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TABLE OF CONTENTS

Register Information Page	2687
Publication Schedule and Deadlines	2688
Petitions for Rulemaking	2689
Periodic Reviews and Small Business Impact Reviews	2692
Regulations	2696
2VAC5-595. Regulations Governing the Manufacturing and Sale of Products that Contain Industrial Hemp Extracts Intended for Human Consumption (Final)	2696
9VAC20-90. Solid Waste Management Permit Action Fees and Annual Fees (Forms).....	2700
9VAC25-900. Certification of Nonpoint Source Nutrient Credits (Final).....	2701
14VAC5-120. Rules Governing the Implementation of the Individual Accident and Sickness Insurance Minimum Standards Act with Respect to Specified Disease Policies (Proposed)	2715
14VAC5-135. Rules Governing Individual and Small Group Market Health Benefit Plans (Proposed).....	2715
14VAC5-140. Rules Governing the Implementation of the Individual Accident and Sickness Insurance Minimum Standards Act (Proposed).....	2715
14VAC5-141. Rules Governing Accident and Sickness Excepted Benefits Policies; Short-Term Limited Duration Insurance (Proposed).....	2715
14VAC5-260. Rules Governing Insurance Holding Companies (Proposed).....	2725
18VAC110-20. Regulations Governing the Practice of Pharmacy (Final)	2730
Guidance Documents	2734
General Notices	2736

Virginia Code Commission

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

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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.

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PUBLICATION SCHEDULE AND DEADLINES

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

August 2022 through September 2023

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
39:1	August 10, 2022	August 29, 2022
39:2	August 24, 2022	September 12, 2022
39:3	September 7, 2022	September 26, 2022
39:4	September 21, 2022	October 10, 2022
39:5	October 5, 2022	October 24, 2022
39:6	October 19, 2022	November 7, 2022
39:7	November 2, 2022	November 21, 2022
39:8	November 14, 2022 (Monday)	December 5, 2022
39:9	November 30, 2022	December 19, 2022
39:10	December 13, 2022 (Tuesday)	January 2, 2023
39:11	December 27, 2022 (Tuesday)	January 16, 2023
39:12	January 11, 2023	January 30, 2023
39:13	January 25, 2023	February 13, 2023
39:14	February 8, 2023	February 27, 2023
39:15	February 22, 2023	March 13, 2023
39:16	March 8, 2023	March 27, 2023
39:17	March 22, 2023	April 10, 2023
39:18	April 5, 2023	April 24, 2023
39:19	April 19, 2023	May 8, 2023
39:20	May 3, 2023	May 22, 2023
39:21	May 17, 2023	June 5, 2023
39:22	May 31, 2023	June 19, 2023
39:23	June 14, 2023	July 3, 2023
39:24	June 28, 2023	July 17, 2023
39:25	July 12, 2023	July 31, 2023
39:26	July 26, 2023	August 14, 2023
40:1	August 9, 2023	August 28, 2023
40:2	August 23, 2023	September 11, 2023

*Filing deadlines are Wednesdays unless otherwise specified.

PETITIONS FOR RULEMAKING

TITLE 12. HEALTH

STATE BOARD OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

Agency Decision

Title of Regulation: 12VAC35-105. Rules and Regulations for Licensing Providers by the Department of Behavioral Health and Developmental Services.

Statutory Authority: §§ 37.2-100 and 37.2-400 - 37.2-432 of the Code of Virginia.

Name of Petitioner: Willard Vaughn, MA, LPC, CTMH.

Nature of Petitioner's Request: The petitioner requests that the board clarify and amend the training and certification requirements for preadmission screening providers to allow for coordination of care with private providers under the Marcus-David Peters Alert Act (§ 37.2-311.1 et seq. of the Code of Virginia).

This petition for rulemaking is brought to the State Board of Behavioral Health and Developmental Services (DBHDS) under its legal authority to take the action requested pursuant to §§ 37.2-203 and 37.2-311.3 of the Code of Virginia and 12VAC35-105-30. This petition for rulemaking is filed in accordance with § 2.2-4007 of the Code of Virginia is to clarify and amend the Enhanced Qualifications for Preadmission Screening Clinicians and expand its reach in the spirit of public-private cooperation under the Marcus-David Peters Act.

"The Department of Behavioral Health and Developmental Services first published a memorandum explaining that the agency would be mandating enhanced qualifications for 'Community Services Boards and Behavioral Health Authorities evaluators who provide recommendations and prepare preadmission screening reports' on March 29, 2016. On July 1, 2016, DBHDS published a document entitled Certification of Preadmission Screening Clinicians which states in part (see <https://dbhds.virginia.gov/behavioral-health/mental-health-services/protocols-and-procedures/>):

'Effective July 1, 2016, anyone conducting a preadmission screening evaluation pursuant to requirements in the Code of Virginia must hold a valid certification from DBHDS as a Certified Preadmission Prescreening Clinician...Application for this certification must be submitted...using the designated forms and approved before the individual may independently conduct preadmission screening evaluations...Upon submission and review of a completed application, DBHDS will issue a Certificate. The certification will be valid for one or two years and must be renewed annually or biannually as specified below. Recertification must be requested prior to the expiration of a current certificate.'

The document goes on to outline educational and precepting requirements, requirements for supervision, the need for

continuing education, and quality assurance practices. DBHDS created these regulations presumably under statutory authority found in §§ 37.2-203 and 37.2-404 of the Code of Virginia.

In 2021 the Marcus-David Peters Act was passed by the General Assembly and is codified in §§ 37.2-311.1 through 37.2-312 of the Code of Virginia. This law mandates that DBHDS take the lead in organizing and implementing the tenants of the act including: '...The Department shall establish additional Marcus alert and community care teams...[and] No later than July 1, 2026 all community services board and behavioral health authority geographical areas shall have established Marcus alert system that uses a community care or mobile crisis team...' which allows for DBHDS to explore the use of public-private partnerships to achieve the mission set forth in the Marcus-David Peters Act. However, this is already provided for in the Community Services Performance Contract that is completed between the department and community services boards every two years under section twelve regarding contracting and subcontracting. Until the passage of the Marcus Alert Act, this was underutilized for crisis intervention services, even to the detriment of the population served by the particular Community Services Board.

Finally, multiple code sections reference the requirement of an evaluation needing to be completed by 'The community services board or its designee' including: §§ 16.1-340, 16.1-340.1, 16.1-340.1:1, 37.2-808(b),(c),(l), and 37.2-809(a),(d),(e),(g),(l) of the Code of Virginia.

Now, having established that DBHDS has and exercised statutory authority to stipulate the requirements necessary for an individual to become a certified preadmission screening clinician, that DBHDS has the responsibility under the law to form public-private partnerships for the good of the citizens of the Commonwealth, and that the law can allow for such partnerships, the present author hereby requests the Enhanced Qualifications for Preadmission Screening Clinicians be amended.

Petition for rule change:

Page 1, Section 2 entitled 'Enhanced Qualifications for Certified Preadmission Screening Clinicians Beginning July 1, 2016'

Present author requests that this section be amended to include a stipulation for providers that are not employed directly by a Community Services Board and requests that it read as follows: Any licensed professional (LMHP), Qualified Mental Health Provider (QMHP), Certified Substance Abuse Clinician (CSAC), or Certified Peer Specialist (CPS) that is not employed directly by a Community Services Board may have their employer apply for certification under these guidelines provided that the employer is licensed by DBHDS as a provider of mobile crisis response, crisis stabilization, partial hospitalization, or is a licensed psychiatric hospital, and has a signed written agreement with the regional crisis hub that would serve their geographic location.

Petitions for Rulemaking

In addition, the employer must show that the individual has held a certified preadmission prescreening clinician certification within the past ten years or that they have completed all of the other requirements set forth herein. Further, an agency that is not a community services board but is licensed as a provider of mobile crisis response, crisis stabilization, partial hospitalization, or a licensed psychiatric hospital must have any employee desiring certification by this standard supervised by an LMHP and have such an individual available 24 hours a day, seven days a week to the perspective clinician regardless of their length of time serving in this capacity.

If certified, the individual will be considered a designee of the Community Services Board that serves the area where the client is physically located during the time of assessment, or that provides outpatient treatment to the client with all powers granted under applicable law.

Amendments in General:

Petitioner asks that any reference to 'the Board,' 'CSB,' or 'Community Services Board' mentioned in the document be replaced by more neutral language such as 'agency,' 'clinic,' or 'facility'."

