnish to the department, within a reasonable time, any information that the director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this general permit or to determine compliance with this general permit. The permittee shall also furnish to the department, upon request, copies of records required to be kept by the permittee. Plans, specifications, maps, conceptual reports, and other relevant information shall be submitted as requested by the director prior to commencing construction.

E. ~~Reporting requirements~~ Unauthorized discharges. Except in compliance with this general permit or another issued by the department, it shall be unlawful for any person to:

~~1. If, for any reason, the permittee does not comply with one or more limitations, standards, monitoring or management requirements specified in this permit, the permittee shall submit to the department at least the following information:~~

~~a. A description and cause of noncompliance;~~

~~b. The period of noncompliance, including exact dates and times or the anticipated time when the noncompliance will cease; and~~

~~c. Actions taken or to be taken to reduce, eliminate, and prevent recurrence of the noncompliance. Whenever such noncompliance may adversely affect state waters or may endanger public health, the permittee shall submit the above required information by oral report within 24 hours from the time the permittee becomes aware of the circumstances and by written report within five days. The director may waive the written report requirement on a case by case basis 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 any unpermitted, unusual or extraordinary discharge which enters or could be expected to enter state waters. The permittee shall provide information, specified in Part II E 1 a through c, regarding each such discharge immediately, that is, as quickly as possible upon discovery, however, in no case later than 24 hours. A written submission covering these points shall be provided within five days of the time the permittee becomes aware of the circumstances covered by this paragraph.~~

~~NOTE: The immediate (within 24 hours) reports required in Parts II E 1 and 2 may be made to the department's regional office. Reports may be made by telephone. For reports outside normal working hours, a message shall fulfill the immediate reporting requirement. For emergencies, the Virginia Department of Emergency Management maintains a 24 hour telephone service at 1-800-468-8892.~~

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

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

F. ~~Signatory requirements~~ Notice of planned changes, and reports of unauthorized discharges, unusual or extraordinary discharges, noncompliance, and compliance schedules. ~~Any registration statement or certification required by this permit shall be signed as follows:~~

1. ~~For a corporation, by a responsible corporate official~~ Notice of planned changes. ~~For purposes of this section, a responsible corporate official means (i) a president, secretary, treasurer, or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25,000,000 (in second quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.~~

a. The permittee shall give notice to the department as soon as possible of any planned physical alterations or additions to the design or operation of the pollutant management activity.

b. The permittee shall give at least 10 days advance notice to the department of any planned changes in the permitted facility or activity that may result in noncompliance with the general permit requirements.

2. ~~For a municipality, state, federal or other public agency by either a principal executive officer or ranking elected official~~ Reports of unauthorized discharges. ~~(A principal executive officer of a federal, municipal, or state agency includes the chief executive officer of the agency or head executive officer having responsibility for the overall operation of a principal geographic unit of the agency.)~~ Any permittee who discharges or causes or allows (i) a discharge of sewage, industrial wastes, other wastes, or any noxious or deleterious substance into or upon state waters in violation of Part II E, or (ii) a discharge that may reasonably be expected to enter state waters in violation of Part II E 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:

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

b. The cause of the discharge;

c. The date on which the discharge occurred;

d. The length of time that the discharge continued;

e. The volume of the discharge;

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

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

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

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

3. ~~For a partnership or sole proprietorship, by a general partner or proprietor respectively~~ Reports of unusual or extraordinary discharges. If any unusual or extraordinary discharge, including a bypass or upset, should occur from a treatment works and the discharge enters or could be expected to enter state waters, the permittee shall promptly notify, in no case later than 24 hours, the department by telephone after the discovery of the discharge. This notification shall provide all available details of the incident, including any adverse effects on aquatic life and the known number of fish killed. The permittee shall reduce the report to writing and shall submit it to the department within five days of discovery of the discharge in accordance with Part II F 4 b. Unusual and extraordinary discharges include any discharge resulting from:

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

b. Breakdown of processing or accessory equipment;

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

d. Flooding or other acts of nature.

4. Reports of noncompliance. 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 4 a:

(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 department may waive the written report on a case-by-case basis for reports of noncompliance under Part II F 4 if the oral report has been received within 24 hours and no adverse impact on state waters has been reported.

c. The permittee shall report all instances of noncompliance not reported under Part II F 4 a or b in writing at the time the next monitoring reports are submitted. The reports shall contain the information listed in Part II F 4 b.

NOTE: The immediate (within 24 hours) reports required in Part II F may be made to the department's regional office. For reports outside normal working hours, leave a message and this shall fulfill the immediate reporting requirement. For emergencies, the Virginia Department of Emergency Management maintains a 24-hour telephone service at 1-800-468-8892.

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

G. ~~Change in management of pollutants~~ Proper operation and maintenance. ~~All pollutant management activities authorized by this permit shall be made in accordance with the terms and conditions of the permit.~~ The permittee shall ~~submit a new registration statement 30 days prior to all expansions, production increases, or process modifications, that will result in the management of new or increased pollutants~~ be responsible for the proper operation and maintenance of all treatment works, systems, and controls that are installed or used to achieve compliance with the conditions of this permit. Proper operation and maintenance includes effective plant performance, adequate funding, adequate staffing, and adequate laboratory and process controls, including appropriate quality assurance procedures. ~~The management of any pollutant at a level greater than that identified and authorized by this permit, shall constitute a violation of the terms and conditions of this permit.~~

H. ~~Treatment works operation and quality control~~ Signatory requirements.

1. ~~Design and operation of facilities or treatment works and disposal of all wastes shall be in accordance with the registration statement filed with the department. The permittee has the responsibility of designing and operating the facility in a reliable and consistent manner to meet the facility performance requirements in the permit. If facility deficiencies, design or operational, are identified in the future which could affect the facility performance or~~

~~reliability, it is the responsibility of the permittee to correct such deficiencies~~ Applications. All general permit applications shall be signed as follows:

a. For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy-making or decision-making functions for the corporation or (ii) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25 million (in second-quarter 1980 dollars) if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

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

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

2. ~~All waste collection, control, treatment, management of pollutant activities and disposal facilities shall be operated in a manner consistent with the following~~ Reports and other information. All reports required by general permits and other information requested by the department shall be signed by a person described in Part II H 1 or by a duly authorized representative of that person. A person is a duly authorized representative only if:

a. ~~At all times, all facilities and pollutant management activities shall be operated in a prudent and workmanlike manner.~~ The authorization is made in writing by a person described in Part II H 1;

b. The ~~permittee shall provide an adequate operating staff to carry out the operation, maintenance and testing functions required to ensure compliance with the conditions of this permit.~~ authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, or a position of equivalent responsibility. A duly authorized representative may thus be either a named individual or any individual occupying a named position; and

c. ~~Maintenance of treatment facilities or pollutant management activities shall be carried out in such a manner that the monitoring and limitation requirements are not violated~~ The written authorization is submitted to the department.

~~d. Collected solids shall be stored and utilized as specified in the approved nutrient management plan in such a manner as to prevent entry of those wastes (or runoff from the wastes) into state waters.~~

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

4. Certification. Any person signing a document under Part II H 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 ensure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering 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."

I. ~~Adverse impact~~ Duty to comply. The permittee shall ~~take~~ comply with all ~~feasible steps to minimize any adverse impact to state waters resulting from noncompliance with any limitation or limitations or~~ conditions ~~specified in~~ of this general permit~~,~~ and ~~shall perform and report such accelerated or additional monitoring as is necessary to determine the nature and impact of the noncomplying limitation or limitations or conditions~~ this chapter. Any noncompliance with this general permit or this chapter constitutes a violation of the State Water Control Law. General permit noncompliance is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application. Compliance with this general permit during its term constitutes compliance for purposes of enforcement with the State Water Control Law.

J. Duty to ~~halt, reduce activity or to mitigate~~ reapply.

~~1. 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.~~

~~2. The permittee shall take all reasonable steps to minimize, correct or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.~~

If the permittee wishes to continue an activity regulated by this general permit after the expiration date of this general permit, the permittee shall apply for and obtain a new permit. All permittees with a currently effective general permit shall

submit a new application before the expiration date of the existing general permit unless permission for a later date has been granted by the board. The board shall not grant permission for applications to be submitted later than the expiration date of the existing general permit.

K. ~~Structural stability~~ Bypass. ~~The structural stability of any of the units or parts of the facilities herein permitted is the sole responsibility of the permittee and the failure of such structural units or parts shall not relieve the permittee of the responsibility of complying with all terms and conditions of this permit.~~

1. Prohibition. "Bypass" means intentional diversion of waste streams from any portion of a treatment works. A bypass of the treatment works is prohibited except as provided in this subsection.

2. Anticipated bypass. If the permittee knows in advance of the need for a bypass, the permittee shall notify the department promptly at least 10 days prior to the bypass. After considering its adverse effects, the department may approve an anticipated bypass if:

a. The bypass will be unavoidable to prevent loss of human life, personal injury, or severe property damage. "Severe property damage" means substantial physical damage to property, damage to the treatment works that causes them to become inoperable, or substantial and permanent loss of natural resources that can reasonably be expected to occur in the absence of a bypass. "Severe property damage" does not mean economic loss caused by delays in production; and

b. There are no feasible alternatives to bypass such as the use of auxiliary treatment works, retention of untreated waste, or maintenance during normal periods of equipment downtime. However, if bypass occurs during normal periods of equipment downtime or preventive maintenance and in the exercise of reasonable engineering judgment the permittee could have installed adequate backup equipment to prevent such bypass, this exclusion shall not apply as a defense.

3. Unplanned bypass. If an unplanned bypass occurs, the permittee shall notify the department as soon as possible, but in no case later than 24 hours, and shall take steps to halt the bypass as early as possible. This notification will be a condition for defense to an enforcement action that an unplanned bypass met the conditions in Part II K 2 a and b and in light of the information reasonably available to the permittee at the time of the bypass.

L. ~~Compliance with state law~~ Upset. ~~Compliance with this permit during its term constitutes compliance with the State Water Control 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.~~ A permittee may claim an upset as an affirmative defense to an action brought for noncompliance. In any enforcement proceedings a permittee shall have the burden of proof to establish the occurrence of any upset. In order to establish an affirmative defense of upset, the permittee shall present properly signed, contemporaneous operating logs or other relevant evidence that shows:

1. That an upset occurred and that the cause can be identified;

2. That the permitted facility was at the time being operated efficiently and in compliance with proper operation and maintenance procedures;

3. That the 24-hour reporting requirements to the department were met; and

4. That the permittee took all reasonable steps to minimize or correct any adverse impact on state waters resulting from noncompliance with the permit.

M. ~~Property rights~~ Inspection and entry. ~~The issuance of 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 any invasion of personal rights, nor any infringement of federal, state, or local laws or regulations.~~ Upon presentation of credentials, any duly authorized agent of the department may, at reasonable times and under reasonable circumstances:

1. Enter upon any public or private property on which the pollutant management activities that are governed by this general permit are located and have access to records required by this general permit;

2. Have access to, inspect, and copy any records that must be kept as part of the conditions in this general permit;

3. Inspect any facility's equipment (including monitoring and control equipment) practices or operations regulated or required under this general permit; and

4. Sample or monitor any substances or parameters at any locations for the purpose of assuring general permit compliance or as otherwise authorized by the State Water Control Law.

N. ~~Severability~~ Effect of a permit. ~~The provisions of this permit are severable.~~ This general permit neither conveys any property rights in either real or personal property or any exclusive privileges nor authorizes any injury to private property or invasion of personal rights or any infringement of federal, state, or local law or regulations.

O. ~~Duty to reregister~~ State law. ~~If the permittee wishes to continue to operate under a general permit after the expiration date of this permit, the permittee must submit a new registration statement at least 30 days prior to the expiration date of this permit.~~ Nothing in this general permit shall be construed to preclude the institution of any legal action under or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any other state law or

regulation or under authority preserved by § 510 of the federal Clean Water Act. Except as provided in general permit conditions on bypassing in Part II K and upset in Part II L, nothing in this general permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance.

P. ~~Right of entry~~ Oil and hazardous substance liability. ~~The permittee shall allow, or secure necessary authority to allow, authorized state representatives, upon the presentation of credentials:~~

~~1. To enter upon the permittee's premises on which the establishment, treatment works, pollutant management activities, or discharge or discharges is located or in which any records are required to be kept under the terms and conditions of this permit;~~

~~2. To have access to inspect and copy at reasonable times any records required to be kept under the terms and conditions of this permit;~~

~~3. To inspect at reasonable times any monitoring equipment or monitoring method required in this permit;~~

~~4. To sample at reasonable times any waste stream, process stream, raw material or by-product; and~~

~~5. To inspect at reasonable times any collection, treatment, or pollutant management activities required under this permit. For purposes of this section, the time for inspection shall be deemed reasonable during regular business hours, and whenever the facility is discharging or involved in managing pollutants. Nothing contained here shall make an inspection time unreasonable during an emergency.~~

Nothing in this general 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 Code of Virginia.

Q. ~~Transferability of permits~~ Duty to mitigate. ~~Coverage under this permit may be transferred to a new owner by a permittee if:~~

~~1. The current permittee notifies the department 30 days in advance of the proposed transfer of the title to the facility or property;~~

~~2. The notice to the department includes a written agreement between the existing and proposed new permittee containing a specific date of transfer of permit responsibility, coverage and liability between them; and~~

~~3. The department does not within the 30-day time period notify the existing permittee and the proposed permittee of the board's intent to transfer coverage under the permit. Such transferred coverage under this permit shall, as of the date of the transfer, be fully effective.~~

The permittee shall take all reasonable steps to minimize or prevent any pollutant management activity in violation of this general permit that has a reasonable likelihood of adversely affecting human health or the environment.

R. ~~Permit modification~~ Need to halt or reduce activity not a defense. ~~The permit may be modified when a change is made in the promulgated standards or regulations on which the permit was based.~~ 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 general permit.

S. Permit ~~termination~~ action. ~~After public notice and opportunity for a hearing, coverage under the general permit may be terminated for cause.~~ Permits may be modified, revoked and reissued, or terminated for cause upon the request of the permittee or interested persons or upon the department's initiative. If a permittee files a request for a general permit modification, revocation, or termination or files a notification of planned changes or anticipated noncompliance, the general permit terms and conditions shall remain effective until the request is acted upon by the department. This provision shall not be used to extend the expiration date of the effective general permit.

T. When an individual VPA permit may be required. The director may require any permittee authorized to manage pollutants covered under this general permit to apply for and obtain an individual VPA permit. Cases where an individual VPA permit may be required include~~, but are not limited to,~~ the following:

1. The pollutant management activities violate the terms or conditions of this general permit;

2. When additions or alterations have been made to the affected facility that require the application of permit conditions that differ from those of the existing general permit or are absent from it; and

3. When new information becomes available about the operation or pollutant management activities covered under this general permit that was not available at the time of general permit coverage.

Coverage under this general permit may be terminated as to an individual permittee for any of the reasons set forth above after appropriate notice and an opportunity for a hearing.

U. When an individual VPA permit may be requested. Any permittee operating under this general permit may request to be excluded from the coverage under this general permit by applying for an individual VPA permit. When an individual VPA permit is issued to a permittee the applicability of this general permit to the individual permittee is automatically terminated on the effective date of the individual VPA permit.

V. ~~Civil and criminal liability~~ Transfer of coverage under this general permit. ~~Nothing in this permit shall be construed to~~

~~relieve the permittee from civil and criminal penalties for noncompliance with the terms of this permit.~~

1. Permits are not transferable to any person except after notice to the department. The department may require modification or revocation and reissuance of this general permit to change the name of the permittee and to incorporate such other requirements as may be necessary. Except as provided in Part II V 2, coverage under this general permit may be transferred by the permittee to a new owner or operator only if the general permit has been modified to reflect the transfer or has been revoked and reissued to the new owner or operator.

2. As an alternative to transfers under Part II V 1, coverage under this general permit shall be automatically transferred to a new permittee if:

a. The current permittee notifies the department within 30 days of the transfer of the title to the facility or property;

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

c. The department does not within the 30-day time period, notify the existing permittee and the proposed new permittee of its intent to modify or revoke and reissue the coverage under this general permit. If the department notice is not received, the transfer is effective on the date specified in the agreement mentioned in Part II V 2 b.

W. ~~Oil and hazardous substance liability~~ Severability. ~~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 § 311 of the Clean Water Act or §§ 62.1-44.34:14 through 62.1-44.34:23 of the Code of Virginia.~~

~~X. Unauthorized discharge of pollutants. Except in compliance with this permit, it shall be unlawful for any permittee 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 uses of such waters for domestic or industrial consumption, or for recreation, or for other uses.~~

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

Part III
Pollutant Management and Monitoring Requirements for Animal Waste End-Users

A. Pollutant management and monitoring requirements.

1. During the period beginning with ~~the~~ this general permit's effective date and lasting until ~~the~~ this general permit's expiration date, the permittee is authorized to manage pollutants at the ~~location or~~ locations identified in the registration statement and the ~~facility's~~ approved nutrient management plan written for the animal waste end-user.

2. At earthen liquid waste storage facilities constructed after December 1, 1998, to an elevation below the seasonal high water table or within one foot thereof, groundwater monitoring wells shall be installed. A minimum of one up gradient and one down gradient well shall be installed at each earthen waste storage facility that requires groundwater monitoring. Existing wells may be utilized to meet this requirement if properly located and constructed.

3. All ~~facilities~~ animal waste end-users previously covered under a general permit, individual VPA permit, or a VPDES permit that required groundwater monitoring shall continue monitoring consistent with the requirements listed ~~below~~ in this part regardless of where ~~they~~ the animal waste end-users are located relative to the seasonal high water table.

4. ~~At facilities where~~ Where groundwater monitoring is required, the following conditions apply:

a. One data set shall be collected from each well prior to any waste being placed in the storage facility.

b. The static water level shall be measured prior to bailing well water for sampling.

c. At least three well volumes of groundwater shall be withdrawn immediately prior to sampling each monitoring well.

5. In accordance with subdivisions 2 and 3 of this subsection, the groundwater shall be monitored by the permittee at the monitoring wells as specified ~~below~~ in Table 1 of Part III. Additional groundwater monitoring may be required in the ~~facility's~~ approved nutrient management plan written for the animal waste end-user.

6. If groundwater monitoring results for any monitored parameter demonstrate potential noncompliance with this general permit related to the waste storage facility, then the permittee shall submit an approvable groundwater monitoring action plan that outlines appropriate measures to be taken to address the noncompliance. The groundwater monitoring action plan shall be submitted to the department within 30 days of obtaining the monitoring results.

7. The analysis of the groundwater samples for ammonia nitrogen and nitrate nitrogen shall be performed by a laboratory accredited under the Virginia Environmental Laboratory Accreditation Program (VELAP) in accordance

with 1VAC30-46-20. Field sampling, testing, and measurement of the static water level, pH, and conductivity where the sample is taken are not subject to the VELAP requirement.

TABLE 1
GROUNDWATER MONITORING

PARAMETERS	LIMITATIONS	UNITS	MONITORING REQUIREMENTS	
			Frequency	Sample Type
Static Water Level	NL	Ft	1/3 years	Measured
Ammonia Nitrogen	NL	mg/L	1/3 years	Grab
Nitrate Nitrogen	NL	mg/L	1/3 years	Grab
pH	NL	SU	1/3 years	Grab
Conductivity	NL	~~umhos/cm~~ µmhos/cm	1/3 years	Grab

NL = No limit, this is a monitoring requirement only.

~~6.~~ 8. Soil at the land application sites shall be monitored as specified ~~below~~ in Table 2 of Part III. Additional soils monitoring may be required in the ~~facility's~~ approved nutrient management plan written for the animal waste end-user.

TABLE 2
SOILS MONITORING

PARAMETERS	LIMITATIONS	UNITS	MONITORING REQUIREMENTS	
			Frequency	Sample Type
pH	NL	SU	1/3 years	Composite
Phosphorus	NL	ppm or lbs/ac	1/3 years	Composite
Potash	NL	ppm or lbs/ac	1/3 years	Composite
Calcium	NL	ppm or lbs/ac	1/3 years	Composite
Magnesium	NL	ppm or lbs/ac	1/3 years	Composite

NL = No limit, this is a monitoring requirement only.
SU = Standard Units

~~7.~~ 9. Soil monitoring shall be conducted at a depth of between 0-6 inches, unless otherwise specified in the ~~facility's~~ approved nutrient management plan written for the animal waste end-user.

~~8.~~ 10. Waste shall be monitored as specified ~~below~~ in Table 3 of Part III. Additional waste monitoring may be required in the ~~facility's~~ approved nutrient management plan written for the animal waste end-user.

TABLE 3
WASTE MONITORING

PARAMETERS	LIMITATIONS	UNITS	MONITORING REQUIREMENTS	
			Frequency	Sample Type
Total Kjeldahl Nitrogen	NL	*	1/year	Composite
Ammonia Nitrogen	NL	*	1/year	Composite

Total Phosphorus	NL	*	1/year	Composite
Total Potassium	NL	*	1/year	Composite
Calcium	NL	*	1/year	Composite
Magnesium	NL	*	1/year	Composite
Moisture Content	NL	%	1/year	Composite

NL = No limit, this is a monitoring requirement only.