Agency Decision: Request denied.

Statement of Reason for Decision: The State Board of Behavioral Health and Developmental Services voted unanimously to deny the petition as it is outside of the scope of the board. Specifically, the changes sought by the petitioner would require legislative changes to state law as the requirements for prescreeners are in Chapter 8 (§ 37.2-800 et seq.) of Title 37.2 of the Code of Virginia (primarily §§ 37.2-808 and 37.2-809 of the Code of Virginia, as the petitioner cited in part) and also, Chapter 11 (§ 16.1-226 et seq.) of Title 16.1 of the Code of Virginia (namely §§ 16.1-339 and 16.1-345 of the Code of Virginia). Until the Code of Virginia is changed, the changes requested are not possible nor could they be made in regulation as law must precede regulatory change. Also, requirements for prescreeners are in agreement between the Department of Behavioral Health and Developmental Services and community service boards through administrative memos and in the annual Performance Contract. These requirements for who is a prescriber and who must have a certification for them are not in regulation. The recommendation for amendment to "Enhanced Qualifications for Certified Preadmission Screening Clinicians Beginning 01 July 2016" is an administrative memo. Such administrative action is outside the purview of the board. Therefore, the petition was denied as it is outside of the scope of the authority of the board.

Agency Contact: Ruth Anne Walker, Director of Regulatory Affairs and Board Liaison, Department of Behavioral Health and Developmental Services, Jefferson Building, 1220 Bank

Street, 4th Floor, Richmond, VA, 23219, telephone (804) 225-2252, or email ruthanne.walker@dbhds.virginia.gov.

V.A.R. Doc. No. PFR22-32; Filed July 21, 2022, 1:58 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF DENTISTRY

Agency Decision

Title of Regulation: **18VAC60-25. Regulations Governing the Practice of Dental Hygiene.**

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

Name of Petitioner: Joyce Turcotte.

Nature of Petitioner's Request: Acceptance of a refresher course that is a dental hygiene program recognized by the American Dental Association and American Academy of Dental Hygiene for license reinstatement for experienced dental hygienists.

Agency Decision: Request granted.

Statement of Reason for Decision: The Board of Dentistry considered this issue at its meeting on June 10, 2022. The board decided to initiate rulemaking to implement this requested change, as well as similar changes to the regulations governing dentists and dental assistants II.

Agency Contact: Jamie Sacksteder, Acting Executive Director, Board of Dentistry, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4581, or email jamie.sacksteder@dhp.virginia.gov.

V.A.R. Doc. No. PFR22-20; Filed July 13, 2022, 2:26 p.m.

BOARD OF SOCIAL WORK

Initial Agency Notice

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

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

Name of Petitioner: Joseph Lynch, LCSW.

Nature of Petitioner's Request: The petitioner requests that the Board of Social Work amend 18VAC140-20-50, which provides the experience requirements for a licensed clinical social worker, to require a supervisee working toward becoming a licensed clinical social worker to obtain licensure as a licensed master's social worker while obtaining required experience under supervision.

Agency Plan for Disposition of Request: The petition for rulemaking will be published in the Virginia Register of Regulations on August 15, 2022, and on the Virginia Regulatory Town Hall. Public comment opens August 15, 2022, and closes September 14, 2022. The Board of Social Work will consider the petition and all comments in support or opposition at its meeting currently scheduled for September 23, 2022. The petitioner will be notified of the board's decision after that meeting.

Public Comment Deadline: September 14, 2022.

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

VA.R. Doc. No. PFR22-42; Filed July 20, 2022, 1:26 p.m.

PERIODIC REVIEWS AND SMALL BUSINESS IMPACT REVIEWS

TITLE 2. AGRICULTURE

BOARD OF AGRICULTURE AND CONSUMER SERVICES

Agency Notice

Pursuant to Executive Order 19 (2022) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the following regulation is undergoing a periodic review and a small business impact review: **2VAC5-195, Prevention and Control of Avian Influenza in the Live-Bird Marketing System**. The review will be guided by the principles in Executive Order 19 (2022). The purpose of this review is to determine whether this regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

Public comment period begins August 15, 2022, and ends September 5, 2022.

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

Agency Notice

Pursuant to Executive Order 19 (2022) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the following regulation is undergoing a periodic review and a small business impact review: **2VAC5-210, Rules and Regulations Pertaining to Meat and Poultry Inspection under the Virginia Meat and Poultry Products Inspection Act**. The review will be guided by the principles in Executive Order 19 (2022). The purpose of this review is to determine whether this regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

Public comment period begins August 15, 2022, and ends September 5, 2022.

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

Agency Notice

Pursuant to Executive Order 19 (2022) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the following regulation is undergoing a periodic review and a small business impact review: **2VAC5-250, Rules and Regulations Relating to Grain Dealers Licensing and Bonding Law**. The review will be guided by the principles in Executive Order 19 (2022). The purpose of this review is to determine whether this regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

Public comment period begins August 15, 2022, and ends September 5, 2022.

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

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 a small business impact review: **2VAC5-318, Rules and Regulations for Enforcement of the Virginia Pest Law - Thousand Cankers Disease; 2VAC5-320, Regulations for the Enforcement of the Endangered Plant and Insect Species Act; 2VAC5-321, Regulation of the Harvest and Purchase of Wild Ginseng;**

Periodic Reviews and Small Business Impact Reviews

2VAC5-410, Rules and Regulations for the Enforcement of the Virginia Agricultural Liming Materials Law; and 2VAC5-450, Rules and Regulations Relating to the Virginia Plants and Plant Products Inspection Law.

The review of each regulation will be guided by the principles in Executive Order 19 (2022). The purpose of this review is to determine whether each regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to these regulations, including whether each regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

Public comment period begins August 15, 2022, and ends September 5, 2022.

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

Agency Notice

Pursuant to Executive Order 19 (2022) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the following regulation is undergoing a periodic review and a small business impact review: **2VAC5-425, Vapor Pressure Requirements for Gasoline Ethanol Blends**. The review will be guided by the principles in Executive Order 19 (2022). The purpose of this review is to determine whether this regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

Public comment period begins August 15, 2022, and ends September 5, 2022.

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

Agency Notice

Pursuant to Executive Order 19 (2022) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the following regulation is undergoing a periodic review and a small business impact review: **2VAC5-600, Regulations Pertaining to Food for Human Consumption**. The review will be guided by the principles in Executive Order 19 (2022). The purpose of this review is to determine whether this regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

Public comment period begins August 15, 2022, and ends September 5, 2022.

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

STATE MILK COMMISSION

Agency Notice

Pursuant to Executive Order 19 (2022) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the following regulation is undergoing a periodic review and a small business impact review: **2VAC15-20, Regulations for the Control and Supervision of Virginia's Milk Industry**. The review will be guided by the principles in Executive Order 19 (2022). The purpose of this review is to determine whether this regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

Periodic Reviews and Small Business Impact Reviews

Public comment period begins August 15, 2022, and ends September 5, 2022.

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: Crafton Wilkes, Administrator, State Milk Commission, Oliver Hill Building, 102 Governor Street, Room 206, Richmond, VA 23218, telephone (804) 786-2013.



TITLE 12. HEALTH

STATE BOARD OF HEALTH

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Board of Health conducted a periodic review and a small business impact review of **12VAC5-66, Regulations Governing Durable Do Not Resuscitate Orders**, and determined that this regulation should be amended. The board is publishing its report of findings dated July 20, 2022, to support this decision.

The regulation is necessary for the protection of public health, safety, and welfare and intend to achieve that objective in the most efficient and cost-effective manner by providing clarity to health care providers regarding an individual's end of life health care decisions. The regulation is, for the most part, clearly written and easy to understand for health care providers, patients, and patients' families.

Following a periodic review, the State Board of Health will amend the regulation to ensure that the language reflects the most up-to-date information available and conforms to Virginia Administrative Code style and form.

There is a continued need for the regulation. Sections 32.1-111.4, 32.1-111.5, and 54.1-2987.1 of the Code of Virginia require and rely on the regulation. Additionally, the regulation is necessary for providing clear direction regarding how to honor a patient's end of life health care wishes within Virginia. A public comment was received regarding "required reconsideration" of a valid Do Not Resuscitate (DNR) Order as part of the informed consent process for certain operative procedures. Comments discussed the need for clarification on the regulation as it applies to situations where there is a "required reconsideration" of a DNR during surgery or procedures. For example, although there is a DNR order, there are circumstances in which a patient may benefit from some surgery or other procedures to improve their quality of life. Consequently, during such procedure, resuscitative procedures

would not be performed in the event of cardiac or respiratory arrest for patients with a DNR order.

The regulation is not complex and does not overlap, duplicate, or conflict with federal or state law or regulation. The last comprehensive review and amendment to the regulation occurred in 2016, and since that time there has been no significant change to the technology, economic conditions, or other factors in the areas affected by the regulation. Most hospitals, physician offices, and nursing facilities are not considered small businesses. Additionally, the regulation does not require actions that should result in additional expenditure of resources. As such, the regulation does not create any adverse impact on small businesses in Virginia.

Contact Information: Michael Capps, Legislative and Regulatory Coordinator, Virginia Department of Health, James Madison Building, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7190.

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Board of Health conducted a periodic review and a small business impact review of **12VAC5-195, Virginia WIC Program**, and determined that this regulation should be amended. The board is publishing its report of findings dated June 1, 2022, to support this decision.

The regulation is necessary for the protection of public health, safety, and welfare of women, infants, and children served by the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) in the Commonwealth of Virginia. The regulation is clearly written and understandable.

The Virginia Department of Health (VDH) is recommending the regulation be amended to reflect updated language and current program practices relevant to the regulation.

There is a continued need for the regulation because the Virginia WIC Program provides nutritious foods to supplement diets; information on healthy eating; and referrals to health care for women, infants, and children throughout the Commonwealth. This regulation establishes the requirements for the provision of WIC services. The regulation is clearly written and easily understandable. The regulation does not overlap, duplicate, or conflict with any known federal or state law or regulation. Regulations are evaluated on an ongoing basis and this regulation was last amended effective July 2019 as a result of a periodic review. VDH does not anticipate that amending the regulation will have an adverse economic impact on small businesses in the Commonwealth.

Contact Information: Robin Buskey, Policy Analyst, Office of Family Health Services, Virginia Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 863-7253.

Periodic Reviews and Small Business Impact Reviews

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Board of Health conducted a periodic review and a small business impact review of **12VAC5-501, Rules and Regulations Governing the Construction and Maintenance of Migrant Labor Camps**, and determined that this regulation should be amended. The board is publishing its report of findings dated March 22, 2022, to support this decision.

The regulation is necessary for the protection of public health, safety, and welfare. The regulation provides standards for the permitting of migrant labor camps in the Commonwealth. Such standards address the following areas of public health and safety: permitting requirements, trash and garbage collections, requirements for approved water supply, storage of hazard material, and conformity with the Uniform Statewide Building Code and select occupational safety and health standards as prescribed by the Virginia Safety and Health Codes Board (SHCB). Such standards are necessary to protect the public health, safety, and welfare of migrant laborers. In addition, the regulation is clearly written and understandable.

The regulation has not undergone a comprehensive review since its initial administrative codification, approximately 20 years ago. The regulation, in its current form, does not reflect existing industry standards, changes in technology or safety, and no longer aligns with other regulations that govern food safety and disease prevention. The agency is recommending that the regulation be amended.

Section 32.1-211 B of the Code of Virginia gives authority to the State Board of Health to adopt regulations governing migrant labor camps as a supplement to the occupational safety and health regulations adopted by the SHCB pursuant to Chapter 3 (§ 40.1-22 et seq.) of Title 40.1 of the Code of Virginia. The continued need for the regulation is necessary as it outlines public health standards and supplements the regulations adopted by the SHCB.

VDH received a public comment requesting an increase in inspection frequency, amending standards for sanitation, the addition of H-2B workers to its regulatory authority, additional standards for safety (cooling standards), and other recommendations.

The regulation is clearly written and easily understandable; however, several sections are outdated or no longer relevant, may conflict with other state regulations, and do not reflect or reference current standards related to the health, safety, and welfare of migrant labor camps. It has been several decades since the regulation has undergone amendment, and an evaluation is necessary to determine how or if technology, economic conditions, or other factors could have an impact on the regulated population or the general public.

As the agency is recommending to amend the regulation, staff will engage with stakeholders and the regulated community

regarding any proposed amendments to minimize the economic impact of the regulation on small businesses while maintaining appropriate regulatory standards to ensure the safety, health, and welfare of the public.

Contact Information: Julie Henderson, Director, Office of Environmental Health Services, Virginia Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7001.

REGULATIONS

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

Symbol Key

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

TITLE 2. AGRICULTURE

BOARD OF AGRICULTURE AND CONSUMER SERVICES

Final Regulation

REGISTRAR'S NOTICE: The Board of Agriculture and Consumer Services is claiming an exemption from the Administrative Process Act pursuant to § 3.2-5145.5 of the Code of Virginia. Prior to adopting such regulation, the board must publish a notice of opportunity to comment in the Virginia Register of Regulations. Such notice of opportunity to comment shall contain (i) a summary of the proposed regulation; (ii) the text of the proposed regulation; and (iii) the name, address, and telephone number of the agency contact person responsible for receiving public comments and shall be made at least 60 days in advance of the last date prescribed in such notice for submittals of public comment. The board shall also consider and keep on file all public comments received for such regulation adopted pursuant to § 3.2-5145.5 of the Code of Virginia.

Title of Regulation: **2VAC5-595. Regulations Governing the Manufacturing and Sale of Products that Contain Industrial Hemp Extracts Intended for Human Consumption (adding 2VAC5-595-10 through 2VAC5-595-60).**

Statutory Authority: § 3.2-5145.5 of the Code of Virginia.

Effective Date: August 15, 2022.

Agency Contact: Ryan Davis, Program Manager, Office of Dairy and Foods, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-8899, FAX (804) 371-7792, TDD (800) 828-1120, or email ryan.davis@vdacs.virginia.gov.

Summary:

Pursuant to Chapters 659 and 660 of the 2020 Acts of Assembly, which created a new article in the Virginia Food and Drink Law establishing requirements for the production, distribution, and sale of industrial hemp extracts intended for human consumption, this new regulation establishes a regulatory framework and standards for industrial hemp extract manufacturers. The regulation (i) identifies specific potential contaminants of industrial hemp extract or a food containing an industrial hemp extract and establishes tolerances for these contaminants; (ii) establishes labeling requirements for an industrial hemp extract or a food containing an industrial

hemp extract; and (iii) provides testing requirements for industrial hemp extracts and criteria for independent testing laboratories that conduct required batch testing of industrial hemp extracts.

Amendments to the proposed regulation are in response to comments received during the required public comment period and language included in the 14th enactment clause of Item 4-14 of the 2022 Appropriation Act in § 3.2-5145.5 C of the Code of Virginia. The proposed regulation underwent a 60-day public comment period from November 8, 2021, through January 7, 2022, during which the agency received approximately 10 comments, with the primary concerns being the definition of "cannabinoid" and the regulation of delta-8 tetrahydrocannabinol (THC) products. The 2022 Appropriation Act mandates that this regulation address additional labeling requirements, which have been incorporated into the final regulation. Therefore the amendments to the proposed regulation include (i) clarifying the definition of "cannabinoid"; (ii) replacing language specifying contaminant limits for microbiological, mycotoxins, and heavy metals and pesticide chemical residue tolerances with references to identical limits for these contaminants established in the Board of Pharmacy's regulation that pertains to cannabis products produced by permitted pharmaceutical processors; and (iii) adding requirements for the package label of an industrial hemp extract that contains THC or food containing an industrial hemp extract that contains THC to reflect the mandatory labeling requirements established by the language in Item 4-14 of the 2022 Appropriation Act.

Chapter 595

Regulations Governing the Manufacturing and Sale of Products that Contain Industrial Hemp Extracts Intended for Human Consumption

2VAC5-595-10. Definitions.

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

"Approved source" means a manufacturer of an industrial hemp extract or food containing an industrial hemp extract that operates (i) under inspection by the responsible food regulatory agency in the location in which such manufacturing occurs and (ii) in compliance with the laws, regulations, or criteria that pertain to the manufacturer of an industrial hemp extract or food containing an industrial hemp extract in the location in which such manufacturing occurs.

"Batch" means a specific quantity of an industrial hemp extract that is uniform and is produced during a specified period of time under similar conditions and identified by a specific code that allows traceability.