*Parameters for waste may be reported as a percent, as lbs/ton or lbs/1000 gallons, or as ppm where appropriate.

~~9.~~ 11. Analysis of soil and waste shall be according to methods specified in the ~~facility's~~ approved nutrient management plan written for the animal waste end-user.

~~10.~~ 12. All monitoring data collected as required by this section and any additional monitoring shall be maintained on site for a period of five years and shall be made available to department personnel upon request.

B. ~~Other~~ Site design, storage, and operation requirements ~~or special conditions~~.

1. Any liquid manure collection and storage facility shall be designed and operated to (i) prevent point source discharges of pollutants to state waters except in the case of a storm event greater than the 25-year, 24-hour storm and (ii) provide adequate waste storage capacity to accommodate periods when the ground is frozen or saturated, periods when land application of nutrients should not occur due to limited or nonexistent crop nutrient uptake, and periods when physical limitations prohibit the land application of waste.

2. Waste storage facilities constructed after December 1, 1998, shall not be located on a 100-year floodplain. For the purposes of determining the 100-year floodplain, a Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map (FIRM), a FEMA Letter of Map Amendment (LOMA), or a FEMA Letter of Map Revision (LOMR) shall be used.

3. Earthen waste storage facilities constructed after December 1, 1998, shall include a properly designed and installed liner. Such liner shall be either a synthetic liner of at least 20 mils thickness or a compacted soil liner of at least one foot thickness with a maximum permeability rating of 0.0014 inches per hour. A Virginia licensed professional engineer or an employee of the Natural Resources Conservation Service of the U.S. Department of Agriculture with appropriate engineering approval authority shall certify that the siting, design, and construction of the waste storage facility comply with the requirements of this general permit. This certification shall be maintained on site.

4. At earthen waste storage facilities constructed below the seasonal high water table, the top surface of the waste must be maintained at a level of at least two feet above the water table.

5. All liquid waste storage ~~or treatment~~ facilities shall maintain at least one foot of freeboard at all times, up to and including a 25-year, 24-hour storm.

6. For new waste storage ~~or treatment~~ facilities constructed after November 16, 2014, the facilities shall be constructed, operated, and maintained in accordance with the applicable practice standard adopted by the Natural Resources Conservation Service of the U.S. Department of Agriculture and approved by the department. A Virginia licensed professional engineer or an employee of the Natural Resources Conservation Service of the U.S. Department of Agriculture with appropriate engineering approval authority shall certify that the siting, design, and construction of the waste storage facility comply with the requirements of this general permit. This certification shall be maintained on site.

7. The permittee shall notify the department's regional office at least 14 days prior to (i) animals being initially placed ~~in the confined facility~~ into confinement or (ii) the utilization of any new waste storage ~~or treatment~~ facilities.

8. Semi-solid and solid waste shall be stored in a manner that prevents contact with surface water and groundwater. Waste that is stockpiled outside for more than 14 days shall be kept in a waste storage facility or at a site that provides adequate storage. Adequate storage shall, at a minimum, include the following:

a. Waste shall be covered to protect it from precipitation and wind;

b. Stormwater shall not run onto or under the stored waste;

c. A minimum of two feet separation distance to the seasonal high water table or an impermeable barrier shall be used under the stored waste. All waste storage facilities that use an impermeable barrier shall maintain a minimum of one foot separation between the seasonal high water table and the impermeable barrier. ~~"Seasonal high water table" means that portion of the soil profile where a color change has occurred in the soil as a result of saturated soil conditions or where soil concretions have formed. Typical colors are gray mottlings, solid gray, or black. The depth~~

~~in the soil at which these conditions first occur is termed the seasonal high water table.~~ Impermeable barriers shall be constructed of at least 12 inches of compacted clay, at least four inches of reinforced concrete, or another material of similar structural integrity that has a minimum permeability rating of 0.0014 inches per hour ($1X10^{-6}$ centimeters per second); and

d. For waste that is not stored in a waste storage facility or under roof, the storage site must be at least 100 feet from any surface water, intermittent drainage, wells, sinkholes, rock outcrops, and springs. For semi-solid and solid waste that is stored on an impermeable barrier and where any stormwater runoff is collected in the waste storage facility, the semi-solid and solid waste can be stored adjacent to the waste storage facility regardless of the location of the waste storage facility so long as any surface water, intermittent drainage, wells, sinkholes, rock outcrops, and springs are protected from runoff from the stored semi-solid and solid waste.

Semi-solid and solid waste that is stored on an impermeable barrier and where any stormwater runoff is collected in a waste storage facility is considered adequate storage and is therefore not required to be covered.

9. All equipment needed for ~~the~~ proper operation ~~of the permitted facilities~~ shall be maintained in good working order. The manufacturer's operating and maintenance manuals shall be retained for references to allow for timely maintenance and prompt repair of equipment when appropriate. The permittee shall periodically inspect for leaks on equipment used for land application of waste.

10. All treated wastes generated by a digester or other manure treatment technologies shall be approved by the department and shall be managed by ~~a facility~~ the animal waste end-user covered under this general permit and in accordance with the following conditions:

a. All treated wastes generated by a digester or other manure treatment technologies must be managed through an approved nutrient management plan or transferred to another entity in accordance with animal waste transfer requirements in Part III ~~B 15~~ C 6 and ~~16~~ 7.

b. When a ~~facility~~ animal waste end-user covered under this general permit generates a treated waste from animal waste and other feedstock, the permittee shall maintain records related to the production of the treated waste.

(1) If off-site wastes are added to generate the treated waste, then the permittee shall record the following items:

(a) The amount of waste brought to the ~~facility~~ animal waste end-user; and

(b) From whom and where the waste originated.

(2) For all treated wastes generated by the ~~facility~~ animal waste end-user, the permittee shall record the following items:

(a) The amount of treated waste generated;

(b) The nutrient analysis of the treated waste; and

(c) The final use of the treated waste.

(3) Permittees shall maintain the records required by Part III B 10 b (1) and (2) on site for a period of three years. All records shall be made available to department personnel upon request.

11. When the waste storage facility is no longer needed, the permittee shall close it in a manner that (i) minimizes the need for further maintenance and (ii) controls, minimizes, or eliminates, to the extent necessary to protect human health and the environment, the postclosure escape of uncontrolled leachate, surface runoff, or waste decomposition products to the groundwater, surface water, or the atmosphere. Prior to closure, the permittee shall notify the department of any plans to close a liquid waste storage facility. At closure, the permittee shall remove all waste residue from the animal waste storage facility. Removed waste materials shall be utilized according to the approved NMP.

C. Animal waste use and transfer requirements.

1. Animal waste generated by ~~this facility~~ an animal waste end-user that is subject to this general permit shall not be applied to fields owned by or under the operational control of either the permittee or a legal entity in which the permittee has an ownership interest unless the fields are included in the ~~facility's~~ approved nutrient management plan written for this animal waste end-user.

~~12.~~ 2. The permittee shall implement a nutrient management plan (NMP) developed by a certified nutrient management planner in accordance with § 10.1-104.2 of the Code of Virginia and approved by the Department of Conservation and Recreation and maintain the plan on site. All revised and Department of Conservation and Recreation approved NMPs shall be submitted to the department prior to the expiration of the previous NMP. The NMP shall address the form, source, amount, timing, and method of application of nutrients on each field to achieve realistic production goals, while minimizing nitrogen and phosphorus loss to ~~ground~~ groundwaters and surface waters. The terms of the NMP shall be enforceable through this general permit. The NMP shall contain at a minimum the following information:

a. Site map indicating the location of the waste storage facilities and the fields where waste will be applied;

b. Site evaluation and assessment of soil types and potential productivities;

c. Nutrient management sampling including soil and waste monitoring;

d. Storage and land area requirements;

e. Calculation of waste application rates; and

f. Waste application schedules.

~~13.~~ 3. Waste shall not be land applied within buffer zones. Buffer zones at waste application sites shall, at a minimum, be maintained as follows:

a. Distance from occupied dwellings not on the permittee's property: 200 feet (unless the occupant of the dwelling signs a waiver of the buffer zone);

b. Distance from water supply wells or springs: 100 feet;

c. Distance from surface water courses: 100 feet (without a ~~permanent~~ vegetated buffer) or 35 feet (if a ~~permanent~~ vegetated buffer exists). Other site-specific conservation practices may be approved by the department that will provide pollutant reductions equivalent or better than the reductions that would be achieved by the 100-foot buffer or 35-foot wide vegetated buffer;

d. Distance from rock outcropping (except limestone): 25 feet;

e. Distance from limestone outcroppings: 50 feet; and

f. Waste shall not be applied in such a matter that it would discharge to sinkholes that may exist in the area.

~~14.~~ 4. The following land application records shall be maintained:

a. The identification of the land application field sites where the waste is utilized or stored;

b. The application rate;

c. The application dates; and

d. What crops have been planted.

These records shall be maintained on site for a period of five years after the date the application is made and shall be made available to department personnel upon request.

~~15.~~ 5. In cases where a waste storage facility is threatened by emergencies such as fire or flood or where these conditions are imminent, animal waste can be land applied outside of the spreading schedule outlined in the NMP written for the animal waste end-user. If this occurs, then the animal waste end-user shall document the land application information in accordance with Part III C 4 and notify the department in accordance with Part II F 3.

6. Animal waste generated by ~~this facility~~ an animal waste end-user that is subject to this general permit may be transferred from the permittee to another person, if one or more of the following conditions are met:

a. Animal waste generated by ~~this facility~~ an animal waste end-user that is subject to this general permit may be transferred off-site for land application or another acceptable use approved by the department, if:

(1) The sites where the animal waste will be utilized are included in ~~this permitted facility's~~ the animal waste end-user's approved nutrient management plan; or

(2) The sites where the animal waste will be utilized are included in another permitted ~~facility's~~ entity's approved nutrient management plan.

b. Animal waste generated by ~~this facility~~ an animal waste end-user that is subject to this general permit may be transferred off-site without identifying in the permittee's approved nutrient management plan the fields where such waste will be utilized, if the following conditions are met:

(1) The animal waste is registered with the Virginia Department of Agriculture and Consumer Services in accordance with regulations adopted pursuant to ~~subdivision A 2 of~~ § 3.2-3607 A 2 of the Code of Virginia; or

(2) When the permittee transfers to another person more than 10 tons of solid or semi-solid animal waste (solid or semi-solid animal waste contains less than 85% moisture) or more than 6,000 gallons of liquid animal waste (liquid animal waste contains 85% or more moisture) in any 365-day period, the permittee shall maintain records in accordance with Part III ~~B 16~~ C 7.

~~16.~~ 7. Animal waste may be transferred from a permittee to another person without identifying the fields where such waste will be utilized in the permittee's approved nutrient management plan if the following conditions are met:

a. When a permittee transfers to another person more than 10 tons of solid or semi-solid animal waste (solid or semi-solid animal waste contains less than 85% moisture) or more than 6,000 gallons of liquid animal waste (liquid animal waste contains 85% or more moisture) in any 365-day period, the permittee shall provide that person with:

(1) Permittee's name, address, and the general permit number;

(2) A copy of the most recent nutrient analysis of the animal waste; and

(3) An animal waste fact sheet.

b. When a permittee transfers to another person more than 10 tons of solid or semi-solid animal waste (solid or semi-solid animal waste contains less than 85% moisture) or more than 6,000 gallons of liquid animal waste (liquid animal waste contains 85% or more moisture) in any 365-day period, the permittee shall keep a record of the following:

(1) The ~~recipient~~ recipient's name and address;

(2) The amount of animal waste received by the person;

(3) The date of the transaction;

(4) The nutrient analysis of the animal waste;

(5) The locality in which the recipient intends to utilize the animal waste (i.e., nearest town or city and zip code);

(6) The name of the stream or waterbody, if known, to the recipient that is nearest to the animal waste utilization or storage site; and

(7) The signed waste transfer records form acknowledging the receipt of the following:

(a) The animal waste;

(b) The nutrient analysis of the animal waste; and

(c) An animal waste fact sheet.

c. Permittees shall maintain the records required by Part III ~~B 16~~ C 7 a and b for at least three years after the date of the transaction and shall make them available to department personnel upon request.

~~17. When the waste storage or treatment facility is no longer needed, the permittee shall close it in a manner that (i) minimizes the need for further maintenance and (ii) controls, minimizes, or eliminates, to the extent necessary to protect human health and the environment, the postclosure escape of uncontrolled leachate, surface runoff, or waste decomposition products to the groundwater, surface water, or the atmosphere. At closure, the permittee shall remove all waste residue from the animal waste storage or treatment facility. Removed waste materials shall be utilized according to the approved NMP.~~

~~18. As required by § 62.1-44.17:1 F of the Code of Virginia, each~~ D. Each permittee covered under this general permit shall have completed the training program offered or approved by the department in the two years prior to submitting the registration statement for general permit coverage or shall complete such training within one year after the registration statement has been submitted for general permit coverage. All permittees shall complete the training program at least once every three years.

9VAC25-192-80. Tracking and accounting requirements for animal waste end-users.

A. When an animal waste end-user is the recipient of more than 10 tons of solid or semi-solid animal waste (solid or semi-solid animal waste contains less than 85% moisture) or more than 6,000 gallons of liquid animal waste (liquid animal waste contains 85% percent or more moisture) in any 365-day period from an owner or operator of an animal feeding operation covered by a general permit, an individual VPA permit, or a VPDES permit, the end-user shall maintain records regarding the transfer and land application of animal waste.

1. The animal waste end-user shall provide the permittee with the following items:

a. ~~End-user~~ End-user's name and address;

b. The locality in which the end-user intends to utilize the waste (i.e., nearest town or city and zip code);

c. The name of the stream or waterbody, if known, to the end-user that is nearest to the waste utilization or storage site; and

d. Written ~~acknowledgement~~ acknowledgment of receipt of:

(1) The waste;

(2) The nutrient analysis of the waste; and

(3) An animal waste fact sheet.

2. The animal waste end-user shall record the following items regarding the waste transfer:

a. The ~~source~~ source's name, address, and permit number (if applicable);

b. The amount of animal waste that was received;

c. The date of the transaction;

d. The final use of the animal waste;

e. The locality in which the waste was utilized (i.e., nearest town or city and zip code); and

f. The name of the stream or waterbody, if known, to the recipient that is nearest to the waste utilization or storage site.

Records regarding animal waste transfers shall be maintained on site for a period of three years after the date of the transaction. All records shall be made available to department personnel upon request.

3. If waste is land applied, then the animal waste end-user shall keep a record of the following items regarding the land application of the waste:

a. The nutrient analysis of the waste;

b. Maps indicating the animal waste land application fields and storage sites;

c. The land application rate;

d. The land application dates;

e. What crops were planted;

f. Soil test results, if obtained;

g. NMP, if applicable; and

h. The method used to determine the land application rates (i.e., phosphorus crop removal, waste nutrient analysis rate, soil test recommendations, or a nutrient management plan).

Records regarding land application of animal waste shall be maintained on site for a period of three years after the date the application is made. All records shall be made available to department personnel upon request.

B. Any duly authorized agent of the ~~board~~ department may, at reasonable times and under reasonable circumstances, enter any establishment or upon any property, public or private, for the purpose of obtaining information or conducting surveys or investigations necessary in the enforcement of the provisions of this regulation.

9VAC25-192-90. ~~Utilization and storage~~ Storage and land application requirements for transferred animal waste.

A. An animal waste end-user who receives animal waste from an owner or operator of an animal feeding operation covered by a general permit, an individual VPA permit, or a VPDES

permit shall comply with the requirements outlined in this section.

B. Storage requirements. An animal waste end-user who receives animal waste from an owner or operator of an animal feeding operation covered by a general permit, an individual VPA permit, or a VPDES permit shall comply with the requirements outlined in this subsection regarding storage of animal waste in ~~his~~ the owner or operator's possession or under ~~his~~ the owner or operator's control.

1. ~~Animal~~ Semi-solid and solid waste shall be stored in a manner that prevents contact with surface water and groundwater. ~~Animal~~ Semi-solid and solid waste that is stockpiled outside for more than 14 days shall be kept in a waste storage facility or at a site that provides adequate storage. Adequate storage shall, at a minimum, include the following:

a. ~~Animal~~ Semi-solid and solid waste shall be covered to protect it from precipitation and wind;

b. Stormwater shall not run onto or under the stored ~~animal~~ semi-solid and solid waste;

c. A minimum of two feet separation distance to the seasonal high water table or an impermeable barrier shall be used under the stored waste. All waste storage facilities that use an impermeable barrier shall maintain a minimum of one foot separation between the seasonal high water table and the impermeable barrier. ~~"Seasonal high water table" means that portion of the soil profile where a color change has occurred in the soil as a result of saturated soil conditions or where soil concretions have formed. Typical colors are gray mottlings, solid gray, or black. The depth in the soil at which these conditions first occur is termed the seasonal high water table.~~ Impermeable barriers shall be constructed of at least 12 inches of compacted clay, at least four inches of reinforced concrete, or another material of similar structural integrity that has a minimum permeability rating of 0.0014 inches per hour ($1X10^{-6}$ centimeters per second); and

d. For ~~animal~~ semi-solid and solid waste that is not stored in a waste storage facility or under roof, the storage site must be at least 100 feet from any surface water, intermittent drainage, wells, sinkholes, rock outcrops, and springs. For semi-solid and solid waste that is stored on an impermeable barrier and where any stormwater runoff is collected in the waste storage facility, the semi-solid and solid waste can be stored adjacent to the waste storage facility regardless of the location of the waste storage facility so long as surface water, intermittent drainage, wells, sinkholes, rock outcrops, and springs are protected from runoff from the stored semi-solid and solid waste.

Semi-solid and solid waste that is stored on an impermeable barrier and where any stormwater runoff is collected in a waste storage facility is considered adequate storage and is therefore not required to be covered.

2. Any liquid animal waste collection and storage facility shall be designed and operated to (i) prevent point source discharges of pollutants to state waters except in the case of a storm event greater than the 25-year, 24-hour storm and (ii) provide adequate waste storage capacity to accommodate periods when the ground is frozen or saturated, periods when land application of nutrients should not occur due to limited or nonexistent crop nutrient uptake, and periods when physical limitations prohibit the land application of waste.

3. Waste storage facilities constructed after December 1, 1998, shall not be located on a 100-year floodplain. For the purposes of determining the 100-year floodplain, a Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map (FIRM), a FEMA Letter of Map Amendment (LOMA), or a FEMA Letter of Map Revision (LOMR) shall be used.

4. Earthen waste storage facilities constructed after December 1, 1998, shall include a properly designed and installed liner. Such liner shall be either a synthetic liner of at least 20 mils thickness or a compacted soil liner of at least one foot thickness with a maximum permeability rating of 0.0014 inches per hour. A Virginia licensed professional engineer or an employee of the Natural Resources Conservation Service of the U.S. Department of Agriculture with appropriate engineering approval authority shall certify that the siting, design, and construction of the waste storage facility comply with the requirements of this subsection. This certification shall be maintained on site.

5. At earthen waste storage facilities constructed below the seasonal high water table, the top surface of the waste must be maintained at a level of at least two feet above the water table.

6. All liquid waste storage ~~or treatment~~ facilities shall maintain at least one foot of freeboard at all times, up to and including a 25-year, 24-hour storm.

C. Land application requirements. An animal waste end-user who (i) receives more than 10 tons of solid or semi-solid animal waste (solid or semi-solid animal waste contains less than 85% moisture) or more than 6,000 gallons of liquid animal waste (liquid animal waste contains 85% or more moisture) from an owner or operator of an animal feeding operation covered by a general permit, an individual VPA permit, or VPDES permit and (ii) land applies animal waste shall follow appropriate land application requirements as outlined in this subsection. The application of animal waste shall be managed to minimize adverse water quality impacts.

1. The maximum application rates can be established by the following methods:

a. Phosphorus crop removal application rates can be used when:

(1) Soil test phosphorus levels do not exceed the values listed in the Phosphorus Environmental Thresholds table ~~below~~:

Phosphorus Environmental Thresholds	
Region	Soil Test P (ppm) VPI & SU Soil Test (Mehlich I)*
Eastern Shore and Lower Coastal Plain	135
Middle and Upper Coastal Plain and Piedmont	136
Ridge and Valley	162
*If results are from another laboratory, then the Department of Conservation and Recreation approved conversion factors must be used.	

(2) The phosphorus crop removal application rates are set forth by regulations promulgated by the Department of Conservation and Recreation in accordance with § 10.1-104.2 of the Code of Virginia.

b. Animal waste may be applied to any crop once every three years at a rate of no greater than 80 pounds of plant available phosphorus per acre when:

(1) The plant available phosphorus supplied by the animal waste is based on a waste nutrient analysis obtained in the last two years;

(2) In the absence of current soil sample analyses and recommendations; and

(3) Nutrients have not been supplied by an organic source, other than pastured animals, to the proposed land application sites within the previous three years of the proposed land application date of animal waste.

c. Soil test recommendations can be used when:

(1) Accompanied by analysis results for soil tests that have been obtained from the proposed field ~~or fields~~ in the last three years;

(2) The analytical results are from procedures in accordance with 4VAC50-85-140 A 2 f; and

(3) Nutrients from the waste application do not exceed the nitrogen or phosphorus recommendations for the proposed crop or double crops. The recommendations shall be in accordance with 4VAC50-85-140 A 2 a.

d. A nutrient management plan developed by a certified nutrient management planner in accordance with § 10.1-104.2 of the Code of Virginia.

2. The timing of land application of animal waste shall be appropriate for the crop, and in accordance with 4VAC50-85-140 A 4, except that no waste may be applied to ice covered or snow covered ground or to soils that are saturated.

3. Animal waste shall not be land applied within buffer zones. Buffer zones at waste application sites shall, at a minimum, be maintained as follows:

a. Distance from occupied dwellings: 200 feet (unless the occupant of the dwelling signs a waiver of the buffer zone);

b. Distance from water supply wells or springs: 100 feet;

c. Distance from surface water courses: 100 feet (without a ~~permanent~~ vegetated buffer) or 35 feet (if a ~~permanent~~ vegetated buffer exists). Other site-specific conservation practices may be approved by the department that will provide pollutant reductions equivalent or better than the reductions that would be achieved by the 100-foot buffer;

d. Distance from rock outcropping (except limestone): 25 feet;

e. Distance from limestone outcroppings: 50 feet; and

f. Waste shall not be applied in such a manner that it would discharge to sinkholes that may exist in the area.

4. In cases where the waste storage facility is threatened by emergencies such as fire or flood or where these conditions are imminent, animal waste can be land applied outside of the spreading schedule outlined in the animal waste fact sheet. If this occurs, then the animal waste end-user shall document the land application information in accordance with 9VAC25-192-80 A 3.

D. Animal waste end-users shall maintain the records demonstrating compliance with the requirements of subsections B and C of this section for at least three years and make them available to department personnel upon request.

E. The activities of the animal waste end-user shall not contravene the Water Quality Standards~~, as amended and adopted by the board,~~ (9VAC25-260) or any provision of the State Water Control Law ~~(§ 62.1-44 et seq. of the Code of Virginia)~~.

F. Any duly authorized agent of the ~~board~~ department may, at reasonable times and under reasonable circumstances, enter any establishment or upon any property, public or private, for the purpose of obtaining information or conducting surveys or investigations necessary in the enforcement of the provisions of this regulation.

NOTICE: The following forms used in administering the regulation have been filed by the agency. Amended or added forms are reflected in the listing and are published following the listing. Online users of this issue of the Virginia Register of Regulations may also click on the name to access a form. The forms are also available from the agency contact or may be viewed at the Office of Registrar of Regulations, General Assembly Building, 201 North Ninth Street, 4th Floor, Richmond, Virginia 23219.

FORMS (9VAC25-192)

~~Virginia DEQ Registration Statement for VPA General Permit for Animal Feeding Operations for Owners of Animal Feeding Operations, RS, VPG1 (rev. 3/14)~~

~~Virginia DEQ Registration Statement for VPA General Permit for Animal Feeding Operations for Animal Waste End-Users, RS End-Users, VPG1 (rev. 3/14)~~

Virginia DEQ Registration Statement for VPA General Permit for Animal Feeding Operations and Animal Waste Management for Owners of Animal Feeding Operations, RS AFO Owners, VPG1 (rev. 11/2024)

Virginia DEQ Registration Statement for VPA General Permit for Animal Feeding Operations and Animal Waste Management for Animal Waste End-Users, RS End-Users, VPG1 (rev. 11/2024)

Local Government Ordinance Form (eff. 11/94)

~~Virginia DEQ Fact Sheet for Animal Waste Use and Storage (rev. 4/14)~~

Virginia DEQ Fact Sheet for Animal Waste Use and Storage (rev. 11/2024)

VA.R. Doc. No. R23-7432; Filed December 15, 2023, 10:47 a.m.

Action Withdrawn

Title of Regulation: **9VAC25-720. Water Quality Management Planning Regulation (amending 9VAC25-720-10).**

Statutory Authority: § 62.1-44.15 of the Code of Virginia; § 303 of the federal Clean Water Act.

The State Water Control Board has WITHDRAWN the regulatory action for **9VAC25-720, Water Quality Management Planning Regulation,** which was published as a Notice of Intended Regulatory Action (NOIRA) in 20:14 VA.R. 1691 March 22, 2004. This action is being withdrawn because the Water Quality Management Planning Regulation has been amended to address the issues listed in this NOIRA through a separate regulatory action, and the amendments identified in this NOIRA are no longer needed.

Agency Contact: Bryant Thomas, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 396-5846, or email bryant.thomas@deq.virginia.gov.

VA.R. Doc. No. R24-532; Filed December 14, 2023, 1:31 p.m.

Action Withdrawn

Title of Regulation: **9VAC25-760. James River (Richmond Regional West) Surface Water Management Area (adding 9VAC25-760-10, 9VAC25-760-20, 9VAC25-760-30).**

Statutory Authority: § 62.1-246 of the Code of Virginia.

The State Water Control Board has WITHDRAWN the regulatory action for **9VAC25-760, James River (Richmond Regional West) Surface Water Management Area,** which was published as a Proposed Action in 19:15 VA.R. 2241-2246 April 7, 2003. This action is being withdrawn because of the length of time that has passed since this action was proposed it would not be appropriate to continue to use this action to adopt a regulation. On November 30, 2023, the State Water Control Board accepted staff's recommendation to withdraw this regulatory action.

Agency Contact: Weedon Cloe, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 754-5457, or email william.cloe@deq.virginia.gov.

VA.R. Doc. No. R24-502; Filed December 14, 2023, 3:30 p.m.

TITLE 11. GAMING

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES, CHARITABLE GAMING

Reproposed Regulation

REGISTRAR'S NOTICE: The Department of Agriculture and Consumer Services, Charitable Gaming, is claiming an exemption from the Administrative Process Act in accordance with the third enactment of Chapters 554 and 609 of the 2022 Acts of Assembly, which exempts the actions of the department relating to the adoption of regulations necessary to implement the provisions of the act; however, the board is required to provide an opportunity for public comment on regulations prior to their adoption.

Titles of Regulations: **11VAC20-20. Charitable Gaming Regulations (amending 11VAC20-20-10, 11VAC20-20-30, 11VAC20-20-50, 11VAC20-20-80, 11VAC20-20-90, 11VAC20-20-120, 11VAC20-20-600, 11VAC20-20-610).**

11VAC20-30. Texas Hold'em Poker Tournament Regulations (adding 11VAC20-30-10 through 11VAC20-30-210).

Statutory Authority: § 18.2-340.19 of the Code of Virginia.

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: February 14, 2024.

Agency Contact: Michael Menefee, Program Manager, Charitable and Regulatory Programs, Department of Agriculture and Consumer Services, 102 Governor Street, Richmond, VA 23219, telephone (804) 786-3983, or email michael.menefee@vdacs.virginia.gov.

Background: Section 18.2-340.19 of the Code of Virginia requires the Department of Agriculture and Consumer Services (VDACS) to adopt regulations that prescribe the conditions under which a qualified organization may manage, operate, contract with operators of, or conduct Texas Hold'em poker tournaments. Chapters 554 and 609 of the 2022 Acts of Assembly require the Commissioner of Agriculture and Consumer Services to prescribe regulations that are consistent with the provisions of Chapter 982 of the 2020 Acts of Assembly. The proposed regulations prescribe the conditions

under which Texas Hold'em poker tournaments shall be conducted in the Commonwealth. To effectively regulate Texas Hold'em poker tournaments, VDACS has determined that it will (i) promulgate Texas Hold'em Poker Tournament Regulations (11VAC20-30) and (ii) amend the Charitable Gaming Regulations (11VAC20-20) to include poker-specific provisions where appropriate. In the previous proposed stage of this regulatory action, VDACS was unable to include proposed amendments to 11VAC20-20 as that chapter was not yet effective. The Charitable Gaming Regulations (11VAC20-20) became effective March 29, 2023, so the agency has included the poker-specific amendments to 11VAC20-20 in the revised proposed stage for this regulatory action. During this reproposed stage, the agency is publishing the proposed poker-specific amendments to 11VAC20-20 and the proposed text of 11VAC20-30 with amendments the agency determined are appropriate in response to the comments received during the initial proposed stage public comment period. This will afford the regulated community and interested stakeholders the opportunity to review and comment on all of the Texas Hold'em poker tournament regulatory provisions before the provisions become effective.

Summary:

Pursuant to Chapters 554 and 609 of the 2022 Acts of Assembly and in conformance with Chapter 982 of the 2020 Acts of Assembly, the proposed regulatory action establishes the requirements for charitable organizations wishing to conduct Texas Hold'em poker tournaments to generate charitable funds. The proposed action prescribes the conditions under which a qualified organization may manage, operate, conduct, or contract with a separate operator to conduct Texas Hold'em poker tournaments. The proposed regulation (i) provides that a charitable organization wishing to conduct Texas Hold'em poker tournaments must obtain a permit from the department; (ii) establishes required documents that must be provided to the department, prohibited acts, procedures for recordkeeping and bank account maintenance, and contract and lease requirements; (iii) requires that any person administering a Texas Hold'em poker tournament for a charitable organization must register with the department as an operator; (iv) requires the registration of a landlord who rents, leases, or otherwise provides a premises to a charitable organization to hold a Texas Hold'em poker tournament; (v) establishes requirements for Texas Hold'em poker tournaments, including a fixed entry fee, use of poker cards and poker chips, posting house rules, and prohibited acts; and (vi) outlines training requirements for all persons working or volunteering at a poker tournament, including a prohibition of staff of the charitable organization or the operator from participating as a player in the poker tournament.

Proposed changes to 11VAC20-30 in the reproposed regulation (i) allow concurrent tournaments with several restrictions, including the number of concurrent tournaments that may be played at any given time; (ii) allow a dealer of an operator to play in a poker tournament only if the dealer does not deal in that tournament or within 48 hours of the dealer's shift; (iii) remove the requirement for a dealer's last name to appear on the dealer's badge; (iv) allow add-ons and defines the term; (v) allow an organization to conduct poker tournaments outside of the county, city, or town or adjacent county, city, or town where the organization is located; and (vi) allow the use of computer software to manage poker tournaments.

Proposed amendments to 11VAC20-20, included in the reproposed regulation (i) add new definitions consistent with 11VAC20-30 to allow for the conduct of Texas Hold'em poker tournaments by qualified organizations; (ii) establish the criteria for receiving a permit to conduct Texas Hold'em poker tournaments, including documentation that must be provided with the permit application; (iii) establish prohibited acts that if the organization is found to have committed, would result in the denial, revocation, or suspension of the organization's permit; and (iv) add recordkeeping requirements for organizations that conduct poker tournaments.

11VAC20-20-10. Definitions.

In addition to the definitions contained in § 18.2-340.16 of the Code of Virginia, the following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Administer" means the conduct of activities by an operator that are associated with production of a poker tournament.

"Add-on" means a player's purchase of additional poker chips during a tournament at preannounced times before that player runs out of poker chips.

"Agent" means any person authorized by a supplier, network bingo provider, or manufacturer to act for or in place of such supplier, network bingo provider, or manufacturer.

"Board of directors" means the board of directors, managing committee, or other supervisory body of a qualified organization.

"Calendar day" means the period of 24 consecutive hours commencing at 12:00:01 a.m. and concluding at midnight.

"Calendar week" means the period of seven consecutive calendar days commencing at 12:00:01 a.m. on Sunday and ending at midnight the following Saturday.

"Cash" means United States currency or coinage.

"Charitable Gaming Law" means Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2 of the Code of Virginia.

"Charitable host representative" means a person who (i) is a bona fide member, as defined in § 18.2-340.16 of the Code of Virginia, of the qualified organization; (ii) meets all other

requirements for bona fide members set forth in the Charitable Gaming Law; (iii) does not receive remuneration pursuant to § 18.2-340.33 of the Code of Virginia; and (iv) is responsible for the oversight and execution of the written contract between the qualified organization and operator during the poker tournament.

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

"Concealed face bingo card" means a nonreusable bingo card constructed to conceal the card face.

"Conduct" means the actions associated with the provision of a gaming operation during and immediately before or after the permitted activity, which may include (i) selling bingo cards or packs, electronic bingo devices, instant bingo or pull-tab cards, electronic pull-tab devices, electronic pull-tabs, network bingo cards, or raffle tickets; (ii) calling bingo games; (iii) distributing prizes; (iv) dealing playing cards; (v) distributing poker chips; and ~~(iv)~~ (vi) any other services provided by game workers, charitable host representatives, or volunteer dealers.

"Control program" means software involved in any critical game function.

"Daubing" means covering a square containing a number called with indelible ink or otherwise marking a number called on a card or an electronic facsimile of a card.

"Deal" means each separate package or series of packages consisting of one game of instant bingo, pull-tabs, or seal cards with the same serial number.

"Decision bingo" means a bingo game where the cost to a player to play is dependent on the number of bingo numbers called, and the prize payout is in direct relationship to the number of participants and the number of bingo numbers called but shall not exceed statutory prize limits for a regular bingo game.

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

"Designator" means an object used in the bingo number selection process, such as a ping-pong ball, upon which bingo letters and numbers are imprinted.

"Device number" means the unique serial number assigned to each electronic gaming device by the department and displayed on the device tag affixed by the department.

"Device tag" means the mark that contains a unique serial number assigned to each electronic gaming device that is affixed by the department to each electronic gaming device indicating that the department has authorized and approved the use of such device.

"Discount" means any reduction in cost of admission or game packs or any other purchases through use of coupons, free packs, or other similar methods.

"Disinterested player" means a player who is unbiased.

"Disposable bingo paper" or "disposable paper" means a nonreusable, paper bingo card manufactured with preprinted numbers.

"Distributed pull-tab system" means a computer system consisting of a computer and associated equipment for the use of distributing a finite number of electronic pull-tabs, a certain number of which entitle a player to prize awards at various levels.

"Door prize" means any prize awarded by the random drawing or random selection of a name or number based solely on attendance at a charitable gaming activity.

"Electronic bingo device" means an electronic unit that uses proprietary software or hardware, or operates in conjunction with commonly available software and computers to display facsimiles of bingo cards and allows a player to daub such cards or allows for the automatic daubing of such cards.

"Electronic gaming" or "electronic games" means any instant bingo, pull-tabs, or seal card gaming that is conducted primarily by use of an electronic device. "Electronic gaming" does not include (i) the game of chance identified in clause (ii) of the definition of "bingo" in § 18.2-340.16 of the Code of Virginia or (ii) network bingo.

"Electronic gaming device" means an electronic unit used to facilitate the play of an electronic pull-tab. An electronic pull-tab device may take the form of an upright cabinet or a handheld device or may be of any other composition as approved by the department.

"Electronic gaming adjusted gross receipts" means the gross receipts derived from electronic gaming less the total amount in prize money paid out to players.

"Electronic gaming manufacturer" means a manufacturer of electronic devices used to conduct electronic gaming.

"Electronic pull-tabs" means a form of electronic gaming using an electronic version of a single instant bingo card or pull-tab. An electronic pull-tab is a predetermined game outcome in electronic form, distributed on-demand from a finite number of game outcomes by a distributed pull-tab system.

"Equipment and video systems" means equipment that facilitates the conduct of charitable gaming, such as ball blowers, flashboards, electronic verifiers, and replacement parts for such equipment. Equipment and video systems shall not include dispensing devices, electronic bingo devices, and electronic pull-tab devices.

"Event game" means a bingo game (i) that is played using instant bingo cards or pull-tabs in which the winners include both instant winners and winners who are determined by the random draw of a bingo ball, the random call of a bingo number, or the use of a seal card, and (ii) that is sold in its

entirety and played to completion during a single bingo session.

"Fiscal year" or "annual reporting period" means the 12-month period beginning January 1 and ending December 31 of any given year.

"Flare" means a printed or electronic display that bears information relating to the name of the manufacturer or logo, name of the game, card count, cost per play, serial number, number of prizes to be awarded, and specific prize amounts in a deal of instant bingo, pull-tab, seal cards, or electronic pull-tabs.

"Free space number," "perm number," "center number," "card number," or "face number" means the number generally printed in the center space of a bingo card that identifies the unique pattern of numbers printed on that card.

"Game manager" means a person who (i) is a bona fide member, as defined in § 18.2-340.16 of the Code of Virginia, of the qualified organization that is managing, operating, and conducting a poker tournament; (ii) meets all other requirements for bona fide members set forth in the Charitable Gaming Law and this chapter; and (iii) is responsible for the operation of the qualified organization's poker tournament and does not receive remuneration for it pursuant to § 18.2-340.33 of the Code of Virginia.

"Game program" means a written list of all games to be played including the sales price of all bingo paper, network bingo cards, and electronic bingo devices, pack configuration, prize amounts to be paid during a session for each game, and an indication whether prize amounts are fixed based on attendance.

"Game set" means the entire pool of electronic pull-tabs that contains predefined and randomized game results assigned under a unique serial number. This term is equivalent to "deal" or "deck."

"Game subset" means a division of a game set into equal sizes.

"Immediate family" means one's spouse, parent, child, sibling, grandchild, grandparent, mother or father-in-law, or stepchild.

"Interested persons" means (i) the president, an officer, or a game manager of any qualified organization that is exempt or is a permit applicant or holds a permit to conduct charitable gaming, or (ii) the owner, director, officer, or partner of an entity engaged in supplying charitable gaming supplies to organizations, engaged in providing network bingo supplies to organizations, or engaged in manufacturing any component of an electronic game that is distributed in the Commonwealth.

"IRS" means the U.S. Internal Revenue Service.

"Management" means the provision of oversight of a gaming operation, which may include the responsibilities of applying for and maintaining a permit or authorization; compiling, submitting, and maintaining required records and financial reports; and ensuring that all aspects of the operation are in compliance with all applicable statutes and regulations.

"Manufacturer" means a person who or entity that assembles from raw materials or subparts a completed piece of bingo equipment or supplies, a distributed pull-tab system, or other charitable gaming or electronic gaming equipment or supplies. "Manufacturer" also means a person who or entity that modifies, converts, adds, or removes parts to or from bingo equipment or supplies, a distributed pull-tab system, or other charitable gaming or electronic gaming equipment or supplies to further their promotion or sale for the conduct of charitable gaming.

"Operation" means the activities associated with production of a charitable gaming or electronic gaming activity, which may include (i) the direct on-site supervision of the conduct of charitable gaming and electronic gaming; (ii) coordination of game workers; and (iii) all responsibilities of charitable gaming and electronic gaming designated by the organization's management.

"Operator" means a person who has registered with the department in accordance with 11VAC20-30-50 to administer poker tournaments.

"Organization number" means a unique identification number issued by the department.

"Owner" means any individual with financial interest of 10% or more in a supplier, network bingo provider, or a manufacturer of a distributed pull-tab system or other electronic gaming device or system distributed in the Commonwealth.

"Pack" means sheets of bingo paper or electronic facsimiles assembled in the order of games to be played. This shall not include any raffle.

"Poker game" means a Texas Hold'em poker game as defined in § 18.2-340.16 of the Code of Virginia.

"Poker tournament" means a Texas Hold'em poker tournament as defined in § 18.2-340.16 of the Code of Virginia.

"Prize" means cash, merchandise, certificate, or other item of value awarded to a winning player.

"Progressive bingo" means a bingo game in which the prize is carried forward to the next game if a predetermined pattern is not completed within a specified number of bingo numbers called.

"Progressive seal card" means a seal card game in which a prize is carried forward to the next deal if not won when a deal is completed.

"Remuneration" means payment in cash or the provision of anything of value for goods provided or services rendered.

"Seal card" means a board or placard used in conjunction with a deal of the same serial number that contains one or more concealed areas that when removed or opened, reveal a predesignated winning number, letter, or symbol located on that board or placard.

"Selection device" means a manually or mechanically operated device used to randomly select bingo numbers.

"Serial number" means a unique number assigned by the manufacturer to each set of bingo cards or network bingo cards; each instant bingo, pull-tab, or seal card in a deal; each electronic bingo device; each door prize ticket; each game set and game subset of electronic pull-tabs; and each electronic gaming device.

"Series number" means the number of unique card faces contained in a set of disposable bingo paper cards, network bingo cards, or bingo hard cards. A 9000 series, for example, has 9,000 unique faces.

"Session" means a period of time during which one or more bingo games are conducted or during which instant bingo, pull-tabs, seal cards, or electronic gaming may be sold and redeemed. A session begins with the sale of instant bingo, pull-tabs, seal cards, electronic gaming, electronic bingo devices, network bingo cards, or bingo cards or packs.

"Social organization" means the same as that term is defined in § 18.2-340.16 of the Code of Virginia.

"Social quarters" means the same as that term is defined in § 18.2-340.16 of the Code of Virginia.