"Cannabinoid" means a naturally-occurring, biologically active, chemical constituent of Cannabis sativa [~~including cannabidiol (CBD), cannabidiolic acid (CBDA), delta-9-tetrahydrocannabinol (THC), and delta-9-tetrahydrocannabinolic acid (THCA)].~~

"Consumer" means a person who (i) purchases an industrial hemp extract or a food containing an industrial hemp extract for personal use, (ii) is not functioning in the capacity of an operator of a food establishment or food processing plant, and (iii) does not offer the industrial hemp extract or food containing an industrial hemp extract for resale.

"Consumption" means oral ingestion.

"Contaminant" means any substance not intended to be an ingredient in a food and that is potentially harmful to the consumer.

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

"Extract" means a naturally occurring phytochemical produced by the industrial hemp plant that has been removed from the inert structural material of the plant.

"Food" means any article that is intended for human consumption and introduction into commerce, whether the article is simple, mixed, or compound, and all substances or ingredients used in the preparation thereof. "Food" does not mean a drug as defined in § 54.1-3401 of the Code of Virginia. "Food" includes a dietary supplement.

"Industrial hemp" means any part of the plant Cannabis sativa with a concentration of tetrahydrocannabinol that is no greater than that allowed by federal law.

"Industrial hemp extract" means an extract (i) of a Cannabis sativa plant that has a concentration of tetrahydrocannabinol that is no greater than that allowed for hemp by federal law and (ii) that is intended for human consumption.

"Manufacturer" means a person that (i) produces a packaged food or a food intended to be used as an ingredient in a food and (ii) offers the food for sale directly to consumers or for wholesale distribution. "Manufacturer" does not include a person that adds an industrial hemp extract to food for immediate consumption by consumers in a retail food establishment or at a farmers' market, if that person did not produce the industrial hemp extract.

"Phytochemical" means any naturally occurring chemical compound in a plant.

"Processor" means a person registered pursuant to subsection A of § 3.2-4115 of the Code of Virginia to process industrial hemp.

"Production field" means the land or area on which a grower is growing or intends to grow industrial hemp.

"Retail food establishment" means a food business regulated under and operating in compliance with the Retail Food Establishment Regulations (2VAC5-585) and Chapter 51 (§ 3.2-5100 et seq.) of Title 3.2 of the Code of Virginia.

"Retail sale" means the sale of a product directly to a consumer.

"Total delta-9 tetrahydrocannabinol concentration" means the post-decarboxylation delta-9 tetrahydrocannabinol concentration, which can be determined using the following equation [delta-9 tetrahydrocannabinol] + (0.877 x [tetrahydrocannabinolic acid]).

"Wholesale distribution" means the sale of a product to an intermediate entity that intends to further distribute that product for retail sale.

2VAC5-595-20. Regulated articles.

Industrial hemp extracts and foods containing an industrial hemp extract are subject to the provisions of this chapter.

2VAC5-595-30. Inspection required.

A. A person that manufactures an industrial hemp extract in Virginia and introduces that industrial hemp extract into commerce shall first be inspected by the department for compliance with the requirements in 2VAC5-595-50.

B. To apply for an inspection to manufacture an industrial hemp extract or to introduce an industrial hemp extract into commerce, a person must:

1. Submit an application on a form provided by the [~~commissioner~~ department]; and
2. Provide documentation of an unexpired Industrial Hemp Processor Registration issued pursuant to subsection A of § 3.2-4115 of the Code of Virginia.

2VAC5-595-40. General requirements.

A. A manufacturer shall produce an industrial hemp extract in compliance with Chapter 51 (§ 3.2-5100 et seq.) of Title 3.2 of the Code of Virginia and Regulations Pertaining to Food for Human Consumption (2VAC5-600), including 21 CFR Part 117.

B. Notwithstanding subsection A of this section, a manufacturer shall produce an industrial hemp extract or food containing an industrial hemp extract in compliance with 21 CFR Part 111 if the industrial hemp extract or food containing an industrial hemp extract is:

Regulations

1. Produced in a tablet, capsule, powder, softgel, or gel cap form;

2. Labeled with a panel titled "Supplement Facts"; or

3. Labeled with a statement that describes the role of a nutrient or ingredient intended to affect the structure or function in humans or that characterizes the documented mechanism by which a nutrient or ingredient acts to maintain such structure or function.

C. The manufacture or sale of food that contains an industrial hemp extract is not eligible for the exemption from inspection provided in § 3.2-5130 of the Code of Virginia.

D. A person offering for sale a food containing an industrial hemp extract shall obtain the industrial hemp extract from an approved source.

2VAC5-595-50. Laboratory testing required for contaminants and phytochemicals of an industrial hemp extract or a food containing an industrial hemp extract.

A. If an industrial hemp extract is used as an ingredient in a food and that industrial hemp extract was produced by a manufacturer that is an approved source pursuant to § 3.2-5145.3 of the Code of Virginia, that food containing an industrial hemp extract is not subject to the testing requirements prescribed in this section. However, a food containing an industrial hemp extract that contains any contaminant in an amount that exceeds an acceptable criteria or tolerance established in this section is adulterated.

B. A manufacturer of an industrial hemp extract shall submit for laboratory analysis a sample from each batch of industrial hemp extract the manufacturer produces. Such laboratory analysis shall only be performed by a laboratory that meets the requirements prescribed in subsection E of this section.

C. A batch whose sample contains any contaminant in an amount that exceeds an acceptable criteria or tolerance established in this section is adulterated. A manufacturer of an industrial hemp extract may not offer for sale or sell any industrial hemp extract from a batch whose sample contains any contaminant in an amount that exceeds an acceptable criteria or tolerance established in this section.

D. A manufacturer of an industrial hemp extract may not offer for sale or sell any industrial hemp extract from a batch whose sample does not contain the cannabinoid or phytochemical concentration claimed on the label for the industrial hemp extract.

E. The laboratory analysis required in subsection B of this section shall be performed by a laboratory that:

1. Has no direct or indirect financial interest in a manufacturer of an industrial hemp extract or in any other entity that may benefit from the production, manufacture, sale, purchase, or use of an industrial hemp extract or product containing an industrial hemp extract. Additionally,

no person with a direct or indirect financial interest in the laboratory shall have a direct or indirect financial interest in a manufacturer of an industrial hemp extract or in any other entity that may benefit from the production, manufacture, sale, purchase, or use of an industrial hemp extract or product containing an industrial hemp extract.

2. Employs 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 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.

F. The microbiological content in a sample from a batch of industrial hemp extract shall [~~not exceed the following acceptable criteria:~~

<u>Microbiological</u>	<u>Acceptable criteria</u>
<u>Total Aerobic Microbial Count</u>	<u>< 1,000 cfu/g or cfu/ml</u>
<u>Total Combined Yeast and Mold Count</u>	<u>< 100 cfu/g or cfu/ml</u>
<u>Escherichia coli</u>	<u>Absent in 1 g or 1 ml</u>

meet the standard for the microbiological test established in 18VAC110-60-300.]

G. The mycotoxin content in a sample from a batch of industrial hemp extract shall [~~not exceed the following acceptable criteria:~~

<u>Mycotoxin</u>	<u>Acceptable criteria</u>
<u>Aflatoxin (total)</u>	<u>< 20 ppb (20 ug/kg)</u>
<u>Ochratoxin A</u>	<u>< 20 ppb (20 ug/kg)</u>

meet the standard for the mycotoxin test established in 18VAC110-60-300.]

H. The heavy metal content in a sample from a batch of industrial hemp extract shall [~~not exceed the following acceptable criteria:~~

<u>Heavy metal</u>	<u>Acceptable criteria</u>
<u>Arsenic</u>	<u>< 10 ppm</u>
<u>Cadmium</u>	<u>< 4.1 ppm</u>
<u>Lead</u>	<u>< 10 ppm</u>
<u>Mercury</u>	<u>< 2 ppm</u>

meet the standard for the heavy metal test established in 18VAC110-60-300.]