"Treasure chest" means a raffle including a locked treasure chest containing a prize that a participant, selected through some other authorized charitable game, is afforded the chance to select from a series of keys a predetermined key that will open the locked treasure chest to win a prize.

"Use of proceeds" means the use of funds derived by an organization from its charitable gaming activities, which are disbursed for those lawful religious, charitable, community, or educational purposes.

"Voucher" means a printed ticket tendered to the player, upon request, for any unused game plays or winnings that remain on the electronic pull-tab device.

"WINGO" means a variation of a traditional bingo game that uses visual devices rather than a verbal caller and is intended for play by hearing impaired persons.

11VAC20-20-30. Charitable gaming permit application process for raffles, bingo, paper pull-tabs, network bingo, paper instant bingo, ~~and~~ paper seal cards, and poker tournaments.

A. Any organization (i) anticipating gross gaming receipts from raffles that exceed the amount set forth in § 18.2-340.23 of the Code of Virginia or (ii) intending to operate and conduct bingo, electronic gaming, instant bingo, seal cards, pull-tabs, a poker tournament, or network bingo shall complete a department-prescribed application to request issuance or renewal of an annual permit to conduct charitable gaming. Organizations shall submit a nonrefundable fee payable to the Treasurer of Virginia in the amount of $200 with the application, unless the organization is exempt from such fee pursuant to § 18.2-340.23 of the Code of Virginia.

B. The department may initiate action against any organization exempt from permit requirements when it reasonably believes the organization is not in compliance with the provisions of Charitable Gaming Law or regulations adopted pursuant thereto.

C. Permits shall be valid for a period of one year from the date of issuance or for a period specified on the permit. The department may issue permits for periods of less than one year.

D. Permits shall be granted only after a background investigation of an organization, interested persons, or both to ensure public safety and welfare as required by § 18.2-340.25 of the Code of Virginia. Investigations shall consider the nature, the age and severity, and the potential harm to public safety and welfare of any criminal offenses. The investigation may include the following:

1. A search of criminal history records for the chief executive officer and chief financial officer of the organization, game manager, or charitable host representative. Information and authorization to conduct these records checks shall be provided in the permit application. In addition, the department shall require that the organization provides assurances that all other members involved in the management, operation, or conduct of charitable gaming meet the requirements of subdivision 12 of § 18.2-340.33 of the Code of Virginia. Applications may be denied if:

a. Any person participating in the management of any charitable gaming has ever been:

(1) Convicted of a felony; or

(2) Convicted of any misdemeanor involving fraud, theft, or financial crimes within the preceding five years.

b. Any person participating in the conduct of charitable gaming has been:

(1) Convicted of any felony in the preceding 10 years; or

(2) Convicted of any misdemeanor involving fraud, theft, or financial crimes within the preceding five years;

2. An inquiry as to whether the organization has been granted tax-exempt status pursuant to § 501(c) by the

Internal Revenue Service and is in compliance with IRS annual filing requirements;

3. An inquiry as to whether the organization has entered into any contract with, or has otherwise employed for compensation, any persons for the purpose of organizing or managing, operating, or conducting any charitable gaming activity, excluding a written contract with an operator to administer a qualified organization's poker tournament;

4. Inquiries into the finances and activities of the organization and the sources and uses of funds;

5. Inquiries into the level of community or financial support to the organization and the level of community involvement in the membership and management of the organization; and

6. An inquiry as to whether the organization operates in accordance with the provisions of or is in violation of any provision of the Charitable Gaming Law or regulations promulgated pursuant thereto.

E. The permit application for an organization that has not previously held a permit shall include:

1. A copy of the articles of incorporation, bylaws, charter, constitution, or other appropriate organizing document;

2. A copy of the determination letter issued by the IRS under § 501(c) of the Internal Revenue Code, if appropriate, or a letter from the national office of an organization indicating the applicant organization is in good standing and is currently covered by a group exemption ruling. A letter of good standing is not required if the applicable national or state office has furnished the department with a listing of member organizations in good standing in the Commonwealth as of January 1 of each year and has agreed to promptly provide the department any changes to the listing as they occur;

3. A copy of the written lease or proposed written lease agreement and all other agreements between the organization and the landlord if the organization rents or intends to rent a facility where bingo, a poker tournament, or electronic gaming is or will be conducted. Information on the lease shall include name, address, and telephone number of the landlord; maximum occupancy of the building; ~~and~~ the rental amount per session; and if the landlord that leases a facility where a poker tournament will be conducted is an entity, the name of each of the entity's owners, members, manager, officers, and directors;

4. An authorization by an officer or other appropriate official of the organization to permit the department to determine whether the organization has been investigated or examined by the IRS in connection with charitable gaming activities during the previous three years~~. F.~~; and

5. Any contracts or any other agreements with landlords, suppliers, network bingo providers, social organizations, operators, or manufacturers to which the organization is or may be a party.

F. If the organization wishes to conduct a poker tournament, the organization must provide the following information and documentation with its permit application in addition to the documents listed in subsection E of this section:

1. House rules that govern how the poker tournament will be played. All house rules shall be preapproved by the department and shall be consistent with the Charitable Gaming Law, this chapter, 11VAC20-30, and the official rules for poker tournaments established by the Poker Tournament Directors Association;

2. If the organization uses or intends to use an operator to administer its poker tournament, the identity of the organization's charitable host representative and a copy of a current photo identification of the charitable host representative, such as a driver's license or other government-issued identification;

3. If the organization uses or intends to use an operator to administer its poker tournament, a copy of the operator's internal control policies that comply with criteria established in 11VAC20-30-60 O;

4. If the organization intends to manage, operate, and conduct or manages, operates, and conducts its own poker tournament, the designation and identity of the organization's game manager who shall be responsible for the operation and conduct of the poker tournament for the qualified organization and a copy of a current photo identification of the game manager, such as a driver's license or other government-issued identification; and

5. A sample of the badge that meets the criteria established in 11VAC20-30-60 Q.

G. Copies of minutes of meetings of the organization may be requested by the department prior to rendering a permitting decision.

H. Organizations applying to renew a permit previously issued by the department shall submit articles of incorporation, bylaws, charter, constitution, or other organizing document; IRS determination letter; any new contract or agreement with a landlord, supplier, network bingo provider, social organization, operator, or manufacturer to which the organization is or may be a party; and a copy of any lease with any landlord or social organization if there are any amendments or changes to these documents.

I. Organizations may request permits to conduct joint bingo games as provided in § 18.2-340.29 of the Code of Virginia.

1. In the case of a joint bingo game, each organization shall file a permit application.

2. The nonrefundable permit fee for joint bingo games shall be a total of $200. However, no permit application fee is due

if each of the organizations is exempt from the application fee pursuant to § 18.2-340.23 of the Code of Virginia.

3. A single permit may be issued in the names of all the organizations conducting a joint bingo game. All restrictions and prohibitions applying to single organizations shall apply to qualified organizations jointly conducting bingo games pursuant to § 18.2-340.29 of the Code of Virginia.

4. No joint bingo game shall be conducted prior to the issuance of a joint permit.

5. Applications for joint bingo games shall include an explanation of the division of manpower, costs, and proceeds for the joint bingo game.

J. An organization wishing to change dates, times, or locations of its charitable gaming shall request an amendment to its permit. Amendment requests shall be made in writing on a form prescribed by the department in advance of the proposed effective date.

K. An organization may cancel its charitable gaming due to inclement weather, disasters, or other circumstances outside the organization's control without an amendment to its permit.

L. An organization may sell raffle tickets for a drawing to be held outside of the Commonwealth of Virginia in the United States provided:

1. The raffle is conducted by the organization in conjunction with a meeting outside the Commonwealth of Virginia or with another organization that is licensed to conduct raffles outside the Commonwealth of Virginia;

2. The raffle is conducted in accordance with this chapter and the laws and regulations of the state where the drawing is to be held; and

3. The portion of the proceeds derived from the sale of raffle tickets in the Commonwealth is reported to the department.

M. Any permitted organization that ceases to conduct charitable gaming shall immediately notify the department in writing and provide the department a report as to the disposition of all unused charitable gaming supplies or electronic gaming devices on a form prescribed by the department.

11VAC20-20-50. Suspension, revocation, or denial of permit and authorization.

A. Pursuant to § 18.2-340.20 of the Code of Virginia, the department may suspend, revoke, or deny (i) the permit to conduct charitable gaming or to contract with an operator to administer a poker tournament or (ii) the authorization to operate and conduct electronic gaming of any organization for cause, including any of the following reasons:

1. The organization is found to be in violation of or has failed to meet any of the requirements of the Charitable Gaming Law or regulations governing the management, operation, and conduct of charitable gaming or electronic gaming in the Commonwealth.

2. The organization is found to be not in good standing with its state or national organization.

3. The IRS revokes or suspends the organization's federal tax-exempt status.

4. The organization willfully and knowingly provides false information in its application for a permit to conduct charitable gaming.

5. The organization is found to have a member involved in the management, operation, or conduct of its charitable gaming who has been convicted of any felony or any misdemeanor as follows:

a. For any person participating in the management or operation of any charitable gaming:

(1) Convicted of a felony; or

(2) Convicted of any misdemeanor involving fraud, theft, or financial crimes within the preceding five years.

b. For any person participating in the conduct of charitable gaming:

(1) Convicted of any felony within the preceding 10 years; or

(2) Convicted of any misdemeanor involving fraud, theft, or financial crimes within the preceding five years.

6. The organization is found to have managed, operated, or conducted a poker tournament or to have contracted with an operator or any person to administer a poker tournament on its behalf without a permit issued to the organization to do so.

7. If the qualified organization uses or intends to use an operator to administer its poker tournament, the qualified organization fails to submit or provide to the department (i) a written contract that complies with 11VAC20-30-180, (ii) a new or amended written contract with its operator within the 20 days following the date on which that contract is signed by all parties to the contract, or (iii) a new or amended written contract with its operator that complies with 11VAC20-30-180.

8. The qualified organization, member of the qualified organization, person affiliated or associated with the qualified organization, or immediate family member or person residing in the household of a member of the qualified organization or of a person affiliated or associated with the qualified organization directly or indirectly has any interest or ownership in an operator with which the qualified organization contracts to administer its poker tournament.

9. A member of the qualified organization; person affiliated or associated with the qualified organization; or immediate family member or person residing in the household of a director, officer, owner, partner, employee, independent

contractor, or member of the qualified organization or of a person affiliated or associated with the qualified organization receives compensation from an operator with which the qualified organization contracts to administer its poker tournament.

10. If the qualified organization conducts a poker tournament or contracts with an operator to administer its poker tournament, the qualified organization, member of the qualified organization, person affiliated or associated with the qualified organization, or immediate family member or person residing in the household of a member of the qualified organization or of a person affiliated or associated with the qualified organization directly or indirectly receives any payment from the landlord of the facility where the poker tournament occurs or from the agents, employees, immediate family members, or persons residing in the household of the landlord unless such payment is directly related to a written contract to lease a facility for use to hold a poker tournament as required by 11VAC20-20-120 A and such payment is made by check or electronic fund transfer from the landlord directly to the qualified organization's charitable gaming account.

B. The failure to meet any of the requirements of § 18.2-340.24 of the Code of Virginia shall cause the denial of the permit, and no organization shall conduct any charitable gaming until the requirements are met and a permit is obtained.

C. The failure to meet the definition of a social organization or the requirements in § 18.2-340.26:1 shall cause the denial of the authorization to conduct electronic gaming, and no organization shall conduct electronic gaming until the requirements are met and an authorization is obtained.

D. Except when an organization fails to meet any of the requirements of § 18.2-340.24 of the Code of Virginia or fails to file a financial report as required by § 18.2-340.30 of the Code of Virginia or when a manufacturer fails to file a financial report as required by § 18.2-340.30:2 of the Code of Virginia, in lieu of suspending, revoking, or denying a permit to conduct charitable gaming; an authorization to operate and conduct electronic gaming; or a permit to distribute a distributed pull-tab system or electronic gaming devices, the department may afford an organization or manufacturer, at the department's discretion, an opportunity to enter into a compliance agreement specifying additional conditions or requirements as it may deem necessary to ensure an organization's or a manufacturer's compliance with the Charitable Gaming Law and regulations adopted pursuant thereto and may require that an organization or manufacturer participates in such training as is offered by the department.

E. If the premises on which a social organization operates and conducts electronic gaming is deemed a common nuisance pursuant to § 18.2-258 of the Code of Virginia, then the department may suspend, revoke, or deny the social organization's authorization to operate and conduct electronic gaming.

F. If a permit or authorization to operate and conduct electronic gaming is suspended, the department shall set the terms of the suspension, which shall include the length of the suspension and a requirement that, prior to reinstatement of the permit or authorization, the organization shall submit a remedial business plan to address the conditions that resulted in the suspension. The remedial business plan must be approved by the department prior to reinstatement of the permit or authorization.

G. An organization whose permit or authorization to operate and conduct electronic gaming is revoked shall be eligible to reapply for an authorization one year from the date of revocation. If the authorization was revoked fewer than 18 months prior to the organization reapplying for an authorization, the organization shall submit a remedial business plan for approval by the department to address the conditions that resulted in the revocation. The remedial business plan must be approved by the department prior to reinstatement of the permit or authorization. The department at its discretion may issue the authorization if it is satisfied that the organization's remedial business plan will result in compliance with the requirements of the Charitable Gaming Law and regulations adopted pursuant thereto.

H. If a permit or authorization to operate and conduct electronic gaming is suspended, the department shall set the terms of the suspension, which shall include the length of the suspension and a requirement that prior to reinstatement of the authorization, the organization shall submit a remedial business plan approved by the department to address the conditions that resulted in the suspension. The remedial business plan must be approved by the department prior to reinstatement of the permit or authorization.

I. If an organization fails to meet the minimum use of proceeds requirement after having been suspended, the organization's authorization to operate and conduct electronic gaming shall be revoked. An organization whose authorization is revoked shall be eligible to reapply for an authorization at the end of one year from the date of revocation. If the authorization is revoked, the organization is required to reapply for an authorization, and if the authorization was revoked less than 18 months prior to reapplying for an authorization, then the organization shall submit a remedial business plan approved by the department to address the conditions that resulted in the revocation. The department at its discretion may issue the authorization if it is satisfied that the organization's remedial business plan will result in meeting the use of proceeds requirement.

11VAC20-20-80. Bank accounts.

A. A qualified organization shall maintain a charitable gaming bank account that is separate from any other bank

account, and all gaming receipts, except receipts from electronic gaming, shall be deposited into the charitable gaming bank account.

B. Disbursements for expenses other than prizes and reimbursement of meal expenses shall be made by check directly from a charitable gaming bank account or a bank account authorized pursuant to subsection A of this section. However, expenses related to a network bingo game ~~or,~~ distributed pull tab system, or operator may be disbursed through an electronic fund transfer to the network bingo provider ~~or,~~ the permitted manufacturer or supplier providing the distributed pull-tab system, or operator, provided that such an arrangement is agreed upon by both (i) the qualified or social organization and (ii) the network bingo provider ~~or,~~ permitted manufacturer or supplier, or operator. A written agreement specifying the terms of this arrangement shall be required prior to any electronic fund transfer occurring between the two parties.

C. All records related to the charitable gaming bank account or the other bank account, authorized pursuant to subsection A of this section, including monthly bank statements, canceled checks or facsimiles thereof, and reconciliations, shall be maintained for a minimum of three years following the close of a fiscal year.

D. All receipts from each session of bingo games, network bingo games, raffles, instant bingo, pull-tabs, or seal cards shall be deposited by the second business day following the session at which they were received. All receipts from electronic gaming shall be deposited at least once every seven calendar days.

E. All receipts from a poker tournament shall be deposited by the second business day following the poker tournament at which they were received. However, receipts received by an operator for administering a poker tournament for a qualified organization may be deposited through an electronic fund transfer into the qualified organization's charitable gaming account provided that such an arrangement is agreed upon by both the qualified organization and the operator. A written agreement specifying the terms of this arrangement is required prior to any electronic fund transfer occurring between the two parties.

F. Raffle proceeds unrelated to a session shall be deposited into the qualified organization's charitable gaming bank account or a bank account authorized pursuant to subsection A of this section no later than the end of the calendar week following the week during which the organization received the proceeds.

~~F.~~ G. A social organization operating and conducting electronic gaming or a qualified organization renting a premises from a social organization for the purpose of electronic gaming shall maintain a separate bank account for all receipts rebates, discounts, or refunds from electronic gaming.

11VAC20-20-90. Recordkeeping.

A. In addition to the records required by § 18.2-340.30 D of the Code of Virginia, qualified organizations conducting a session of bingo or electronic gaming; managing, operating, and conducting a poker tournament; or contracting with an operator to administer a poker tournament shall maintain a system of records for a minimum of three years following the close of the fiscal year, unless otherwise specified, for each session on forms prescribed by the department or reasonable facsimiles of those forms approved by the department that include:

1. Charitable gaming supplies, including electronic gaming ~~or~~ supplies, network bingo supplies, or poker tournament supplies purchased and used;

2. A session reconciliation form or an instant bingo, pull-tab, ~~or~~ seal card, or poker tournament reconciliation form completed and signed within 48 hours of the end of the session by the game manager. For electronic gaming, an electronic gaming reconciliation form completed and signed within 48 hours of the deposit of receipts in accordance with 11VAC20-20-80 D;

3. All discounts provided;

4. A reconciliation to account for (i) cash received from floor workers for the sale of extra bingo sheets for any game or network bingo cards or (ii) cash received from dealers or game workers as payment from players for entry into the poker tournament or for add-ons;

5. The summary report that electronic bingo systems are required to maintain pursuant to 11VAC20-20-140 D 11;

6. An admissions control system that provides a cross-check on the number of players in attendance and admission sales. This may include a ticket control system, cash register, or any similar system. The requirements of this subdivision shall not apply to the operation and conduct of electronic gaming;

7. All operating expenses, including rent, advertising, and security. Copies of invoices for all such expenses shall also be maintained;

8. Expected and actual receipts from games played on hard bingo cards and number of games played on hard bingo cards;

9. A record of the name and address of each winner for all seal cards~~; in addition, the~~ and poker tournaments. The winning ticket and seal card shall be maintained for a minimum of 90 days after the session;

10. For poker tournaments, an itemized record of all receipts and expenses associated with a poker tournament, including

rent, advertisement, and security as well as an itemized record of all use of proceeds disbursements. Copies of invoices and other documentation for all such expenses shall also be maintained;

11. For poker tournaments, any other operating expenses for which receipts from a poker tournament were disbursed. Copies of invoices and other documentation for all such other expenses shall also be maintained;

12. A record of all door prizes awarded; and

~~11.~~ 13. For any prize or jackpot of a value that meets or exceeds the reporting requirements in the Internal Revenue Service's Publication 3079, the name and address of each individual to whom any such prize or jackpot is awarded and the amount of the award.

B. Qualified organizations conducting raffles unrelated to a session shall have a recordkeeping system to account for cash receipts, cash disbursements, raffle tickets purchased or sold, and prizes awarded. All records shall be maintained for a minimum of three years following the close of the fiscal year. The recordkeeping system shall include:

1. Invoices for the purchase of raffle tickets, which shall reflect the following information:

a. Name and address of supplier;

b. Name of purchaser;

c. Date of purchase;

d. Number of tickets printed;

e. Ticket number sequence for tickets printed; and

f. Sales price of individual ticket;

2. A record of cash receipts from raffle ticket sales by tracking the total number of tickets available for sale, the number issued to sellers, the number returned, the number sold, and reconciliation of all raffle sales to receipts;

3. Serial numbers of tickets for raffle sales initiated and concluded at a bingo game or sequentially numbered tickets, which shall state the name, address, and telephone number of the organization, the prize to be awarded, the date of the prize drawing or selection, the selling price of the raffle ticket, and the charitable gaming permit number;

4. For any raffle prize of a value that meets or exceeds the reporting requirements in the Internal Revenue Service's Publication 3079, receipts on which prize winners must provide printed name, residence address, and the amount and description of the prize received; and

5. Deposit records of the required weekly deposits of raffle receipts.

C. All raffle tickets shall have a detachable section; be consecutively numbered with the detachable section having the same number; provide space for the purchaser's name, complete address, and telephone number; and state (i) the name and address of the organization; (ii) the prize to be awarded; (iii) the date, time, and location of the prize drawing; (iv) the selling price of the ticket; and (v) the charitable gaming permit number. Winning tickets and unsold tickets shall be maintained for a minimum of three years following the close of the fiscal year.

D. All unused charitable gaming supplies, including network bingo supplies, shall either be returned for refund to the original supplier in unopened original packaging in resalable condition as determined by the supplier or destroyed following notification to the department on a form prescribed by the department. The organization shall maintain a receipt for all such supplies returned to the supplier or destroyed.

E. If a qualified organization uses an operator to administer its poker tournament, then the qualified organization and its operator shall each maintain independent records on each poker tournament. The qualified organization shall not have its records managed, maintained, or stored by an operator.

11VAC20-20-120. Requirements regarding renting premises, agreements, and landlord participation.

A. No qualified organization shall lease, rent, or use any premises to operate or conduct charitable gaming unless all terms and conditions for lease, rental, or use are set forth in a written agreement and signed by the parties thereto prior to the issuance of a permit to operate and conduct charitable gaming or authorization to operate and conduct electronic gaming.

B. Organizations shall not make payments to a landlord or a landlord's agent or employee except by check drawn on the organization's charitable gaming account.

C. No landlord, landlord's agent or employee, member of a landlord's immediate family, or person residing in a landlord's household shall make, directly or indirectly, a loan to any of the organization's officers, directors, ~~or~~ game managers, or operators, or to any organization involved in the management, operation, or conduct of charitable gaming or electronic gaming of an organization in Virginia that leases its charitable gaming premises from the landlord.

D. No landlord, landlord's agent or employee, member of a landlord's immediate family, or person residing in a landlord's household shall make any direct or indirect payment to any qualified organization or the organization's officers, directors, or game managers involved in the management, operation, or conduct of charitable gaming or electronic gaming conducted on a premise leased from the landlord in Virginia unless the payment is authorized by the lease agreement and is in accordance with the law.

E. No landlord, landlord's agent or employee, member of a landlord's immediate family, or person residing in a landlord's same household shall do any of the following at charitable games or electronic games operated and conducted on the landlord's premises:

1. Participate in the management, operation, or conduct of any charitable games or electronic games;

2. Sell, lease, or otherwise provide any charitable gaming supplies, including bingo cards, pull-tab cards, distributed pull-tab systems, electronic gaming devices, network bingo cards, playing cards, poker chips, or other game pieces; ~~or~~

3. Require as a condition of the lease that a particular manufacturer, distributor, network bingo provider, ~~or~~ supplier of charitable gaming supplies or electronic gaming device, or operator is used by the organization; or

4. Provide, advise, or direct the qualified organization or its operator to use any particular person to manage, operate, conduct, or administer a poker tournament that is to be held in the landlord's premises.

"Charitable gaming supplies" as used in this chapter shall not include glue, markers, or tape sold from concession stands or from a location physically separated from the location where charitable gaming supplies are normally sold.

F. No member of an organization involved in the management, operation, or conduct of charitable gaming or electronic gaming shall provide any services to a landlord or a landlord's agents or employees or be remunerated in any manner by the landlord of the premises or such landlord's agents or employees where an organization is operating or conducting its charitable gaming or electronic gaming.

G. For the purpose of operating and conducting electronic gaming, a qualified organization shall only lease or rent the premises of a permitted and authorized social organization that is operating and conducting electronic gaming pursuant to §§ 18.2-340.25:1 and 18.2-340.26:3 of the Code of Virginia. All terms and conditions for leasing or renting of the premises shall be set forth in a written agreement and signed by the parties. No qualified organization shall operate and conduct electronic gaming until the written agreement is submitted to the department for review and the department issues a permit authorizing the qualified organization to conduct and operate electronic gaming.

H. The lease agreement between a social organization authorized to operate and conduct electronic gaming and a qualified organization that intends to lease or rent the social organization's public space in order to operate and conduct electronic gaming:

1. Shall not require the qualified organization to acquire, lease, obtain, purchase, rent, or use an electronic gaming device from a specific manufacturer;

2. Shall not provide for the employment or compensation of any member of the social organization for the purpose of organizing, managing, or conducting electronic gaming;

3. Shall establish a fixed rental or lease payment amount that reflects the fair market rental value, as defined in § 18.2-340.16 of the Code of Virginia. The fixed rental or lease payment amount shall not be based on a percentage of the qualified organization's electronic gaming receipts or the number of players at its electronic gaming session;

4. Shall not include a clause or condition that restricts the qualified organization from operating and conducting electronic gaming at the premises of another social organization; and

5. Shall not authorize the qualified organization to operate and conduct electronic gaming in the social organization's social quarters.

I. A social organization that is permitted and authorized to operate and conduct electronic gaming that leases its premises to a qualified organization so that the qualified organization may operate and conduct electronic gaming:

1. Shall not restrict a qualified organization's ability to conduct electronic gaming at the premise of another social organization;

2. Shall not lease or rent its social quarters to a qualified organization for the purpose of operating and conducting electronic gaming;

3. Shall not enter into any agreement that employs or otherwise compensates any person from the qualified organization to participate in the management, operation, or conduct of electronic gaming; and

4. Shall only lease or rent its premises by means of a fixed rental or lease payment amount that is established in the written agreement and reflects the fair market rental value, as defined in § 18.2-340.16 of the Code of Virginia. The fixed rental or lease payment amount shall not be based on a percentage of the qualified organization's receipts from electronic gaming or the number of players at its electronic gaming session.

11VAC20-20-600. Procedural rules for the conduct of fact-finding conferences and hearings.

A. As used in this part, "manufacturer" means a person or entity that assembles from raw materials or subparts a distributed pull-tab system.

B. Fact-finding conference; notification, appearance, and conduct.

1. Unless automatic revocation or immediate suspension is required by law, no permit to conduct charitable gaming, sell charitable gaming supplies, or distribute a distributed pull-tab system; no registration to lease a facility for the purpose of holding a poker tournament; or no authorization to operate and conduct electronic gaming shall be denied, suspended, or revoked except upon notice stating the basis for such proposed action and the time and place for a fact-finding conference as set forth in § 2.2-4019 of the Administrative Process Act.

2. If a basis exists for a refusal to renew, suspend, or revoke a permit or authorization, the department shall notify by certified mail or by hand delivery the interested persons at the address of record maintained by the department.

3. Notification shall include the basis for the proposed action and afford interested persons the opportunity to present written and oral information to the department that may have a bearing on the proposed action at a fact-finding conference. If there is no withdrawal, a fact-finding conference shall be scheduled at the earliest mutually agreeable date, but no later than 60 days from the date of the notification. Organizations~~,~~; suppliers~~,~~; persons who manage, operate, conduct, or administer poker tournaments; landlords leasing a facility for a poker tournament; or manufacturers who wish to waive their right to a conference shall notify the department at least 14 days before the scheduled conference.

4. If after consideration of evidence presented during an informal fact-finding conference, a basis for action still exists, the interested persons shall be notified in writing within 60 days of the fact-finding conference via certified or hand-delivered mail of the decision and the right to a formal hearing. Parties to the conference may agree to extend the report deadline if more time is needed to consider relevant evidence.

C. Hearing; notification, appearance, and conduct.

1. If after a fact-finding conference, a sufficient basis still exists to deny, suspend, or revoke a permit or authorization, interested persons shall be notified by certified or hand-delivered mail of the proposed action and of the opportunity for a hearing on the proposed action. If an organization~~,~~; supplier~~,~~; person who manages, operates, conducts, or administers a poker tournament; landlord leasing a facility for a poker tournament; or manufacturer desires to request a hearing, the organization, supplier, or manufacturer shall notify the department within 14 days of receipt of a report on the conference. Parties may enter into a consent agreement to settle the issues at any time prior to or subsequent to an informal fact-finding conference.

2. If an interested party or representative fails to appear at a hearing, the hearing officer may proceed in the interested party's or representative's absence and make a recommendation.

3. Oral and written arguments may be submitted to and limited by the hearing officer. Oral arguments shall be recorded in an appropriate manner.

D. Hearing location. Hearings before a hearing officer shall be held, insofar as practicable, in the county or city in which the organization~~,~~; supplier~~,~~; person who manages, operates, conducts, or administers a poker tournament; landlord leasing a facility for a poker tournament; or manufacturer is located. If the parties agree, hearing officers may conduct hearings at locations convenient to the greatest number of persons or by telephone conference, video conference, or similar technology, in order to expedite the hearing process.

E. Hearing decisions.

1. Recommendations of the hearing officer shall be a part of the record and shall include a written statement of the hearing officer's findings of fact and recommendations as well as the reasons or basis for the recommendations. Recommendations shall be based upon all the material issues of fact, law, or discretion presented on the record.

2. The department shall review the recommendation of the hearing officer and render a decision on the recommendation within 30 days of receipt. The decision shall cite the appropriate rule, relief, or denial thereof as to each issue.

F. Agency representation. The commissioner's designee may represent the department in an informal conference or at a hearing.

11VAC20-20-610. Reporting violations.

A. Unless otherwise required by law, the identity of any individual who provides information to the department or its agents regarding alleged violations shall be held in strict confidence.

B. Any officer, director, or game manager of a qualified organization or social organization ~~or any;~~ officer or director of a supplier or manufacturer; person who manages, operates, conducts, or administers a poker tournament; or landlord leasing a facility for a poker tournament shall immediately report to the department any information pertaining to the suspected misappropriation or theft of funds or any other violation of the Charitable Gaming Law or regulations promulgated pursuant thereto.

C. Failure to report the information required by subsection B of this section may result in the denial, suspension, or revocation of a permit to conduct charitable gaming, permit to sell charitable gaming supplies, registration as a landlord, or authorization to operate and conduct electronic gaming.

D. Any officer, director, or game manager of a qualified organization or social organization involved in the management, operation, or conduct of charitable gaming or electronic gaming shall immediately notify the department upon being convicted of a felony or a crime involving fraud, theft, or financial crimes.

E. Any officer, director, partner, or owner of a supplier or manufacturer; person who manages, operates, conducts, or administers a poker tournament; or landlord leasing a facility for a poker tournament shall immediately notify the department upon being convicted or of pleading nolo contendere to a felony or a crime involving gambling or an action against any license or certificate held by the supplier or manufacturer in any state in the United States.

F. Failure to report information required by subsection D or E of this section by any officer, director, or game manager of a qualified organization or social organization or by any supplier or manufacturer may result in the denial, suspension, or revocation of a permit to conduct charitable gaming, permit to sell charitable gaming supplies, or authorization to operate and conduct electronic gaming.

G. Any officer, director, or game manager of a qualified organization involved in charitable gaming or electronic gaming shall immediately report to the department any change the IRS makes in the tax status of the organization, or if the organization is a chapter of a national organization covered by a group tax exempt determination, the tax status of the national organization.

H. All organizations regulated by the department shall display prominently a (i) poster advising the public of a telephone number where complaints relating to charitable gaming may be made and (ii) ~~a~~ poster that bears a toll-free telephone number for "Gamblers Anonymous" or other organization that provides assistance to compulsive gamblers. Such posters shall be in a format prescribed by the department.

DOCUMENTS INCORPORATED BY REFERENCE (11VAC20-20)

IRS Publication 3079, Tax-Exempt Organizations and Gaming (rev. 6/2010)

Security Requirements for Cryptographic Modules, Federal Information Processing Standard, FIPS Pub 140-2 (rev. 12/2002)

Poker Tournament Directors Association Rules, Poker Tournament Directors Association, 2019, September 17, 2019, https://www.pokertda.com]

Chapter 30

Texas Hold'em Poker Tournament Regulations

11VAC20-30-10. Definitions.

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

["Add-on" means a player's purchase of additional poker chips during a tournament at preannounced times before that player runs out of poker chips.]

"Administer" means the conduct of activities by an operator that are associated with production of a poker tournament.

"Agent" means any person authorized by an operator, charitable gaming supplier, or landlord to act for or in place of such operator, supplier, or landlord.

"Charitable Gaming Law" means Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2 of the Code of Virginia.

"Charitable host representative" means a person who (i) is a bona fide member, as defined in § 18.2-340.16 of the Code of Virginia, of the qualified organization; (ii) meets all other requirements for bona fide members set forth in the Charitable Gaming Law and regulations adopted pursuant thereto; (iii) does not receive remuneration pursuant to § 18.2-340.33 of the Code of Virginia; and (iv) is responsible for the oversight of the written contract between the qualified organization and operator during the poker tournament.

"Conduct" means the actions by a qualified organization associated with the provision of a poker tournament during and immediately before or after the permitted activity, which may include (i) dealing playing cards; (ii) distributing poker chips; (iii) distributing prizes; and (iv) any other services provided by a charitable host representative, volunteer game worker, or volunteer dealer.

"Dealer" means a volunteer or volunteer member of a qualified organization or an employee, contractor, volunteer, or agent of an operator whose primary function is to distribute cards to players and manage the action at the poker table during a poker game.

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

"Fiscal year" means the 12-month period beginning January 1 and ending December 31 of any given year.

"Flush" means a hand consisting of five cards of the same suit.

"Four of a kind" means a hand consisting of four cards of the same rank, with four aces being the highest ranking four of a kind and four deuces being the lowest ranking four of a kind.

"Full house" means a hand consisting of three of a kind and a pair, with three aces and two kings being the highest-ranking full house and three deuces and two threes being the lowest ranking full house.

"Game manager" means a person who (i) is a bona fide member, as defined in § 18.2-340.16 of the Code of Virginia, of the qualified organization that is managing, operating, and conducting the poker tournament; (ii) meets all other requirements for bona fide members set forth in the Charitable Gaming Law and this chapter; (iii) does not receive remuneration pursuant to § 18.2-340.33 of the Code of Virginia; and (iv) is responsible for the operation of the qualified organization's poker tournament.

"Hi/Lo" means a variation of Texas Hold'em poker in which the highest or lowest poker hands split the pot.

"Immediate family" means a person's spouse, parent, child, sibling, grandchild, grandparent, mother or father-in-law, or stepchild.

"IRS" means the U.S. Internal Revenue Service or its successor.

"Landlord" means any person who owns or leases any premises devoted in whole or in part for use to hold a poker tournament or such person's agent, firm, association, organization, partnership, corporation, employee, or immediate family member thereof or any person residing in the same household as a landlord.

"Manufacturer" means a person that assembles from raw materials or subparts a completed piece of charitable gaming equipment or supplies. "Manufacturer" also means a person who or an entity that modifies, converts, adds, or removes parts to or from charitable gaming equipment or supplies.

"Operator" means a person [~~who is not affiliated with a qualified organization pursuant to 11VAC20-30-90 and~~] who has registered with the department in accordance with 11VAC20-30-50 to administer poker tournaments.

"Pair" means two cards of the same rank.

"Poker game" means a Texas Hold'em poker game as defined in § 18.2-340.16 of the Code of Virginia.

"Poker tournament" means a Texas Hold'em poker tournament as defined in § 18.2-340.16 of the Code of Virginia.

"Pot" means the total amount bet by players during a poker game.

"Rakes" or "cutting of pots" means the taking of a portion of the pot as a fee or other compensation for providing services during a poker game or tournament, including the services of a dealer.

"Remuneration" means payment in cash or the provision of anything of value for goods provided or services rendered.

"Re-buy" means a player's purchase of additional poker chips [~~at a predetermined time and for a predetermined fee~~ during a tournament after that player runs out of poker chips].

"Royal flush" means a hand consisting of an ace, king, queen, jack, and 10 of the same suit.

"Shuffler" means a device that randomizes playing cards.

"Straight" means a hand consisting of five cards of consecutive rank, regardless of suit, with an ace, king, queen, jack, and 10 being the highest ranking straight and an ace, two, three, four, and five being the lowest ranking straight provided, however, that an ace may not be combined with any other sequence of cards for purposes of determining a winning hand (e.g., queen, king, ace, deuce, three).

"Straight flush" means a hand consisting of five cards of the same suit in consecutive ranking with king, queen, jack, 10, and nine being the highest ranking straight flush and ace, deuce, three, four, and five being the lowest straight flush provided, however, that an ace may not be combined with any other sequence of cards for purposes of determining a winning hand (e.g., queen, king, ace, deuce, three).

"Suit" means one of the four categories of cards: club, diamond, heart, or spade, with no suit being higher rank than another.

"Three of a kind" means a hand consisting of three cards of the same rank, with three aces being the highest ranking three of a kind and three deuces being the lowest ranking three of a kind.

"Two pairs" means a hand containing two pairs.

"Tournament chip" or "poker chip" means a token used for wagering in a poker tournament that has no cash value.

"Tournament manager" means a person who is employed or contracted by an operator to administer poker tournaments for a qualified organization.

"Use of proceeds" means the use of funds derived by a qualified organization from its charitable gaming activities for the organization's lawful religious, charitable, community, or educational purpose.

11VAC20-30-20. General requirements.

A qualified organization permitted to conduct poker tournaments shall comply with all applicable provisions of the Charitable Gaming Law, all applicable provisions of 11VAC20-20, and all other regulations adopted pursuant to the Charitable Gaming Law.

11VAC20-30-30. Organization eligibility; permit requirements.

An organization that will conduct a poker tournament is subject to the provisions of 11VAC20-20-20 regarding organization eligibility and permit requirements.

11VAC20-30-40. Permit application process for an organization.

An organization that will conduct a poker tournament is subject to the provisions of 11VAC20-20-30 regarding the permit application process for an organization.

11VAC20-30-50. Operator registration.

A. No qualified organization shall conduct a poker tournament utilizing an operator that is not registered with the department.

B. Any person wishing to administer a poker tournament in Virginia shall obtain a registration from the department. A person seeking to administer a poker tournament on behalf of a qualified organization shall apply to the department for an operator registration on a form prescribed by the department. [As part of the registration, a sample of the badge to be worn by the tournament manager, dealer, and other game workers throughout the duration of the qualified organization's poker tournament shall be provided to the department. The sample badge shall meet the criteria set forth in 11VAC20-30-60 Q.]

C. Any operator that offers to sell, sells, or otherwise provides charitable gaming supplies, which includes playing cards for Texas Hold'em poker, poker chips, and any other equipment or product manufactured for or intended to be used in the conduct of a poker tournament, to any qualified organization must obtain a charitable gaming supplier permit in accordance with § 18.2-340.34 of the Code of Virginia.

D. An operator registration shall be valid for a period of one year from the date of issuance or for the period specified on the registration. The department may issue a registration for a period of less than one year.

E. If any information on the registration application changes or is found to be inaccurate, then the applicant shall notify the department and provide the updated or corrected information within three business days of the change or the discovery of the inaccuracy.

11VAC20-30-60. Requirements for administering, conducting, managing, or operating a poker tournament.

A. A person who has managed, operated, conducted, or administered charitable gaming without a valid license, permit, certificate, registration, or other similar authority related to gambling in any state, territory, or possession of the United States; the District of Columbia; or any political subdivision thereof shall not manage, operate, conduct, or administer a poker tournament.

B. A person who manages, operates, conducts, or administers a poker tournament shall not use or continue to use a poker product that has been recalled by the manufacturer.

C. A person shall not administer a poker tournament for a person who is not permitted to conduct a poker tournament or is not authorized to conduct business in the Commonwealth.

D. A person who administers or conducts a poker tournament must notify the department within 20 days of the occurrence, knowledge, or receipt of the filing of any administrative or legal action against the person relating to gambling or the administration of poker tournaments.

E. A person shall not breach any provision of the contract prescribed in 11VAC20-30-180 between an operator and a qualified organization.

F. A person who has been found to have violated any provision of the Charitable Gaming Law or a regulation adopted pursuant thereto shall not manage, operate, conduct, or administer a poker tournament.

G. A qualified organization shall ensure that all persons, including those employed by the operator, involved in the management, operation, conduct, or administration of a poker tournament are trained in the use of any equipment, on the policies and procedures relevant to the person's function, on the person's responsibilities, on the poker game, and on the Charitable Gaming Law and this chapter. The qualified organization shall ensure the completion of the training required by this subsection, and such completion shall be documented, maintained, and available for inspection by the department, at the department's request.

H. No person other than the charitable organization shall submit a permit application or financial report on behalf of a charitable organization.

I. If the department identifies through inspection, audit, or other means that a person is not in compliance with statutory or regulatory requirements or has ineffective internal controls, the department may impose restrictions consistent with the provisions of this chapter.

J. Any records the department deems necessary to complete an inspection, audit, or investigation may be collected by the department from the premises of any location where a poker tournament is conducted or any location where the records are located or stored. The department shall provide a written receipt of such records at the time of collection.

K. A person who administers a poker tournament shall provide the charitable organization a detailed invoice for each tournament the person administers. The invoice shall reflect the following:

1. Name, address, and the organization number of the qualified organization;

2. Date and location of the poker tournament; and

3. Gross receipts, net receipts, and prize disbursement.

L. A person providing security for an organization's charitable gaming activity shall not participate in the charitable gaming activity and shall not be compensated with charitable gaming supplies, including poker chips.

M. A member of a qualified organization; a person [affiliated or] associated with the qualified organization; or an immediate family member or person residing in the household of a director, officer, owner, partner, employee, independent contractor, [~~a~~ or] member of the qualified organization, or a person affiliated or associated with the qualified organization shall not receive compensation from an operator with whom the qualified organization contracts to administer a poker tournament.

N. A qualified organization shall prohibit an operator and the operator's directors, officers, owners, partners, tournament managers, employees, independent contractors, volunteers, and agents or the immediate family members or persons residing in the household of an operator's directors, officers, owners, partners, tournament managers, employees, independent contractors, volunteers, or agents from playing in a poker tournament [that] the operator administers for the qualified organization.