I. The residual solvent content in a sample from a batch of industrial hemp extract shall not exceed the following acceptable criteria:

Residual solvent	Acceptable criteria
<u>1,2-Dichloroethene</u>	<u>5 ppm</u>
<u>1,1-Dichloroethene</u>	<u>8 ppm</u>
<u>Acetone</u>	<u>5,000 ppm</u>
<u>Acetonitrile</u>	<u>410 ppm</u>
<u>Benzene</u>	<u>2 ppm</u>
<u>Butane</u>	<u>2,000 ppm</u>
<u>Chloroform</u>	<u>60 ppm</u>
<u>Ethanol</u>	<u>5,000 ppm</u>
<u>Ethyl Acetate</u>	<u>5,000 ppm</u>
<u>Ethyl Ether</u>	<u>5,000 ppm</u>
<u>Ethylene Oxide</u>	<u>5 ppm</u>
<u>Heptane</u>	<u>5,000 ppm</u>
<u>Hexane</u>	<u>290 ppm</u>
<u>Isopropyl Alcohol</u>	<u>500 ppm</u>
<u>Methanol</u>	<u>3,000 ppm</u>
<u>Methylene Chloride</u>	<u>600 ppm</u>
<u>Pentane</u>	<u>5,000 ppm</u>
<u>Propane</u>	<u>2,100 ppm</u>
<u>Toluene</u>	<u>890 ppm</u>
<u>Trichloroethylene (1,1,2-Trichloroethene)</u>	<u>80 ppm</u>
<u>Xylenes, Total (ortho-, meta-, para-)</u>	<u>2,170 ppm</u>

J. Any pesticide applied to industrial hemp or during the processing of industrial hemp must be done so in accordance with the label of that pesticide and in compliance with the Virginia Pesticide Control Act (§ 3.2-3900 et seq. of the Code of Virginia) and regulations adopted thereunder. For at least three years, the manufacturer of an industrial hemp extract shall maintain pesticide application records for the industrial hemp from which it produces the industrial hemp extract.

K. The pesticide chemical residue content in a sample from a batch of industrial hemp extract shall [~~not exceed the most stringent tolerance for a pesticide chemical residue in any food item as set forth by the U.S. Environmental Protection Agency's regulations for Tolerances and Exemptions for Pesticide Chemical Residues in Food in 40 CFR Part 180, Subpart C~~ meet the standard for the pesticide chemical residue test established in 18VAC110-60-300]. Pesticide chemical

residue testing shall include testing for carbamates, organochlorines, and [~~organophosphates~~ organophosphates].

L. The total delta-9 tetrahydrocannabinol concentration of a sample from a batch of industrial hemp extract shall not exceed 0.3%.

M. If a manufacturer labels an industrial hemp extract as having any amount of a cannabinoid, a sample from a batch of the industrial hemp extract shall be tested and shall have the claimed amount of the cannabinoid. If a manufacturer labels an industrial hemp extract as having any amount of phytochemical, including a terpene or flavonoid, a sample from a batch of the industrial hemp extract shall be tested and shall have the claimed amount of the phytochemical.

N. If batch testing of industrial hemp extracts from industrial hemp grown in a specific production field consistently shows that levels of contaminants do not exceed the limits established in this chapter, the frequency of batch testing by the manufacturer may be adjusted after consultation with the department. The manufacturer shall retain documentation of the reasoning for adjustment of batch testing frequency and the recommendation of the department and make such available to the department on request.

O. The manufacturer shall maintain industrial hemp extract testing records for at least three years.

2VAC5-595-60. Labeling of industrial hemp extracts and foods containing an industrial hemp extract.

A. For the purpose of this chapter, label or labeling includes the label on the packaging of an industrial hemp extract or food containing an industrial hemp extract as well as any brochure, advertisement, information on social media or on any website, or any other form of product marketing.

B. An industrial hemp extract or food containing an industrial hemp extract shall be labeled in accordance with 21 CFR Part 101 and Chapter 51 (§ 3.2-5100 et seq.) of Title 3.2 of the Code of Virginia.

C. Notwithstanding subsection B of this section, a manufacturer shall label an industrial hemp extract or food containing an industrial hemp extract in compliance with the labeling provisions for dietary supplements in 21 CFR Part 101 and Chapter 51 (§ 3.2-5100 et seq.) of Title 3.2 of the Code of Virginia if the industrial hemp extract or food containing an industrial hemp extract is:

1. Produced in a tablet, capsule, powder, softgel, or gel cap form;
2. Labeled with a panel titled "Supplement Facts"; or
3. Labeled with a statement that describes the role of a nutrient or ingredient intended to affect the structure or function in humans or that characterizes the documented mechanism by which a nutrient or ingredient acts to maintain such structure or function.

Regulations

D. If a manufacturer labels an industrial hemp extract or food containing an industrial hemp extract as containing a specific cannabinoid or concentration thereof, the number of milligrams of [~~each such~~] cannabinoid must be declared on the product label. The manufacturer must make and maintain records verifying the declared amount of cannabinoid. Such records may include a recipes, formulation, or batch record.

E. The label of an industrial hemp extract or food containing an industrial hemp extract shall not contain a claim indicating the product is intended for diagnosis, cure, mitigation, treatment, or prevention of disease, which shall render the product a drug, as that term is defined in 21 USC § 321(g)(1). An industrial hemp extract or food containing an industrial hemp extract with a label that contains a claim indicating the product is intended for diagnosis, cure, mitigation, treatment, or prevention of disease is not a food and shall be considered misbranded.

F. A manufacturer shall identify each batch of an industrial hemp extract or a food containing an industrial hemp extract with a unique code for traceability. Julian date coding or any other system developed and documented by the manufacturer for assigning a unique code to a batch may be used. The batch identification shall appear and be legible on the industrial hemp extract label.

G. The label of an industrial hemp extract [~~or a food containing an industrial hemp extract shall include a statement that the product contains a total delta-9 tetrahydrocannabinol concentration that does not exceed 0.3% or shall state the specific total delta-9 tetrahydrocannabinol concentration of the product~~ that contains tetrahydrocannabinol or a food containing an industrial hemp extract that contains tetrahydrocannabinol must be equipped with a label that states:

1. That the industrial hemp extract or food containing an industrial hemp extract contains tetrahydrocannabinol and may not be sold to a person younger than 21 years of age;
2. All ingredients contained in the industrial hemp extract or food containing an industrial hemp extract;
3. The amount of such industrial hemp extract or food containing an industrial hemp extract that constitutes a single serving; and
4. The total percentage and milligrams of tetrahydrocannabinol included in the industrial hemp extract or food containing an industrial hemp extract and the number of milligrams of tetrahydrocannabinol that are contained in each serving].

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

FORMS (2VAC5-595)

[~~Application for Manufacturer of an Industrial Hemp-Derived Extract Intended for Human Consumption, ODF FSP-10595 (eff. 12/2020)~~

[Application for Manufacturer of an Industrial Hemp-Derived Extract Intended for Human Consumption, VDACS-FSP-APPIH \(rev. 6/2022\)](#)]

VA.R. Doc. No. R22-6441; Filed July 27, 2022, 6:07 a.m.

TITLE 9. ENVIRONMENT

VIRGINIA WASTE MANAGEMENT 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, 900 East Main Street, 11th Floor, Richmond, Virginia 23219.

Title of Regulation: 9VAC20-90. Solid Waste Management Permit Action Fees and Annual Fees.

Agency Contact: Sanjay Thirunagari, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 659-1532, FAX (804) 698-4178, or email sanjay.thirunagari@deq.virginia.gov.

FORMS (9VAC20-90)

[Solid Waste Information and Assessment Program Reporting Table, Form DEQ 50-25 with Statement of Economic Benefits Form and Instructions \(rev. 12/2018\)](#)

~~Solid Waste Annual Permit Fee Quarter Payment, Form PF001 (rev. 6/2021)~~

[Solid Waste Annual Permit Fee Quarter Payment Form PF001 \(rev. 7/2022\)](#)

VA.R. Doc. No. R22-7322; Filed July 20, 2022, 3:23 p.m.

STATE WATER CONTROL BOARD

Final Regulation

REGISTRAR'S NOTICE: The State Water Control Board is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved. The board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: 9VAC25-900. Certification of Nonpoint Source Nutrient Credits (amending 9VAC25-900-10, 9VAC25-900-30, 9VAC25-900-40, 9VAC25-900-150, 9VAC25-900-160, 9VAC25-900-230, 9VAC25-900-270, 9VAC25-900-280, 9VAC25-900-350; repealing 9VAC25-900-20).

Statutory Authority: § 62.1-44.19:20 of the Code of Virginia.

Effective Date: September 14, 2022.

Agency Contact: Allan Brockenbrough, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 836-2321, FAX (804) 698-4178, or email allan.brockenbrough@deq.virginia.gov.

Summary:

Pursuant to Chapters 356 and 422 of the 2022 Acts of Assembly, the amendments (i) limit the authority of the State Water Control Board to the issuance of regulations and transfers authority to issue permits and orders to the Department of Environmental Quality and (ii) allow the department to use third-party long-term stewards to hold and manage the long-term management fund to maintain stream restoration projects.