O. A qualified organization shall ensure that any poker tournament [that] the qualified organization conducts or

contracts with an operator to administer has internal control policies and procedures that include segregation of duties, cash security, and cash controls based on generally accepted standards.

P. [~~A qualified organization shall only pay a fixed fee to an operator for services.~~] No qualified organization shall pay a gross aggregate compensation to the operator based on a percentage of the revenue the qualified organization collects for that tournament. [~~No other fees, charges or assessments shall be paid by the qualified organization~~ The qualified organization shall not pay any other fees, charges, or assessments] to an operator for administering a poker tournament except [~~such~~ a] fixed fee.

Q. [~~All persons managing, operating, conducting, or administering a poker tournament shall wear a badge that meets the requirements set forth in 11VAC20-30-90 Q and shall possess a current photo identification, such as a driver's license or other government-issued identification, while managing, operating, conducting, or administering a poker tournament. All persons shall provide the badge and photo identification to the department upon request.~~ During a poker tournament, all game managers, tournament managers, charitable host representatives, dealers, and all other game workers shall wear a badge that is visible to players and to the department throughout the duration of the poker tournament. The badge shall include:

1. A recent photo of the person;

2. The first name of the person;

3. The name of the qualified organization or operator; and

4. The date the badge was issued to the person.

Each game manager, tournament manager, charitable host representative, dealer, or other game worker shall also possess a current photo identification, such as a driver's license or other government-issued identification. A game manager, tournament manager, charitable host representative, dealer, or other game worker shall provide the game manager's, tournament manager's, charitable host representative's, dealer's, or other game worker's badge, current photo identification, or both upon request by the department.]

R. A qualified organization shall only contract with an operator [~~(i)~~] that [(i)] purchases or receives its charitable gaming supplies from a permitted charitable gaming supplier pursuant to § 18.2-340.34 of the Code of Virginia or (ii) is permitted as a charitable gaming supplier.

S. Any house rules that shall govern the poker tournament shall be prominently displayed during each poker tournament. [~~All house rules shall be preapproved by the department and shall be consistent with the Charitable Gaming Law, this chapter, and the official rules for poker tournaments established by the Poker Tournament Directors Association.~~]

T. A qualified organization shall not rent, lease, or otherwise use any premises for the purposes of holding a poker tournament from a person who is not registered with the department as a landlord in accordance with 11VAC20-30-130.

11VAC20-30-70. Suspension, revocation, or denial of permit for organization.

A. Pursuant to § 18.2-340.20 of the Code of Virginia, the department may suspend, revoke, or deny the permit of any qualified organization to manage, operate, or conduct poker tournaments or to contract with an operator to administer the qualified organization's poker tournaments for cause, including any of the following reasons:

1. Any person involved in the management, operation, or conduct of the qualified organization's poker tournaments is found to be in violation of or has failed to meet any of the requirements of the Charitable Gaming Law [~~or,~~] this chapter [, or 11VAC20-20].

2. The qualified organization is found to be not in good standing with its state or national organization.

3. The IRS revokes or suspends the qualified organization's tax-exempt status.

4. The qualified organization willfully and knowingly provides false information in its application for a permit to conduct charitable gaming.

5. Any person involved in the management, operation, [administration,] or conduct of the qualified organization's poker tournament has been convicted of any felony or any misdemeanor as follows:

a. For any person participating in the management or operation of any charitable gaming:

(1) Convicted of a felony; or

(2) Convicted of any misdemeanor involving fraud, theft, or financial crimes within the preceding five years.

b. For any person participating in the [administration or] conduct of charitable gaming:

(1) Convicted of any felony within the preceding 10 years; or

(2) Convicted of any misdemeanor involving fraud, theft, or financial crimes within the preceding five years.

6. The qualified organization fails to report a violation as required by 11VAC20-20-610.

7. The qualified organization is found to have managed, operated, or conducted a poker tournament or contracted with an operator or any person that administered a poker tournament on its behalf without a permit issued to the qualified organization to do so.

8. The qualified organization fails to comply with the requirements of 11VAC20-20-30.

9. If the qualified organization uses or intends to use an operator to administer its poker tournament, the qualified organization fails to submit or provide to the department a written contract that complies with 11VAC20-30-180, fails to submit or provide to the department a new or amended written contract with its operator within the 20 days following the date on which the contract is signed by all parties to the contract, or fails to submit or provide to the department a new or amended written contract with its operator that complies with 11VAC20-30-180.

10. The qualified organization [~~,~~ ;] the members of the qualified organization [~~,~~ ;] any persons affiliated or associated with the qualified organization [~~,~~ ;] or immediate family members or persons residing in the household of a member of the qualified organization or [of] a person affiliated or associated with the qualified organization [~~shall not~~] directly or indirectly [~~receive~~ received or receives] a loan from a landlord [~~,~~ ;] operator [~~,~~ ;] charitable gaming supplier [~~,~~ ;] or the agents, employees, immediate family members, or persons residing in the household of a landlord, operator, or charitable gaming supplier. [For the purpose of this subdivision, a "loan" is a loan that the qualified organization; member of the qualified organization; person affiliated or associated with the qualified organization; or immediate family members or persons residing in the household of a member of the qualified organization or of a person affiliated or associated with the qualified organization directly or indirectly receives (i) during the qualified organization's contract with the landlord; operator; charitable gaming supplier; or the agents, employees, immediate family members, or persons residing in the household of a landlord, operator, or charitable gaming supplier; or (ii) within the three years preceding the effective date of that contract. For the purpose of this subdivision, a "loan" is a loan on which the qualified organization; member of the qualified organization; person affiliated or associated with the qualified organization; or immediate family members or persons residing in the household of a member of the qualified organization or of a person affiliated or associated with the qualified organization maintains an outstanding balance during the qualified organization's contract with the landlord; operator; charitable gaming supplier; or the agents, employees, immediate family members, or persons residing in the household of a landlord, operator, or charitable gaming supplier.]

B. The failure to meet any of the requirements of § 18.2-340.24 of the Code of Virginia shall be cause for the denial of the permit, and no qualified organization shall manage, operate, and conduct any poker tournaments or contract with an operator to administer the qualified organization's poker tournaments until the requirements are met and a permit is obtained.

C. If the department suspends a qualified organization's permit, the department shall set the terms of the suspension, which shall include the length of the suspension and a requirement that, prior to reinstatement of the permit, the organization shall submit a remedial business plan to address the conditions that resulted in the suspension.

11VAC20-30-80. Poker tournaments.

[~~A. A Texas Hold'em poker tournament is a competition at which:~~

~~1. Players shall pay a fixed fee for entry into the competition and for a certain amount of poker chips for use in the competition;~~

~~2. Players may be allowed to pay an additional fee during set preannounced times of the competition to receive additional poker chips for use in the competition;~~

~~3. Players may be seated at one or more tables simultaneously playing Texas Hold'em poker games;~~

~~4. Players shall, upon running out of poker chips, be eliminated from the competition;~~

~~5. A set preannounced number of players shall be awarded prizes of value according to how long such players remain in the competition;~~

~~6. The tournament has a fixed and predetermined end time in accordance with this section; and~~

~~7. The poker chips have no monetary or cash value and no actual currency is wagered.~~

~~B.~~] Any poker [~~competition~~ game conducted by a qualified organization] that does not meet the requirements established in [~~subsection A of this section~~ § 18.2-340.16 and subsection 16 of § 18.2-340.33 of the Code of Virginia, this chapter, and 11VAC20-20] is not a poker tournament and is prohibited pursuant to § 18.2-340.22 of the Code of Virginia. A qualified organization shall ensure its poker tournament meets the requirements established in [~~subsection A of this section~~ the Charitable Gaming Law, this chapter, and 11VAC20-20].

11VAC20-30-90. Operation of poker tournaments; administration of poker tournaments.

A. A qualified organization shall only manage, operate, and conduct a poker tournament after a permit has been issued pursuant to 11VAC20-20-20 by the department. A qualified organization that contracts with an operator that is registered pursuant to 11VAC20-30-50 shall obtain a permit prior to the operator administering a poker tournament.

B. A person shall only administer a poker tournament for a qualified organization permitted by the department pursuant to 11VAC20-20-20 and shall only administer a poker tournament after the person is registered pursuant to 11VAC20-30-50.

C. A qualified organization's game managers, volunteer game workers, dealers, charitable host representatives, or the immediate family members or persons residing in the

household of a qualified organization's game managers, volunteer game workers, dealers, or charitable host representatives shall not participate as a player or otherwise play in the poker tournament in which they served as a game manager, volunteer game worker, dealer, or charitable host representative conducted by or administered for the organization.

D. The qualified organization shall ensure an operator's directors [~~,~~;] officers [~~,~~;] owners [~~,~~;] partners [~~,~~;] tournament managers [~~, dealers,~~;] employees [~~,~~;] independent contractors [~~,~~;] volunteers [~~,~~;] agents [~~,~~;] or the immediate family members or persons residing in the household of an operator's directors, officers, owners, partners, tournament managers, [~~dealers,~~] employees, independent contractors, volunteers, or agents do not participate as a player or otherwise play in the poker tournament for which the operator is contracted to administer. [The qualified organization, in its sole discretion, may prohibit dealers of the contracted operator from playing in any tournament that the operator conducts for the qualified organization. The qualified organization shall ensure that no dealer plays in a tournament in which they were employed to deal, a tournament conducted concurrently with one in which they are employed to deal, or within 48 hours of any shift. The qualified organization shall ensure that an operator's dealers or the dealer's immediate family member do not participate as a player or otherwise play in the qualified organization's tournament when working as a dealer.]

E. A qualified organization is responsible for all actions performed by its game managers, volunteer game workers, dealers, and charitable host representatives. If a qualified organization contracts with an operator to administer its poker tournament, the qualified organization is responsible for ensuring the poker tournament is administered in compliance with the Charitable Gaming Law [~~and,~~] this chapter [, and 11VAC20-20].

F. [~~A qualified organization may not hold concurrent poker tournaments.~~

~~G. A qualified organization may conduct poker tournaments only at a location within the county, city, or town in which the organization's principal office, as registered with the State Corporation Commission, is located or in an adjoining county, city, or town. A qualified organization may not conduct poker at an establishment that has been granted a license pursuant to Chapter 2 (§ 4.1-200 et seq.) of Title 4.1 of the Code of Virginia unless such license is held by the organization.~~

~~H.~~] A qualified organization shall ensure that all persons, including the operator's employees, independent contractors, volunteers, or agents, involved in the management, operation, conduct, or administration of a poker tournament are trained in the use of any equipment, on the policies and procedures relevant to the person's function, on the person's responsibilities, on the poker game, and on the Charitable Gaming Law [~~and,~~] this chapter [, and 11VAC20-20] . All training courses shall be approved in advance by the department.

Any person who will serve as a dealer shall be trained, at a minimum, in the following:

1. Procedures for opening and closing tables for the poker tournament, including the proper security procedures regarding poker chip inventories;

2. Procedures for distributing and removing gaming chips and plaques from the poker tournament table;

3. Procedures for accepting cash at the poker tournament table;

4. Procedures for shift changes at the poker tournament table;

5. Procedures for the proper placement of wagers by players and the proper collection of losing wagers and payment of winning wagers; and

6. Recognizing problem and compulsive gamblers at poker tournaments and procedures for informing supervisory personnel.

Before any person who will serve as a dealer is allowed to deal at a poker tournament, the prospective dealer [~~shall~~ must] pass a table test. A table test shall consist of the dealer demonstrating proficiency [~~at~~ prior to] the poker tournament to the satisfaction of the game manager or tournament manager. The qualified organization shall ensure the completion of the training required by this subsection and the successful completion of the table test by the prospective dealer. Such completion shall be documented, maintained, and available for inspection by the department, at [~~their~~ its] request.

[~~I.~~ G.] The qualified organization shall be responsible for ensuring all house rules are followed during the poker tournament, including those house rules administered by an operator.

[~~J.~~ H.] If a qualified organization is managing, operating, and conducting its own poker tournament, then a game manager must be physically present during the entire duration of the poker tournament. If an operator is administering a qualified organization's poker tournament, then the charitable host representative must be physically present during the entire duration of the poker tournament and ensure the tournament manager is physically present during the entire duration of the poker tournament.

[~~K. A qualified organization shall provide a badge that meets the criteria established in 11VAC20-30-90 Q for each of its game managers, the tournament manager, the charitable host representative, dealers, and other game workers. Each game manager, tournament manager, charitable host representative, dealer, or other game worker shall wear a badge so that the badge is visible to players and to the department during the~~

~~duration of the poker tournament. Each game manager, tournament manager, charitable host representative, dealer, or other game worker shall also possess a current photo identification, such as a driver's license or other government-issued identification. The game manager, tournament manager, charitable host representative, each dealer, and all other game workers shall provide the badge, current photo identification, or both upon request by the department to do so.~~

~~L.~~ I.] If a qualified organization is managing, operating, and conducting its own poker tournament, then a game manager shall complete and sign a poker tournament reconciliation form within the 48 hours following the end of the poker tournament, as required by 11VAC20-30-100. If an operator is administering a qualified organization's poker tournament, then the charitable host representative shall complete a poker tournament reconciliation form, sign it, and ensure the tournament manager signs it within the 48 hours following the end of the poker tournament as required by 11VAC20-30-100.

[~~M.~~ J.] All persons involved in managing, operating, conducting, or administering a poker tournament shall be 18 years of age or older.

[~~N.~~ K.] During a poker tournament [~~held by a qualified organization, no gambling or gaming may take place other than that specifically authorized by this chapter~~ managed, operated, and conducted by a qualified organization or administered by an operator on behalf of the qualified organization, no other gambling or gaming may take place within the rooms used to manage, operate, conduct, or administer the poker tournament].

[L.] During a poker tournament held by a qualified organization, no person may use currency, a token that is not an authorized tournament chip, or other thing of value as a wager.

[~~O. No poker games utilizing any electromechanical device or other mechanism employing electronic chips, tubes, video display screens, or microprocessors may be used during a poker tournament~~ M. The qualified organization shall be responsible for ensuring that all poker tournaments use human dealers and that the dealers are in the same physical location as all of the players].

[~~P.~~ N.] Players must be physically present [and seated at the poker table] to play.

[~~Q. During a poker tournament, all game managers, tournament managers, charitable host representatives, dealers, and all other game workers shall wear a badge that includes:~~

~~1. A recent photo of the person;~~

~~2. The first and last name of the person;~~

~~3. The name of the qualified organization or operator; and~~

~~4. The date the badge was issued to the person.~~]

11VAC20-30-100. Tournament play.

A. All persons participating as a player in a poker tournament shall be 18 years of age or older.

B. Prior to a poker tournament, a qualified organization must establish the fixed fee that a player must pay in order to enter the poker tournament. The qualified organization must post or advertise the fixed entry fee for the poker tournament and the number of tournament chips received for that entry fee.

C. The qualified organization shall ensure a poker game meets the definition of Texas Hold'em poker game as stated in § 18.2-340.16 of the Code of Virginia.

D. The game manager, charitable host representative, dealer, volunteer game workers, or operator's employees, independent contractors, volunteers, or agents shall not:

1. Allow any wagering in any manner not set forth in this chapter;

2. Accept any direct or indirect tip or gratuity; or

3. Consume alcoholic beverages during the tournament.

E. The dealer shall only be responsible for dealing playing cards and handling tournament chips at the poker table during the poker tournament. The dealer shall not be assigned any other duties or responsibilities not directly related to dealing playing cards or handling tournament chips.

F. The following resources shall be used during a poker tournament:

1. A live dealer;

2. Physical playing cards;

3. Physical tournament chips; and

4. Tables large enough to ensure that players may examine their cards without disclosing the card value to other players. No single table shall have more than 11 players.

G. [~~Re-buys~~ Add-ons] may be allowed at preannounced times within the first three hours of tournament play or until the first break (consolidation or balancing of tables) of the tournament, whichever occurs first. These [~~re-buys~~ add-ons] must occur at established times that are posted in the tournament rules prior to the beginning of the tournament. [~~A re-buy~~ An add-on] must contain the predetermined number of poker chips established in the tournament rules. [~~Re-buys~~ Add-ons] may only occur before a player has lost all of his poker chips and may only bring the player up to the original amount of poker chips provided at the beginning of the tournament. A player who has lost all of his poker chips may not [~~re-buy~~ add-on] and is eliminated from the tournament.

H. [Re-buys are prohibited.

I.] No individual who is participating in the management, operation, or conduct of a poker tournament shall provide any

information or engage in any conduct that alters or is intended to alter the outcome of any poker tournament.

[~~I.~~ J.] Tournament chips.

1. [~~All tournament chips used in a poker tournament must be purchased from a charitable gaming supplier permitted pursuant to § 18.2-340.34 of the Code of Virginia.~~

~~2.~~] All poker tournaments shall be conducted using tournament chips approved by the department. The tournament chips shall bear the following:

a. The name, logo, or other identification of the charitable organization or operator issuing the tournament chip;

b. The word "Tournament;"

c. The tournament value of the poker chip. No monetary word or symbol, such as dollars ($) or cents (¢), shall be used on any poker chip; and

d. The phrase "No Cash Value."

[~~3.~~ 2.] A qualified organization or its operator shall store tournament chips in a secure area.

[~~4.~~ 3.] A qualified organization or its operator shall conduct an inventory of all tournament chips and include on a poker tournament reconciliation form prescribed or approved by the department any discrepancy in the inventory and shall include the balance for each tournament value of the poker chip on hand at the beginning of each tournament and the balance on hand at the end of each tournament.

[~~5.~~ 4.] Tournament chips are to be used in the play of the poker tournament and shall not be redeemed for cash or any other thing of value. A qualified organization or its operator shall not accept tournament chips as payment for any goods or services and shall not use tournament chips in any other transaction.

[~~6.~~ 5.] No person is permitted to sell or exchange a tournament chip for currency with another player, the operator, the qualified organization, or any other person or entity.

[~~J.~~ K.] Playing cards.

1. [~~All playing cards used in a poker tournament must be purchased from or provided by a charitable gaming supplier permitted pursuant to § 18.2-340.34 of the Code of Virginia.~~

~~2.~~] The qualified organization or its operator shall conduct an inventory of all boxes containing decks of playing cards at the beginning of each tournament and at the end of each tournament to ensure that the boxes of cards are intact, unbroken, and free from alteration or tampering.

[~~3.~~ 2.] Decks of cards shall be stored in a secure location that minimizes alteration or tampering.

[~~4.~~ 3.] The dealer shall verify that all cards are present in the deck and visually inspect the backs of the cards for any defects that might compromise the integrity or fairness of the poker game and shall offer an opportunity for each player at the dealer's table to visually inspect the cards. The game manager or [~~charitable host representative~~ tournament manager] shall remove any deck of cards that is missing a card or contains damaged or altered cards or other card flaws that would affect the integrity of the poker game. Any deck found to be defective or missing a card or to contain damaged or altered cards or other card flaws shall be made unplayable.

[~~5.~~ 4.] Unless the Poker Tournament Directors Association rules differ, the ranking of hands, from highest to lowest, shall be as follows:

a. Royal flush;

b. Straight flush;

c. Four of a kind;

d. Full house;

e. Flush;

f. Straight;

g. Three of a kind;

h. Two pairs;

i. One pair; and

j. High card.

[~~K.~~ L.] The order of finish for a poker tournament shall be determined by one of the following methods only:

1. If play continues until all but one player is eliminated before the predetermined end time, the order of finish shall be the order of elimination from last to first. The last remaining player shall be declared the winner; or

2. If play stops at the predetermined end time, the order of finish shall be determined by the ranking value of the tournament chips held by each player at the end of play from highest to lowest. The player with the highest value of tournament chips shall be declared the winner.

[~~L.~~ M.] The following restrictions apply to method of play:

1. Wild cards are prohibited;

2. Hi/Lo games are prohibited;

3. Rakes or cutting of pots is prohibited;

4. A player shall only bet on his hand in a poker game;

5. A players is prohibited from exchanging information concerning his hand;

6. A players who folds from the poker game of play shall not reveal his pocket cards; and

7. No player may play more than one hand during a poker game.

[~~M.~~ N.] A qualified organization shall prominently display its charitable gaming permit during the poker tournament, and if the qualified organization uses an operator to administer its poker tournament, the qualified organization shall also prominently display the operator's registration.

[~~N.~~ O.] The qualified organization shall prominently display the department's poster advising the public of a telephone number where complaints relating to the poker tournament may be made. Such posters shall be in a format prescribed by the department, as required by 11VAC20-20-610.

[~~O.~~ P.] The qualified organization shall prominently display a poster that bears a toll-free telephone number for "Gamblers Anonymous" or another organization that provides assistance to compulsive gamblers.

[~~P. The qualified organization shall prominently display any house rules that shall govern the poker tournament beyond the official rules for poker tournaments established by the Poker Tournament Directors Association. Any house rules shall be consistent with the Charitable Gaming Law, this chapter, and the official rules for poker tournaments established by the Poker Tournament Directors Association.~~]

Q. The qualified organization shall ensure all mechanical poker equipment is fully functional and maintains the integrity of the poker tournament prior to, during, and after the poker tournament. Any mechanical poker equipment that is not fully functional or that does not maintain the integrity of the poker tournament shall be removed immediately from the poker tournament by the qualified organization.

R. [~~A qualified organization shall not manage, operate, or conduct its poker tournament or have its poker tournament administered by an operator on a premises where gambling or gaming activities occur, unless such activities are authorized by the Charitable Gaming Law or regulations adopted pursuant thereto; Chapter 40 (§ 58.1-4000 et seq.) or Chapter 41 (§ 58.1-4100 et seq.) of Title 58.1 of the Code of Virginia; or Chapter 29 (§ 59.1-364 et seq.) of Title 59.1 of the Code of Virginia.~~

~~S.~~] Only a qualified organization or a permitted charitable gaming supplier shall advertise a poker tournament. Any printed advertisement is permitted, provided the name of the qualified organization shall be in a type size equal to or larger than the name of the premises used for the poker tournament, name of the operator, or any word referring to the poker tournament.

[~~T.~~ S.] A game manager or, if a qualified organization uses an operator to administer its poker tournament, the charitable host representative shall ensure any tournament chips, playing cards, or mechanical poker equipment used to conduct the poker tournament are not counterfeit or tampered with or do not otherwise affect the integrity of the poker tournament prior to, during, and after the poker tournament. Any tournament chips, playing cards, or mechanical equipment found to be counterfeit or tampered with shall be removed immediately from the poker tournament. Such incidents shall be reported by the qualified organization or jointly by the qualified organization and operator to the department.

[T. A person managing, operating, conducting, or administering a poker tournament at the premises at which another poker tournament is or will be conducted or administered within the same 24-hour period shall ensure that:

1. The start time of the poker tournament is at least two hours before or after the start time of the other poker tournament that is or will be conducted or administered at the premises;

2. The poker tournament has an entry fee that is separate from the entry fee for the other poker tournament that is or will be conducted or administered at the premises;

3. The tournament chips used for the poker tournament are visually distinct from the tournament chips used in the other poker tournament that is or will be conducted or administered at the premises;

4. Each table that is used in the poker tournament bears a sign that distinguishes it from those tables that are used in the other poker tournament that is or will be conducted or administered at the premises;

5. No player plays in more than one poker tournament that is conducted or administered at the premises at a time; and

6. No player plays at more than one table at a time.

U. Notwithstanding the provisions of subsection T of this section, a person shall not at the same premises and in the same 24-hour period in which the start times of two poker tournaments have already occurred manage, operate, conduct, or administer a poker tournament at that premises. No owner of a premises at which a poker tournament is conducted or administered shall allow the management, operation, conduct, or administration of more than two poker tournaments at that premises in a 24-hour period. For the purpose of this subsection and subsection T of this section, a 24-hour period begins at the start time of the first of two poker tournaments conducted or administered at a premises.]

11VAC20-30-110. Charitable gaming supplies; approval of mechanical card shuffler and dealer shoes and other mechanical equipment.

A. All charitable gaming supplies, including cards, tournament chips, and mechanical equipment, shall be purchased from or provided by a charitable gaming supplier permitted pursuant to § 18.2-340.34 of the Code of Virginia.

B. Mechanical equipment may be used to conduct poker games or tournaments, provided that such equipment is preapproved by the department in accordance with and subject to this section and technical standards adopted by the department.

C. The department shall set testing criteria for all mechanical card shufflers and dealer shoes and other mechanical equipment used during a poker tournament. A mechanical card shuffler and dealer shoe or other mechanical equipment used during a poker tournament shall not be sold, leased, or otherwise furnished to any person in the Commonwealth for use during a poker tournament until an identical sample mechanical card shuffler and dealer shoe or equipment containing identical software has been certified by a testing facility that has been formally recognized by the department as a testing facility that upholds the standards of integrity established by the department. The testing facility must certify that the mechanical card shuffler and dealer shoe, other mechanical equipment, associated hardware, and associated software conform, at a minimum, to the requirements of this chapter. Once the testing facility reports the test results to the department, the department will either approve or reject the mechanical card shuffler and dealer shoe or other mechanical equipment and inform the manufacturer of the results. If any such approved system or equipment fails to meet the department's criteria, that system or equipment shall be recalled and shall not be distributed in the Commonwealth. The cost of testing shall be borne by the manufacturer of such equipment.

D. Notwithstanding any other testing criteria established by the department, the mechanical card shuffler and dealer shoe shall be tested to the standards established in GLI 29: Card Shufflers and Dealer Shoes, Version 1.0, produced by Gaming Laboratories International.

11VAC20-30-120. Rules of play.

All persons conducting, managing, operating, or administering a poker tournament shall adhere to the official rules of the Poker Tournament Directors Association.

11VAC20-30-130. Requirements regarding renting premises, agreements, and landlord participation.

A. [~~A qualified organization shall not rent or use any leased premises to hold a poker tournament unless all terms for rental or use are set forth in a written contract provided to the department prior to the issuance of a permit to conduct the poker tournament.~~

~~B.~~] A person who rents, leases, or otherwise provides a premises to a qualified organization to hold a poker tournament shall obtain a landlord registration from the department. A landlord shall obtain a landlord registration regardless of whether the landlord charges or intends to charge a rental fee for providing a premises to a qualified organization.

[~~C.~~ B.] All persons who rent, lease, or otherwise provide a premises to a qualified organization to hold a poker tournament shall apply to the department for a landlord registration on a form prescribed by the department. The application for a landlord registration shall include:

1. The names of all owners, directors, and partners; and

2. All current rental agreements between the landlord and a qualified organization.

[~~D.~~ C.] A landlord registration shall be valid for a period of one year from the date of issuance or for the period specified on the registration. The department may issue a registration for a period of less than one year. If any information on the registration application changes or is found to be inaccurate, the applicant shall notify the department and provide the updated or corrected information within three business days of the change or the discovery of the inaccuracy.

[~~E.~~ D.] A [qualified organization shall ensure that the] landlord [~~,~~ ;] the landlord's agents [~~, or;~~] the landlord's employees [;] or an immediate family member or person residing in the household of such landlord, agent, or employee shall not directly or indirectly make a loan to [~~a~~ the] qualified organization [~~,~~ ;] a member of [~~a~~ the] qualified organization [~~,~~ ;] a person affiliated or associated with [~~a~~ the] qualified organization [~~,~~ ;] an operator [~~,~~ ;] a [charitable gaming] supplier [~~of poker supplies,~~;] or an immediate family member or person residing in the household of a member of [~~a~~ the] qualified organization, a person affiliated or associated with [~~a~~ the] qualified organization, an operator, or a [charitable gaming] supplier [~~of poker supplies~~]. [For the purpose of this subsection, a "loan" is a loan that the landlord; the landlord's agents; the landlord's employees; or an immediate family member or person residing in the household of such landlord, agent, or employee makes (i) during the qualified organization's contract with the landlord or (ii) within the three years preceding the effective date of that contract. For the purpose of this subsection, a "loan" is a loan on which the qualified organization; member of the qualified organization; person affiliated or associated with the qualified organization; or immediate family members or persons residing in the household of a member of the qualified organization or of a person affiliated or associated with the qualified organization maintains an outstanding balance during the qualified organization's contract with the landlord.]

[~~F.~~ E.] A [qualified organization shall ensure that the] landlord [~~,~~ ;] the landlord's agents [~~,~~ ;] the landlord's employees [~~,~~ ;] or the immediate family members or persons residing in the household of such landlord, agent, or employee shall not directly or indirectly make any payment to [~~a~~ the] qualified organization [~~,~~ ;] a member of [~~a~~ the] qualified organization [~~,~~ ;] a person affiliated or associated with [~~a~~ the] qualified organization [~~,~~ ;] an operator [~~,~~ ;] a charitable gaming supplier [~~,~~ ;] or an immediate family member or person residing in the household of a member of [~~a~~ the] qualified organization, a person affiliated or associated with [~~a~~ the] qualified organization, an operator, or a charitable gaming supplier.

[~~G.~~ F.] A [qualified organization shall ensure that the] landlord [~~,~~ ;] its agent [~~, or;~~] its employees [;] or the

immediate family members or persons residing in the household of such landlord, agent, or employee shall not:

1. Participate in the management, operation, conduct, or administration of [~~any~~ the qualified organization's] poker tournament [that is] operated, conducted, or administered on the landlord's premises;

2. Sell, lease, or otherwise provide any charitable gaming supplies, including playing cards, poker chips, or other game pieces, for use during [~~a~~ the qualified organization's] poker tournament [that is] operated, conducted, or administered on the landlord's premises;

3. Require as a condition of the lease that [~~a~~ the] qualified organization use a particular charitable gaming supplier or operator; or

4. Provide, advise, or direct [~~a~~ the] qualified organization or operator to use a particular person to manage, operate, conduct, or administer [~~a~~ the qualified organization's] poker tournament that is to be held in the landlord's premises.

[~~H.~~ G.] A member of a qualified organization who participates in the management, operation, or conduct of a poker tournament shall not provide services to a landlord or be remunerated in any manner by the landlord of the premises that the qualified organization uses to manage, operate, or conduct its poker tournament.

[~~I.~~ H.] A qualified organization shall only lease a premises by means of a fixed rental payment. The fixed rental payment shall reflect the current fair market rental value of the property and shall not be based upon or determined by a percentage of the proceeds derived from the operation of the poker tournament or to the number of people in attendance at such tournament.

[~~J. No~~ I. The qualified organization shall ensure that no] contract for the rental or leasing of a premises for a poker tournament shall be contingent upon the qualified organization's agreement that it will contract with a particular business for a particular premises, equipment, or service. [~~A~~ The qualified organization shall prohibit the] landlord, owner, lessor, or lessee of [~~a~~ the] premises where [~~a~~ the] poker tournament is being played [~~is prohibited~~] from serving in any capacity with [~~any~~ the] qualified organization that is leasing from such landlord, owner, lessor, or lessee.

[~~K.~~ J.] A charitable gaming supplier is ineligible for a landlord registration [~~issued pursuant to the Charitable Gaming Law and this chapter~~].

[~~L.~~ K.] A landlord shall provide to the department the records [related to the landlord's lease with a qualified organization], including financial records, that the department deems necessary to complete an inspection, audit, or investigation. The department shall provide written receipt of such records at the time the landlord provides requested records to the department. The department may suspend or revoke the registration of a landlord who refuses to provide the requested record.

[~~M.~~ L.] If the department determines [~~through inspection, audit, or other means~~] that a landlord is not in compliance with a provision of the Charitable Gaming Law or regulations adopted pursuant thereto, the department may deny, suspend, or revoke the landlord's registration.

[M. A qualified organization shall not lease the premises of any landlord that has contracted with the qualified organization to administer the qualified organization's poker tournament as an operator.]

11VAC20-30-140. Bank accounts.

An organization that will conduct a poker tournament is subject to the provisions of 11VAC20-20-80 regarding bank accounts.

11VAC20-30-150. Recordkeeping.

An organization that will conduct a poker tournament is subject to the provisions of 11VAC20-20-90 regarding recordkeeping.

11VAC20-30-160. Financial reporting, penalties, inspections, and audits.

An organization that will conduct a poker tournament is subject to the provisions of 11VAC20-20-100 regarding financial reporting, penalties, inspections, and audits.

11VAC20-30-170. Use of proceeds.

An organization that will conduct a poker tournament is subject to the provisions of 11VAC20-20-110 regarding use of proceeds.

11VAC20-30-180. Requirements regarding contracts.

A. If a qualified organization elects to use an operator to administer its poker tournament, then it shall obtain a written contract with the operator.

B. A written contract between a qualified organization and an operator shall identify the conditions and cost for the operator to administer a poker tournament for the qualified organization. This written contract shall:

1. Require the operator to register with the department and comply with the requirements established in 11VAC20-30-50.

2. Require the operator to report to the qualified organization and the department within 20 days if there is any action taken against any valid license, permit, certificate, registration, or other similar documents related to gambling held by the operator in any state, territory, a possession of the United States, the District of Columbia, or any political subdivision thereof.

3. Require the operator to report to the qualified organization and the department within 20 days if the operator fails to file or has been delinquent in excess of one year in the filing of any tax returns or the payment of any taxes due the Commonwealth or has failed to establish a registered office or registered agent in the Commonwealth if so required by § 13.1-634 or 13.1-763 of the Code of Virginia.

4. Require the operator to provide the qualified organization and the department with access to the operator's financial record for each poker tournament administered on the qualified organization's behalf for a minimum of the previous three fiscal years and, if necessary, to provide the qualified organization with copies or the department with the originals of these records or any other records deemed necessary to complete an inspection, audit, or investigation without hindrance from the operator. The department shall provide a written receipt for the originals of the records at the time of collection.

5. Require the operator to provide the qualified organization with a copy of a detailed invoice for each poker tournament that the operator administers on behalf of the qualified organization. The invoice shall include the information required 11VAC20-30-60 K.

6. Require the operator to retain all bank account records, including monthly bank statements, canceled checks or facsimiles thereof, and reconciliations for a minimum of three years following the close of a fiscal year.

7. Require the operator to display prominently its operator's registration during each poker tournament the operator administers on the qualified organization's behalf.

8. Require the operator to comply with any restrictions or additional recordkeeping and financial reporting requirements imposed upon the qualified organization by the department due to deficiencies identified through inspection, audit, or other means.

9. Require the operator to pay all expenses other than prizes that the operator incurs in the administration of the tournament by check or electronic fund transfer directly from its bank account.

10. Specify the duration of the written contract period and the termination rights for the qualified organization and operator.

11. Specify the terms of any arrangement agreed upon by the qualified organization and the operator regarding the deposit of the receipts received by an operator due to the operator's administering of a poker tournament for a qualified organization through an electronic fund transfer into the qualified organization's charitable gaming bank account. A written agreement specifying the terms of this arrangement shall be required prior to any electronic fund transfer occurring between the two parties.

12. Require the tournament manager to be physically present at all times during a poker tournament the operator is administering.

C. A qualified organization shall only contract with an operator that adheres to the provisions of the Charitable Gaming Law and this chapter.

[~~D. An organization shall provide a copy of all written contracts between the organization and the operator to the department upon application for a permit or upon the entering into any contract with an operator following the submission of an application or receipt of a permit.~~]

11VAC20-30-190. Charitable gaming suppliers.

A supplier of charitable gaming supplies used during a poker tournament is subject to the provisions of 11VAC20-20-130.

11VAC20-30-200. Procedural rules for informal fact-finding conferences and hearings.

A person who manages, operates, conducts, or administers a poker tournament or a landlord is subject to the provisions of 11VAC20-20-600 regarding procedural rules for informal fact-finding conferences and hearings.

11VAC20-30-210. Reporting violations.

A person who manages, operates, conducts, or administers a poker tournament or a landlord is subject to the provisions of 11VAC20-20-610 regarding reporting violations.

NOTICE: The following forms used in administering the regulation have been filed by the agency. Amended or added forms are reflected in the listing and are published following the listing. Online users of this issue of the Virginia Register of Regulations may also click on the name to access a form. The forms are also available from the agency contact or may be viewed at the Office of Registrar of Regulations, General Assembly Building, 201 North Ninth Street, 4th Floor, Richmond, Virginia 23219.

FORMS (11VAC20-30)

Annual Financial Report, Form 101 (rev. MM/YYYY)

Charitable Gaming Permit Application – New Applicants, Form 201-N (rev. MM/YYYY)

Charitable Gaming Permit Application – Renewal Applicants, Form 201-R (rev. MM/YYYY)

Destruction of Unused Charitable Gaming Supplies, Form 112 (rev. MM/YYYY)

Landlord Registration, Form 501 (eff. MM/YYYY)

Permit Amendment, Form 202 (rev. MM/YYYY)

Quarterly Financial Report Form, Form 102 (rev. MM/YYYY)

Report of Game Termination, Form 0 (rev. MM/YYYY)

Texas Hold'em Poker Tournament Operator Registration Application, Form 307 (eff. MM/YYYY)

Texas Hold'em Poker Tournament Operator Registration – Personal Information Form, Form 307a (eff. MM/YYYY)

Texas Hold'em Poker Tournament Reconciliation Summary, Form 114 (eff. MM/YYYY)

DOCUMENTS INCORPORATED BY REFERENCE (11VAC20-30)

GLI-29: Card Shufflers and Dealer Shoes, Gaming Laboratories International, LLC, Version 1.0, July 2012, www.gaminglabs.com

Poker Tournament Directors Association Rules Poker Tournament Directors Association, 2019, September 17, 2019, https://www.pokertda.com

VA.R. Doc. No. R23-7455; Filed December 22, 2023, 1:10 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF PHARMACY

Emergency Regulation

Title of Regulation: **18VAC110-21. Regulations Governing the Licensure of Pharmacists and Registration of Pharmacy Technicians (amending 18VAC110-21-46).**

Statutory Authority: §§ 54.1-2400 and 54.1-3303.1 of the Code of Virginia.

Effective Dates: December 26, 2023, through June 25, 2025.

Agency Contact: Caroline Juran, RPh, Executive Director, Board of Pharmacy, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 367-4456, FAX (804) 527-4472, or email caroline.juran@dhp.virginia.gov.

Preamble:

Section 2.2-4011 B of the Code of Virginia states that agencies may adopt emergency regulations in situations in which Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment, and the regulation is not exempt under the provisions of § 2.2-4006 A 4 of the Code of Virginia.

Pursuant to Chapters 171 and 172 of the 2023 Acts of Assembly, the amendments expand the conditions for which a pharmacist can initiate treatment. The amendments add group A streptococcus bacteria infections, influenza virus infections, COVID-19 virus infections, and urinary tract infections for which pharmacists can initiate treatment with controlled substances or devices for persons 18 years of age and older, as clinical decision-making for these four diseases and conditions can be guided by a clinical test that is classified as waived under the federal Clinical Laboratory Improvement Amendments of 1988 (42 USC § 263a).

18VAC110-21-46. Initiation of treatment by a pharmacist.

A. Pursuant to § 54.1-3303.1 of the Code of Virginia, a pharmacist may initiate treatment with, dispense, or administer the following drugs and devices to persons 18 years of age or older:

1. Naloxone or other opioid antagonist, including such controlled paraphernalia as defined in § 54.1-3466 of the Code of Virginia as may be necessary to administer such naloxone or other opioid antagonist;

2. Epinephrine;

3. Injectable or self-administered hormonal contraceptives, provided the patient completes an assessment consistent with the United States Medical Eligibility Criteria for Contraceptive Use;

4. Prenatal vitamins for which a prescription is required;

5. Dietary fluoride supplements, in accordance with recommendations of the American Dental Association for prescribing of such supplements for persons whose drinking water has a fluoride content below the concentration recommended by the U.S. Department of Health and Human Services;

6. Drugs and devices as defined in § 54.1-3401 of the Code of Virginia, controlled paraphernalia as defined in § 54.1-3466 of the Code of Virginia, and other supplies and equipment available over the counter covered by the patient's health carrier when the patient's out-of-pocket cost is lower than the out-of-pocket cost to purchase an over-the-counter equivalent of the same drug, device, controlled paraphernalia, or other supplies or equipment;

7. Vaccines included on the Immunization Schedule published by the Centers for Disease Control and Prevention or that have a current emergency use authorization from the U.S. Food and Drug Administration;

8. Tuberculin purified protein derivative for tuberculosis testing; ~~and~~

9. Controlled substances for the prevention of human immunodeficiency virus, including controlled substances prescribed for pre-exposure and post-exposure prophylaxis pursuant to guidelines and recommendations of the Centers for Disease Control and Prevention; and

10. Controlled substances or devices for the initiation of treatment of the following diseases or conditions for which clinical decision making can be guided by a clinical test that is classified as waived under the federal Clinical Laboratory Improvement Amendments of 1988, 42 USC § 263a:

a. Group A Streptococcus bacteria infection;

b. Influenza virus infection;

c. COVID-19 virus infection; and

d. Urinary tract infection.

B. Pharmacists who initiate treatment with, dispense, or administer a drug or device pursuant to subsection A of this section shall:

1. Follow the statewide protocol adopted by the board for each drug, device, controlled paraphernalia, or other supplies or equipment.

2. Notify the patient's primary health care provider that treatment has been initiated with such drug, device, controlled paraphernalia, or other supplies or equipment or that such drug, device, controlled paraphernalia, or other supplies or equipment have been dispensed or administered to the patient, provided that the patient consents to such notification. If the patient does not have a primary health care provider, the pharmacist shall counsel the patient regarding the benefits of establishing a relationship with a primary health care provider and, upon request, provide information regarding primary health care providers, including federally qualified health centers, free clinics, or local health departments serving the area in which the patient is located. If the pharmacist is initiating treatment with, dispensing, or administering injectable or self-administered hormonal contraceptives, the pharmacist shall counsel the patient regarding seeking preventative care, including (i) routine well-woman visits, (ii) testing for sexually transmitted infections, and (iii) pap smears. If the pharmacist is administering a vaccine pursuant to this section, the pharmacist shall report such administration to the Virginia Immunization Information System in accordance with the requirements of § 32.1-46.01 of the Code of Virginia.