9VAC25-900-10. Definitions.

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

"300 animal units" means the term as defined in 9VAC25-192-10.

"Act" means the Chesapeake Bay Watershed Nutrient Credit Exchange Program, Article 4.02 (§ 62.1-44.19:12 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia.

"Animal feeding operation" means the term as defined by 9VAC25-31-10.

"Applicant" means the person who submits an application to the department for nutrient credit certification pursuant to this chapter.

"Bankfull event" means the storm event that corresponds with the stream stage at its incipient point of flooding. The bankfull

discharge associated with the bankfull event is the flow that transports the majority of a stream's sediment load over time and thereby forms and maintains the channel dimension, pattern, and profile.

"Baseline" means the practices, actions, or levels of reductions that must be in place before credits can be generated. The best management practices to be implemented for achieving baseline are provided in 9VAC25-900-100.

"Best management practice," "practice," or "BMP" means a structural practice, nonstructural practice, or other management practice used to prevent or reduce nutrient loads reaching surface waters or the adverse effects thereof.

"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.

"Certification of nutrient credits" or "nutrient credit certification" means the approval of nutrient credits issued by the department as specified in 9VAC25-900-80. Nutrient credit certification does not include the certification of point source credits generated by point sources regulated under the Watershed General Virginia Pollutant Discharge Elimination System Permit issued pursuant to § 62.1-44.19:14 of the State Water Control Law.

"Chesapeake Bay Watershed" means the land areas draining to the following Virginia river basins: the Potomac River Basin, the James River Basin, the Rappahannock River Basin, the Chesapeake Bay and small coastal basins, or the York River Basin.

"Concentrated animal feeding operation" means the term as defined by 9VAC25-31-10.

"Cropland" means land that is used for the production of grain, oilseeds, silage or industrial crops not defined as hay or pasture.

"DCR" means the Department of Conservation and Recreation.

"Delivery factor" means the estimated percentage of a total nitrogen or total phosphorus load delivered to tidal waters as determined by the specific geographic location of the nutrient source. For point source discharges the delivery factor accounts for attenuation that occurs during riverine transport between the point of discharge and tidal waters. For nonpoint source loads the delivery factor accounts for attenuation that occurs during riverine transport as well as attenuation between the nutrient source and the edge of the nearest stream. Delivery factors values shall be as specified by the department. In the Chesapeake Bay Watershed, the Chesapeake Bay Program Partnership's approved delivery factors shall be used.

"Department" means the Department of Environmental Quality.

Regulations

"Director" means the Director of the Department of Environmental Quality or his designee.

"Exchange" means the transaction in which a person acquires released nutrient credits produced by a nutrient credit-generating project.

"Field office technical guide" or "FOTG" means technical guides about conservation of soil, water, air, and related plant and animal resources and are the primary scientific reference for the U.S. Department of Agriculture's Natural Resource Conservation Service. These guides are used in each field office and are localized so that they apply specifically to the geographic area for which they are prepared.

"Hayland" means land that is used to grow a grass, legume, or other plants such as clover or alfalfa, which is cut and dried for feed.

"Highly erodible soils" means land that is defined as highly erodible by the Sodbuster, Conservation Reserve, and Conservation Compliance parts of the Food Security Act of 1985 (P.L. 99-198) and the Food, Agriculture, Conservation, and Trade Act of 1990 (P.L. 101-624). Lists of highly erodible and potential highly erodible map units are maintained in NRCS field office technical guide.

"HUC" means the hydrologic unit code.

"Impaired waters" means those waters identified as impaired in the 305(b)/303(d) Water Quality Assessment Integrated Report prepared pursuant to § 62.1-44.19:5 of the State Water Control Law.

"Implementation plan" means a plan that has been developed to meet the requirements of 9VAC25-900-120 and is submitted as part of the application.

"Invasive plant species" means non-native plant species that are contained on DCR's Virginia Invasive Plant Species List.

"Innovative practice" means practices or BMPs not approved by the Chesapeake Bay Program Partnership or the Virginia Stormwater BMP Clearinghouse. Nutrient credits generated by innovative practices may only be certified as term credits.

"Landowner" means any person or group of persons acting individually or as a group that owns the parcel on which a nutrient credit-generating project is sited including: (i) the Commonwealth or any of its political subdivisions, including localities, commissions, and authorities; (ii) any public or private institution, corporation, association, firm, or company organized or existing under the laws of this or any other state or country; or (iii) any officer or agency of the United States.

"Land use controls" means legal measures or instruments that restrict the activity, use, and access to property.

"Land use conversion" means a change from a more intensive to less intensive land use resulting in nutrient reductions.

"Management area" means all contiguous parcels deeded to the same landowner that includes the site of the nutrient credit-generating project within its boundaries. The term contiguous means the same or adjacent parcels that may be divided by public or private right-of-way. For a public entity that owns or operates an MS4 and generates credits within the MS4 service area, the management area is the MS4 service area.

"Mitigation" means sequentially avoiding and minimizing impacts to the maximum extent practicable and then compensating for remaining unavoidable impacts of a proposed action.

"Mitigation bank" means a site providing off-site, consolidated compensatory mitigation that is developed and approved in accordance with all applicable federal and state laws or regulations for the establishment, use and operation of mitigation banks and is operating under a signed mitigation banking instrument.

"Mitigation banking instrument" means the legal document for the establishment, operation, and use of a stream or wetland mitigation bank.

"MS4" means a municipal separate storm sewer system as defined in 9VAC25-870-10.

"MS4 service area" means (i) for Phase I MS4 permittees, the service area delineated in accordance with the permit issued pursuant to 9VAC25-870-380 A 3; and (ii) for Phase II MS4 permittees, the term as described in 9VAC25-890.

"Non-land use conversion" means practices, except for land use conversion, that are used by a nutrient credit-generating project to produce nutrient reductions.

"Nonpoint source pollution" or "nonpoint source" means pollution such as sediment, nitrogen, phosphorus, hydrocarbons, heavy metals, and toxics whose sources cannot be pinpointed but rather are washed from the land surface in a diffuse manner by stormwater runoff.

"NRCS" mean the U.S. Department of Agriculture's Natural Resource Conservation Service.

"Nutrient credit" or "credit" means a nonpoint source nutrient reduction that is certified pursuant to this chapter and expressed in pounds of phosphorus and nitrogen either (i) delivered to tidal waters when the credit is generated within the Chesapeake Bay Watershed or (ii) as otherwise specified when generated in the Southern Rivers watersheds. Nutrient credit does not include point source nitrogen credits or point source phosphorus credits as defined in § 62.1-44.19:13 of the Code of Virginia.

"Nutrient credit-generating entity" means an entity that implements practices for the generation of nonpoint source nutrient credits.

"Nutrient credit-generating project" or "project" means a project developed to reduce the load of nitrogen and

phosphorous nonpoint source pollution in order to generate nutrient credits for certification pursuant to this chapter.

"Nutrient reductions" means the reduction in the load of nitrogen and phosphorous nonpoint source pollution.

"Owner" means the Commonwealth or any of its political subdivisions, including sanitation district commissions and authorities and any public or private institution, corporation, association, firm, or company organized or existing under the laws of this or any other state or country, or any officer or agency of the United States, or any person or group of persons acting individually or as a group that owns, operates, charters, rents, or otherwise exercises control over or is responsible for any nutrient credit-generating project.

"Pasture" means land that supports the grazing of domesticated animals for forages.

"Performance standards" means the minimum objectives or specifications required of a particular management practice by the department in order to assure predicted nutrient reductions will be achieved.

"Perpetual nutrient credits" or "perpetual credits" mean credits that are generated by practices that result in permanent nutrient reductions from baseline and certified as permanent in accordance with this chapter.

"Person" means any individual, corporation, partnership, association, state, municipality, commission, or political subdivision of a state, governmental body, including a federal, state, or local entity as applicable, any interstate body or any other legal entity.

"Potential nutrient credits" means the possible credits generated by a nutrient credit-generating project as calculated pursuant to 9VAC25-900-110. These potential nutrient credits shall be expressed in terms of the estimated number of phosphorus and nitrogen credits generated.

"Redevelopment" means a project that includes new development on previously developed land.

"Registry" means the online Virginia Nutrient Credit Registry established and maintained by the department in accordance with § 62.1-44.1.19:20 D of the Code of Virginia.

"Released nutrient credit" means credits that the department has determined to be eligible for placement on the Virginia Nutrient Credit Registry.

"Restoration" means the reestablishment of a wetland, stream, or other aquatic resource in an area where it previously existed. Wetland restoration means the reestablishment of wetland hydrology, soils, and vegetation in an area where a wetland previously existed. Stream restoration means the process of converting an unstable, altered, or degraded stream corridor, including adjacent areas and floodplains, to its natural conditions.

"Retrofit" means a project that provides improved nutrient reductions to previously developed land through the implementation of new BMPs or upgrades to existing BMPs.

"Site" means the physical location within the management area where the nutrient credit-generating project and its associated practices, both baseline and credit-generating, are located.

"Site protection instrument" means a deed restriction, conservation easement, or other legal mechanism approved by the department that provides assurance that the credits will be maintained in accordance with this chapter and the certification requirements.

"Southern Rivers watersheds" means the land areas draining to the following river basins: the Albemarle Sound, Coastal; the Atlantic Ocean, Coastal; the Big Sandy River Basin; the Chowan River Basin; the Clinch-Powell River Basin; the New Holston River Basin (Upper Tennessee); the New River Basin; the Roanoke River Basin; or the Yadkin River Basin.

"State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands.

"Steward" or "long-term steward" means any person who is responsible for implementation of the long-term management plan of a perpetual nutrient credit-generating project.

"Structural BMPs" means any man-made stormwater control measure or feature that requires routine maintenance in order to function or provide the hydrologic, hydraulic, or water quality benefit as designed. Structural practices include bioretention, infiltration facilities, wet ponds, extended detention, wet and dry swales, permeable pavement, rainwater harvesting, vegetated roofs, underground or surface chambers or filters, and other manufactured treatment devices (MTDs).

"T" means the soil loss tolerance rate as defined by the NRCS.

"Term nutrient credit" or "term credit" means nutrient reduction activities that generate credits for a determined and finite period of at least one year but no greater than five years.

"Total maximum daily load" or "TMDL" means the sum of the individual wasteload allocations (WLAs) for point sources, load allocations (LAs) for nonpoint sources, natural background loading, and a margin of safety. TMDLs can be expressed in terms of either mass per time, toxicity, or other appropriate measure. The TMDL process provides for point versus nonpoint source trade-offs. TMDLs in Virginia are expressed as both a daily load and an annual load. For nutrient trading, annual loads are most often utilized.

"Tributary" means those river basins for which separate tributary strategies were prepared pursuant to § 2.2-218 of the Code of Virginia and includes the Potomac, Rappahannock, York, and James River basins, and the Eastern Coastal Basin, which encompasses the creeks and rivers of the Eastern Shore

Regulations

of Virginia that are west of Route 13 and drain into the Chesapeake Bay. For areas outside of the Chesapeake Bay Watershed, "tributary" includes the following watersheds: Albemarle Sound, Coastal; Atlantic Ocean, Coastal; Big Sandy; Chowan; Clinch-Powell; New Holston (Upper Tennessee); New River; Roanoke; and Yadkin.

"Urban lands" means lands characterized by developed areas with buildings, asphalt, concrete, suburban gardens, and a systematic street pattern. Classes of urban development include residential, commercial, industrial, institutional, transportation, communications, utilities, and mixed urban. Undeveloped land surrounded by developed areas, such as cemeteries, golf courses, and urban parks is recognized as urban lands.

"VACS BMP Manual" means the Virginia Agricultural Cost Share BMP Manual.

"Virginia Chesapeake Bay TMDL Watershed Implementation Plan," "Watershed Implementation Plan," or "WIP" means the Phase I watershed implementation plan strategy submitted by Virginia and approved by the U.S. Environmental Protection Agency (EPA) in December 2010 to meet the nutrient and sediment allocations prescribed in the Chesapeake Bay Watershed TMDL or any subsequent revision approved of EPA.

"Virginia Pollutant Discharge Elimination System permit" or "VPDES permit" means a document issued by the ~~State Water Control Board~~ department pursuant to the State Water Control Law authorizing, under prescribed conditions, the potential or actual discharge of pollutants from a point source to surface waters and the use or disposal of sewage sludge.

"Virginia Stormwater Management Program" or "VSMP" means a program to manage the quality and quantity of runoff resulting from land-disturbing activities and includes such items as local ordinances, rules, permit requirements, annual standards and specifications, policies and guidelines, technical materials, and requirements for plan review, inspection, and enforcement, where authorized in the Stormwater Management Act and pursuant to 9VAC25-870, 9VAC25-880, or 9VAC25-890.

"Virginia Water Protection permit" or "VWP permit" means an individual or general permit issued by the ~~board~~ department under § 62.1-44.15:20 of the Code of Virginia that authorizes activities otherwise unlawful under § 62.1-44.5 of the Code of Virginia or otherwise serves as Virginia's Section 401 certification.

"VPA" means Virginia Pollution Abatement.

"VPDES" means Virginia Pollutant Discharge Elimination System.

"VSMP authority" means a Virginia stormwater management program authority as defined in 9VAC25-870-10.

"VWP" means Virginia Water Protection.

"Water body with perennial flow" means a body of water that flows in a natural or man-made channel year-round during a year of normal precipitation as a result of groundwater discharge or surface runoff. Such water bodies exhibit the typical biological, hydrological, and physical characteristics commonly associated with the continuous conveyance of water.

"Water Quality Guide" means Virginia's Forestry Best Management Practices for Water Quality.

"Wetlands" means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

9VAC25-900-20. ~~Authority and delegation of authority. (Repealed.)~~

~~A. This chapter is issued under authority of § 62.1-44.19:20 of the Act.~~

~~B. The director may perform any act of the board provided under this chapter except as limited by § 62.1-44.14 of the Code of Virginia.~~

9VAC25-900-30. Purpose and applicability.

A. The purpose of this chapter is to establish standards and procedures pertaining to the certification of nutrient credits that will be placed on the registry for exchange.

B. This chapter applies to all persons who submit an application for and to all persons that receive a certification of nutrient credits from the department in accordance with the Act and this chapter.

C. Nutrient credits from stormwater nonpoint nutrient credit-generating projects in receipt of a Nonpoint Nutrient Offset Authorization for Transfer letter from the department prior to September 1, 2020, shall be considered certified nutrient credits and shall not be subject to further nutrient credit certification requirements or to the credit retirement requirements of this chapter. However, such projects shall be subject to all other provisions of this chapter, including registration of nutrient credits under 9VAC25-900-90 and the requirements of Part IV (9VAC25-900-140 et seq.) of this chapter including inspection, reporting, and enforcement.

D. This chapter does not apply to the certification of point source nutrient credits that may be generated from effective nutrient controls or removal practices associated with the types of facilities or practices historically regulated by the board or department, such as water withdrawal and treatment and wastewater collection, treatment, and beneficial reuse.

E. This chapter does not apply to stream or wetland restoration projects constructed prior to July 1, 2005, as no usable nutrient reductions are deemed to be generated from these projects and, therefore, no nutrient credits can be certified.

9VAC25-900-40. Relationship to other laws and regulations.

A. Specific requirements regarding the use of nutrient credits are found in the following regulations and statutes:

1. Virginia Stormwater Management Program (VSMP) Regulation (9VAC25-870).

a. VSMP Individual Permits for Discharges from Construction Activities. As specified in § 62.1-44.19:21 B of the Act, those applicants required to comply with water quality requirements for land-disturbing activities operating under a construction individual permit issued pursuant to 9VAC25-870 may acquire and use perpetual nutrient credits placed on the registry for exchange.

b. VSMP Individual Permits for Municipal Separate Storm Sewer Systems. As specified in § 62.1-44.19:21 A of the Act, an MS4 permittee may acquire, use, and transfer nutrient credits for purposes of compliance with any wasteload allocations established as effluent limitations in an MS4 individual permit issued pursuant to 9VAC25-870. Such method of compliance may be approved by the department following review of a compliance plan submitted by the permittee that includes the use of nutrient credits and is in accordance with the provisions of § 62.1-44.19:21 A.

2. General VPDES Permit for Discharges of Stormwater from Construction Activities (9VAC25-880). As specified in § 62.1-44.19:21 B of the Act, those applicants required to comply with water quality requirements for land-disturbing activities operating under a general VSMP permit for discharges of stormwater from construction activities issued pursuant to 9VAC25-880 may acquire and use perpetual nutrient credits placed on the registry for exchange.