3. Maintain a patient record for a minimum of six years following the last patient encounter with the following exceptions:

a. Records that have previously been transferred to another practitioner or health care provider or provided to the patient or the patient's personal representative; or

b. Records that are required by contractual obligation or federal law to be maintained for a longer period of time.

4. Perform the activities in a manner that protects patient confidentiality and complies with the Health Insurance Portability and Accountability Act, 42 USC § 1320d et seq.

VA.R. Doc. No. R24-7530; Filed December 21, 2023, 9:49 a.m.

TITLE 19. PUBLIC SAFETY

DEPARTMENT OF FIRE PROGRAMS

Fast-Track Regulation

Title of Regulation: **19VAC15-11. Public Participation Guidelines (amending 19VAC15-11-10, 19VAC15-11-20, 19VAC15-11-50).**

Statutory Authority: §§ 2.2-4007.02 and 9.1-203 of the Code of Virginia.

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: February 14, 2024.

Effective Date: February 25, 2024.

Agency Contact: Spencer Willett, Government Affairs Manager, Department of Fire Programs, 1005 Technology Park Drive, Glen Allen, VA 23059, telephone (804) 249-1966, or email spencer.willett@vdfp.virginia.gov.

Basis: Section 2.2-4007.02 of the Code of Virginia requires agencies to develop public participation guidelines if they possess regulatory authority. The Executive Director of the Department of Fire Programs has the authority to promulgate regulations related to reduced cigarette ignition propensity as found in § 9.1-215 of the Code of Virginia.

Purpose: The goal of this regulatory change is to correct the definition of "agency" found in 19VAC15 to the Department of Fire Programs. This will ensure compliance with § 2.2-4007.02 of the Code of Virginia, ensure that the public can participate in the future development of regulations, and remove an outdated reference to a board with no regulatory authority. The amendment also conforms the agency's public participation guidelines to the change in the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) made by Chapter 795 of the 2012 Acts of the Assembly.

Rationale for Using Fast-Track Rulemaking Process: This rulemaking is expected to be noncontroversial because it does not make any substantial changes to the regulation. This edit is technical, merely conforming the regulation to § 2.2-4007.02 of the Code of Virginia; therefore, the action is appropriate for the fast-track rulemaking process.

Substance: The general definitions do not impose regulatory requirements but provide support for the public participation guidelines section that require certain actions by the agency and members of the public when participating in regulatory activities. The amendments (i) remove "Virginia Fire Services Board" and replace it with "Department of Fire Programs"; and (ii) pursuant to Chapter 795 of the 2012 Acts of the Assembly, provide that interested persons submitting data, views, and arguments on a regulatory action may be accompanied by and represented by counsel or another representative.

Issues: There are no disadvantages to the public or the Commonwealth. The advantage of this technical edit to the

public and the agency is that it will lead to greater opportunity for participation by members of the public.

Department of Planning and Budget's Economic Impact Analysis:

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

Summary of the Proposed Amendments to Regulation. The Department Fire Programs (DFP) proposes to specify in this regulation that "An interested person may be accompanied by counsel or another representative when providing public comment to the agency." Additionally, the agency proposes to change "Virginia Fire Services Board" to "Department of Fire Programs" where the former currently appears in the regulation.

Background. Pursuant to Chapter 795 of the 2012 Acts of Assembly,[2] DFP proposes to specify in this regulation that "An interested person may be accompanied by counsel or another representative when providing public comment to the agency." Prior to Chapter 795, part B of Virginia Code § 2.2-4007.02 was as follows:

> "B. In formulating any regulation, including but not limited to those in public assistance and social services programs, the agency pursuant to its public participation guidelines shall afford interested persons an opportunity to submit data, views, and arguments, either orally or in writing, to the agency, to include an on-line public comment forum on the Virginia Regulatory Town Hall, or other specially designated subordinate. However, the agency may begin drafting the proposed regulation prior to or during any opportunities it provides to the public to submit comments."

Chapter 795 amended this text to:[3]

> "B. In formulating any regulation, including but not limited to those in public assistance and social services programs, the agency pursuant to its public participation guidelines shall afford interested persons an opportunity to (i) submit data, views, and arguments, either orally or in writing, to the agency, to include an online public comment forum on the Virginia Regulatory Town Hall, or other specially designated subordinate and (ii) be accompanied by and represented by counsel or other representative. However, the agency may begin drafting the proposed regulation prior to or during any opportunities it provides to the public to submit comments."

The current regulation states that "The purpose of this chapter is to promote public involvement in the development, amendment or repeal of the regulations of the Virginia Fire Services Board" and defines "Agency" as "the Virginia Fire Services Board, which is the unit of state government empowered by the agency's basic law to make regulations or decide cases." Chapter 791 of the 1997 Acts of Assembly[4] removed the Virginia Fire Services Board's regulatory authority. DFP, through its director, still has regulatory authority.[5] Thus, DFP proposes to replace "Virginia Fire Services Board" with "Department of Fire Programs" where the former currently appears in the regulation.

Estimated Benefits and Costs. Since the Code of Virginia already specifies that interested persons shall be afforded an opportunity to be accompanied by and represented by counsel or other representative, the DFP's proposal to add this language to the regulation would not change the law in effect, but would be beneficial in that it would inform interested parties who read this regulation but not the statute of their legal rights concerning representation.

19VAC15-11 Public Participation Guidelines pertains to the public's involvement in the development, amendment, or repeal of the regulations of the department. Correcting the name of the rulemaking authority improves clarity, but otherwise should not have substantive impact.

Businesses and Other Entities Affected. The proposed amendments potentially affect all individuals who comment on pending regulatory changes. Individuals who are interested in being accompanied by and represented by counsel or other representative, and were not previously aware of this right, would be particularly affected.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation. An adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined. Since the proposed amendments do not introduce cost nor reduce revenue, no adverse impact is indicated.

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

Localities[8] Affected.[9] The proposed amendments neither disproportionately affect any particular locality, nor introduce costs for local governments.

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

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

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

[2]See http://leg1.state.va.us/cgi-bin/legp504.exe?121+ful+CHAP0795+hil

[3] Bold added for emphasis.

[4]See https://lis.virginia.gov/cgi-bin/legp604.exe?971+ful+CHAP0791+hil

[5]See https://law.lis.virginia.gov/vacode/title9.1/chapter2.1/section9.1-215/

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

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

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

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

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

Summary:

The amendments (i) define "agency" as the "Department of Fire Programs" and (ii) pursuant to Chapter 795 of the 2012 Acts of the Assembly, provide that interested persons submitting data, views, and arguments on a regulatory action may be accompanied by and represented by counsel or another representative.

19VAC15-11-10. Purpose.

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

19VAC15-11-20. Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19VAC15-11-50. Public comment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

VA.R. Doc. No. R24-7699; Filed December 15, 2023, 9:16 a.m.

TITLE 22. SOCIAL SERVICES

STATE BOARD OF SOCIAL SERVICES

Final Regulation

REGISTRAR'S NOTICE: The following regulatory action is exempt from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 4 c of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations, provided such regulations do not differ materially from those required by federal law or regulation. The State Board of Social Services will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **22VAC40-675. Personnel Policies for Local Departments of Social Services (amending 22VAC40-675-210).**

Statutory Authority: §§ 63.2-217 and 63.2-219 of the Code of Virginia.

Effective Date: February 14, 2024.

Agency Contact: Leighann Smigielski, Senior Policy Analyst, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7059, FAX (804) 726-7027, or email r.leighann.smigielski@dss.virginia.gov.

Summary:

The amendments (i) make the regulation consistent with the Hatch Act Modernization Act of 2012 to allow more flexibility for local employees who may wish to run as a candidate in a partisan public elective office in a primary, general, or special election; and (ii) correct a misspelled word.

22VAC40-675-210. Political activity.

A. No local department employee shall ~~make use of his official authority or influence to~~:

1. ~~Interfere~~ Use the employee's official authority or influence to interfere with or affect the result of a nomination or election to public office or position;

2. Directly or indirectly coerce, command, or advise a state or local officer or employee to pay, lend, or contribute anything of value to a party, committee, organization, agency, or person for political purposes; or

3. Be a candidate for a partisan public elective office in a primary, general, or special election if the salary of the employee is paid completely, directly or indirectly, by loans or grants made by the United States or a federal agency.

B. The local department's provisions on political activity shall be consistent with the federal Hatch Act (5 USC §§ 1501-1508) and facilitate effective control of prohibited political activity by employees.

C. In general, the Hatch Act covers officers or employees of a state or local department if their ~~principle~~ principal employment is in connection with an activity that is financed in whole or in part by loans or grants made by a federal agency. An employee subject to political activity laws continues to be covered by these laws and regulations while on annual leave, sick leave, leave without pay, administrative leave, or furlough.

D. The board shall promulgate policy consistent with these provisions. Local departments may request to deviate to local jurisdiction political activity policy that is consistent with the federal Hatch Act and applicable state and local laws, regulations, and ordinances. When the local department wants to exercise this option, it must obtain required approvals and submit the required forms to the department in accordance with the administrative manual. The commissioner will provide his analysis to the board, and the deviation request shall be presented to the board for action.

VA.R. Doc. No. R24-7758; Filed December 26, 2023, 11:20 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, 201 North Ninth Street, 4th Floor, Richmond, Virginia 23219.

BOARD OF DENTISTRY

Titles of Documents: Dental Clinical Competency Examination for Licensure.

Dental Hygiene Clinical Competency Examination.

Public Comment Deadline: February 14, 2024.

Effective Date: February 15, 2024.

Agency Contact: Erin Barrett, Director of Legislative and Regulatory Affairs, Department of Health Professions, Perimeter Center, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 367-4688, or email erin.barrett@dhp.virginia.gov.

STATE BOARD OF EDUCATION

Title of Document: Executive Order #28 Guidance.

Public Comment Deadline: February 14, 2024.

Effective Date: February 15, 2024.

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

* * *

Title of Document: Programmatic Accreditation Guidelines for Career and Technical Education.

Public Comment Deadline: February 14, 2024.

Effective Date: February 15, 2024.

Agency Contact: Andy Armstrong, Assistant Superintendent of Strategic Innovation, Department of Education, 101 North 14th Street, Richmond, VA 23218, telephone (804) 750-8174, or email andy.armstrong@doe.virginia.gov.

BOARD OF HOUSING AND COMMUNITY DEVELOPMENT

Title of Document: Virginia Broadband Availability Map Internet Service Provider Service Territory Data Submission Guidelines.

Public Comment Deadline: February 14, 2024.

Effective Date: February 15, 2024.

Agency Contact: Trisha Lindsey, Policy Planning Manager, Department of Housing and Community Development, Main Street Centre, 600 East Main Street, Suite 300, Richmond, VA 23219, telephone (804) 371-7000, or email trisha.lindsey@dhcd.virginia.gov.

COMMISSION ON LOCAL GOVERNMENT

Title of Document: Virginia Broadband Availability Map Internet Service Provider Service Territory Data Submission Guidelines.

Public Comment Deadline: February 14, 2024.

Effective Date: February 15, 2024.

Agency Contact: Trisha Lindsey, Policy Planning Manager, Department of Housing and Community Development, Main Street Centre, 600 East Main Street, Suite 300, Richmond, VA 23219, telephone (804) 371-7000, or email trisha.lindsey@dhcd.virginia.gov.

VIRGINIA MANUFACTURED HOUSING BOARD

Title of Document: Virginia Broadband Availability Map Internet Service Provider Service Territory Data Submission Guidelines.

Public Comment Deadline: February 14, 2024.

Effective Date: February 15, 2024.

Agency Contact: Trisha Lindsey, Policy Planning Manager, Department of Housing and Community Development, Main Street Centre, 600 East Main Street, Suite 300, Richmond, VA

23219, telephone (804) 371-7000, or email trisha.lindsey@dhcd.virginia.gov.

STATE BOARD OF SOCIAL SERVICES

Title of Document: Child and Family Services Manual, Chapter B, Prevention Services.

Public Comment Deadline: February 14, 2024.

Effective Date: February 15, 2024.

Agency Contact: Nikki Clarke, Legislation, Regulations, and Guidance Manager, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7943, or email nikki.clarke@dss.virginia.gov.

* * *

Titles of Documents: Administrative Human Resources Manual, Chapter 2, Classification and Compensation.

Administrative Human Resources Manual, Chapter 4, Leave.

Administrative Human Resources Manual, Chapter 5, Operations of the Local Departments of Social Services.

Public Comment Deadline: February 14, 2024.

Effective Date: February 15, 2024.

Agency Contact: Leighann Smigielski, Senior Policy Analyst, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7059, or email r.leighann.smigielski@dss.virginia.gov.

DEPARTMENT OF TAXATION

Title of Document: Internet Root Infrastructure Providers Hybrid Sales Factor Guidelines.

Public Comment Deadline: February 14, 2024.

Effective Date: February 15, 2024.

Agency Contact: Austin Smith, Tax Policy Analyst, Department of Taxation, P.O. Box 27185, Richmond, VA 23261-7185, telephone (804) 371-5107, or email austin.smith@tax.virginia.gov.

The following guidance documents have been submitted for deletion and the listed agencies have opened up a 30-day public comment period. The listed agencies had previously identified these documents as certified guidance documents, pursuant to § 2.2-4002.1 of the Code of Virginia. Online users of this issue of the Virginia Register of Regulations may click on the name of a guidance document to view the deleted document and comment. This information is also available on the Virginia Regulatory Town Hall (http://www.townhall.virginia.gov) or from the agency contact.

BOARD OF DENTISTRY

Title of Document: Policy on Recovery of Disciplinary Costs.

Public Comment Deadline: February 14, 2024.

Effective Date: February 15, 2024.

Agency Contact: Erin Barrett, Director of Legislative and Regulatory Affairs, Department of Health Professions, Perimeter Center, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 367-4688, or email erin.barrett@dhp.virginia.gov.

BOARD OF HOUSING AND COMMUNITY DEVELOPMENT

Title of Document: Virginia Broadband Availability Map Internet Service Provider Service Territory Data Submission Guidelines.

Public Comment Deadline: February 14, 2024.

Effective Date: February 15, 2024.

Agency Contact: Trisha Lindsey, Policy Planning Manager, Department of Housing and Community Development, Main Street Centre, 600 East Main Street, Suite 300, Richmond, VA 23219, telephone (804) 371-7000, or email trisha.lindsey@dhcd.virginia.gov.

COMMISSION ON LOCAL GOVERNMENT

Title of Document: Virginia Broadband Availability Map Internet Service Provider Service Territory Data Submission Guidelines.

Public Comment Deadline: February 14, 2024.

Effective Date: February 15, 2024.

Agency Contact: Trisha Lindsey, Policy Planning Manager, Department of Housing and Community Development, Main Street Centre, 600 East Main Street, Suite 300, Richmond, VA 23219, telephone (804) 371-7000, or email trisha.lindsey@dhcd.virginia.gov.

VIRGINIA MANUFACTURED HOUSING BOARD

Title of Document: Virginia Broadband Availability Map Internet Service Provider Service Territory Data Submission Guidelines.

Public Comment Deadline: February 14, 2024.

Effective Date: February 15, 2024.

Agency Contact: Trisha Lindsey, Policy Planning Manager, Department of Housing and Community Development, Main Street Centre, 600 East Main Street, Suite 300, Richmond, VA 23219, telephone (804) 371-7000, or email trisha.lindsey@dhcd.virginia.gov.

BOARD OF PHARMACY

Titles of Documents: Approved Chemicals for Use as Hydrocarbon or Other Flammable Solvents.

Cannabis Product Packaging Requirements.

Criminal Background Checks of Material Owners of Pharmaceutical Processors or Cannabis Dispensing Facilities.

Guidance on Access to the Premises of a Pharmaceutical Processor by Contractor.

Proximity of a School or Daycare to a Cannabis Dispensing Facility.

Verification Sources for a Pharmaceutical Processor.

Public Comment Deadline: February 14, 2024.

Effective Date: February 15, 2024.

Agency Contact: Erin Barrett, Director of Legislative and Regulatory Affairs, Department of Health Professions, Perimeter Center, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 367-4688, or email erin.barrett@dhp.virginia.gov.

STATE BOARD OF SOCIAL SERVICES

Title of Document: Child and Family Services Manual, Chapter B, Early Prevention - Sections 1 and 4.

Child and Family Services Manual, Chapter B, Early Prevention - Sections 1 and 2.

Child and Family Services Manual, Chapter B, Prevention Services - Updates.

Public Comment Deadline: February 14, 2024.

Effective Date: February 15, 2024.

Agency Contact: Nikki Clarke, Legislation, Regulations, and Guidance Manager, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7943, or email nikki.clarke@dss.virginia.gov.

GENERAL NOTICES

DEPARTMENT OF ENVIRONMENTAL QUALITY

Proposed Enforcement Action for Ali Naji

The Virginia Department of Environmental Quality (DEQ) proposes to issue a consent special order to Ali Naji for alleged violations of the State Water Control Law at the Urbanna Exxon located in Urbanna, in Middlesex County. A description of the proposed action is available at the DEQ office listed or online at www.deq.virginia.gov. The DEQ contact will accept comments by email or postal mail from January 15 through February 14, 2024.

Contact Information: Matt Richardson, Enforcement Specialist, Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060, telephone 804-659-2696, or email matthew.richardson@deq.virginia.gov.

Proposed Enforcement Action for Hanover County Public Works

The Department of Environmental Quality (DEQ) proposes to issue a consent special order to Hanover County Public Utilities for alleged violation of the State Water Control Law at 7040 Senn Way, Mechanicsville, Virginia. A description of the proposed action is available at the DEQ office listed or online at www.deq.virginia.gov/permits/public-notices/enforcement-orders. The DEQ contact will accept comments by email or postal mail from January 15, 2024, through February 14, 2024.

Contact Information: Cara Witte, Enforcement Specialist, Department of Environmental Quality, Piedmont Regional Office (Enforcement), 4949 Cox Road, Suite A, Glen Allen, Virginia 23060, telephone (804) 712-4192, or email cara.witte@deq.virginia.gov.

Proposed Enforcement Action for Prins Project USA LLC

The Department of Environmental Quality (DEQ) is proposing an enforcement action for Prins Project USA LLC for violations of State Water Control Law and regulations and applicable permit at the Germanna Highway facility located in Stevensburg, Virginia. The proposed consent order is available from the DEQ contact or at https://www.deq.virginia.gov/permits/public-notices. The DEQ contact will accept written comments from January 16, 2024, to February 15, 2024.

Contact Information: Katherine Mann, Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, or email katherine.mann@deq.virgnia.gov.

Proposed Enforcement Action for Sussex Service Authority

The Department of Environmental Quality (DEQ) is proposing an enforcement action for Sussex Service Authority for violations of State Water Control Law and regulations in Sussex County at the Spring Branch wastewater treatment facility and collection system. The proposed order is available from the DEQ contact or at https://www.deq.virginia.gov/permits/public-notices/enforcement-orders. The DEQ contact will accept written comments from January 15, 2024, to February 14, 2024.

Contact Information: Kristen Sadtler, Water Enforcement Coordinator and Adjudication Officer, Department of Environmental Quality, 1111 East Main Street, Richmond, VA 23219, telephone (804) 664-3864, or email kristen.sadtler@deq.virginia.gov.

BOARD OF HOUSING AND COMMUNITY DEVELOPMENT

Public Comment Opportunity for Proposed Revisions to the Virginia Private Activity Bond Allocation Guidelines, Local Housing Authority Allocation

In early 2023, the Department of Housing and Community Development (DHCD), in coordination with the Board of Housing and Community Development, began the process of revising the Virginia Private Activity Bond Allocation Guidelines for the Local Housing Authority Pool. The first phase of the review process began with an opportunity for public comment in April and May of 2023.

The feedback from the initial comment period has been incorporated into the proposed draft, and DHCD is initiating the second phase of public comment, which represents an opportunity to provide input on the proposed amendments. DHCD will accept written comment from January 15, 2024, through March 15, 2024.

Following that date, DHCD will incorporate the input into a proposed draft to be presented to the board along with a summary of the public comments received. Once the board adopts the amendments to the guidelines, there will be a final 30-day public comment period conducted in accordance with § 2.2-4002.1 of the Code of Virginia planned for July. DHCD tentatively anticipates finalized guidelines in August 2024 to take effect in the 2025 program year.

The public can view the proposed amendments to the guidelines and submit written comment via the Virginia Regulatory Town Hall at https://townhall.virginia.gov/.

Contact Information: Grace Wheaton, Senior Policy Analyst, Department of Housing and Community Development, Main Street Centre, 600 East Main Street, Suite 300, Richmond, VA 23219, telephone (804) 371-7000, FAX (804) 371-7090, or email pab@dhcd.virginia.gov.

GENERAL NOTICES

VIRGINIA CODE COMMISSION

Notice to State Agencies

Contact Information: *Mailing Address:* Virginia Code Commission, General Assembly Building, 201 North Ninth Street, 4th 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.