3. General VPDES Permit for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems (9VAC25-890). As specified in § 62.1-44.19:21 A of the Act, an MS4 permittee may acquire, use, and transfer nutrient credits for purposes of compliance with any wasteload allocations established as effluent limitations in an MS4 general permit issued pursuant to 9VAC25-890. Such method of compliance may be approved by the department following review of a compliance plan submitted by the permittee that includes the use of nutrient credits and is in accordance with the provisions of § 62.1-44.19:21 A.

4. Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (9VAC25-31). As specified in § 62.1-44.19:21 C of the Act, owners of confined or concentrated animal feeding operations issued individual

permits pursuant to 9VAC25-31 may acquire, use, and transfer credits for compliance with any wasteload allocations contained in the provisions of a VPDES permit. Such method of compliance may be approved by the department following review of a compliance plan submitted by the permittee that includes the use of nutrient credits.

5. Virginia Pollutant Discharge Elimination System (VPDES) Permits for Discharges of Storm Water Associated with Industrial Activity. As specified in § 62.1-44.19:21 D of the Act, owners of facilities registered for coverage under 9VAC25-151 for the general VPDES permit or issued a VPDES permit regulating stormwater discharges that requires nitrogen and phosphorus monitoring at the facility may acquire, use, and transfer credits for compliance with any wasteload allocations established as effluent limitations in a VPDES permit. Such method of compliance may be approved by the department following review of a compliance plan submitted by the permittee that includes the use of nutrient credits.

6. General Virginia Pollutant Discharge Elimination System (VPDES) Watershed Permit Regulation for Total Nitrogen and Total Phosphorus Discharges and Nutrient Trading in the Chesapeake Bay Watershed in Virginia (9VAC25-820). Nutrient credits certified pursuant to this chapter may be acquired to offset mass loads of total nitrogen or total phosphorus discharged by new or expanded facilities regulated by 9VAC25-820.

B. This chapter shall not be construed to limit or otherwise affect the authority of the ~~board~~ department to establish and enforce more stringent water quality-based effluent limitations for total nitrogen or total phosphorus in permits where those limitations are necessary to protect local water quality. The exchange or acquisition of credits pursuant to this chapter shall not affect any requirement to comply with such local water quality-based limitations.

9VAC25-900-150. Recordkeeping and reporting.

A. The owner of the nutrient credit-generating project shall maintain all records relevant to the management, operations, and maintenance of the nutrient credit-generating project, including copies of all reports required by this chapter, the nutrient credit certification or the implementation plan, operations and maintenance plan, or financial assurance approved under this chapter. Records of all data used to complete the application for certification of nutrient credits shall be kept. All records shall be maintained for at least five years following the final exchange of any credits. 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 owner of the nutrient credit-generating project, or as requested by the ~~board~~ department.

Regulations

B. All applications, reports, or information submitted to the department shall be signed and certified as required by 9VAC25-900-130.

C. Reporting requirements.

1. The owner of the nutrient credit-generating project shall give advance notice to the department as soon as possible of any planned physical alterations or additions to the project when the alteration or addition could change the amount of nutrient reductions generated.

2. The owner of the nutrient credit-generating project shall give advance notice to the department of any planned changes in the project that may result in noncompliance with the Act, this chapter, or the nutrient credit certification.

3. Reports of compliance or noncompliance with or any progress reports on achieving conditions specified in the nutrient credit certification shall be submitted no later than 14 days following each schedule date.

4. Where the owner of the nutrient credit-generating project becomes aware that incorrect information has been submitted in an application for nutrient credit certification or in any report to the department, the owner shall promptly submit the corrected information.

5. Each owner shall submit an annual report on the status of the nutrient credit-generating project operations including credit-generating practices, confirmation of the continued implementation and maintenance of practices required to establish baseline in accordance with 9VAC25-900-100, statement of financial assurances, and an up-to-date credit ledger detailing credits available for exchange, credits exchanged, and associated purchaser information. This report shall contain recent photographs of any structural BMPs implemented to achieve baseline or for nutrient credit generation. The report shall cover the period from July 1 through June 30 of each year and be submitted annually by August 15 unless an alternative reporting period and submittal date are provided for in the nutrient credit certification.

6. In addition to the annual report detailed in subdivision 5 of this subsection, nutrient credit-generating projects utilizing wetland or stream restoration shall conduct post-construction monitoring and submit monitoring reports, according to the monitoring plan approved as part of the implementation plan pursuant to 9VAC25-900-120.

7. Exchange of credits shall be recorded on the registry. The exchange of credits by the owner of the nutrient credit-generating project shall be reported to the department within 14 calendar days of the date of the exchange. This report shall include:

- a. The identification for the credits exchanged;
- b. The name of and contact information for the buyer;
- c. The name of the seller;

d. The amount of credits exchanged; and

e. If applicable, the name of the facility and the associated permit number that shall use the purchased credits.

9VAC25-900-160. Enforcement and penalties.

The ~~board~~ department may enforce the provisions of this chapter utilizing all applicable procedures under the State Water Control Law.

9VAC25-900-230. Financial assurance applicability.

A. An owner of a nutrient credit-generating project that utilizes structural BMPs for the generation of perpetual credits shall submit and maintain financial assurance in accordance with this part. The financial assurance mechanism shall be submitted to and approved by the department prior to the release of credits.

B. An owner of a nutrient credit-generating project that utilizes structural BMPs for the generation of term credits with terms that exceed one year shall submit and maintain financial assurance in accordance with this part. However, an owner of a nutrient credit-generating project that utilizes structural BMPs for the generation of term credits with terms that exceed one year shall not be required to submit and maintain financial assurance in accordance with this part, provided that the department annually approves the generation of the term nutrient credits prior to release of the credits. In accordance with 9VAC25-900-90 B, the financial assurance mechanism shall be submitted to and approved by the department prior to the release of credits. For the purposes of this part, term credit shall refer to credit with a term greater than one year but not perpetual.

C. An owner of a nutrient credit-generating project using proposed new wetland or stream restoration practices not subject to 33 CFR 332.8 and § 62.1-44.15:23 of the Code of Virginia for the generation of perpetual credits shall be required to submit and maintain financial assurance in accordance with this chapter. In accordance with 9VAC25-900-90 B, the financial assurance mechanism shall be submitted to and approved by the department prior to the release of credits. The following financial assurances shall be provided for these new wetland or stream restoration projects:

1. A monitoring plan financial assurance mechanism shall be established to ensure implementation of the monitoring plan pursuant to 9VAC25-900-120 for any nutrient credits generated from wetland or stream restoration. When the owner conducts the required monitoring and submits a complete monitoring report as specified in the monitoring plan and report requirements, then the owner may request a reduction of the required financial assurance amount equivalent to the cost of one year of monitoring, subject to department approval. If any funds remain in the financial assurance mechanism after the monitoring period, the mechanism shall be maintained until the final monitoring

report is submitted and approved, at which point the mechanism shall be released by the department; ~~and~~

2. A long-term management fund financial assurance mechanism shall be established in support of required long-term management plan tasks pursuant to 9VAC25-900-120 for any nutrient credits generated from wetland or stream restoration. Long-term management funds shall be placed in a separate interest bearing trust account in an appropriate financial institution and may be funded from a sufficient percentage of all credit sale proceeds, a single lump sum payment, or an approved schedule of payments, subject to department approval. No long-term management funds shall be used to finance any expense or activity other than those specified in the long-term management plan unless approved by the department. Responsibility for and access to the long-term management fund is given to the owner or long-term steward and may be transferred to any new long-term steward that is designated by the owner and approved by the department; ~~and~~

3. In lieu of the long-term management fund trust account for stream restoration projects established in subdivision 2 of this subsection, a third-party long-term steward approved by the department, such as a public agency, nongovernmental organization, or private land manager, may hold long-term management funds in a separate interest-bearing account to be used only for the long-term management of the stream restoration project.

D. When the nutrient credits are generated or used by a locality, authority, utility, sanitation district, or owner operating an MS4 or a point source permitted under 9VAC25-870, the existence of tax or rate authority may be used by such entity at its option in satisfaction of the financial assurance required pursuant to this part.

9VAC25-900-270. Financial assurance requirements for perpetual credits.

A. Subject to the requirements and limitations outlined in this section, the owner shall demonstrate financial assurance for the nutrient credit-generating project generating perpetual nutrient credits using any one or combination of the mechanisms specified in 9VAC25-900-290 through 9VAC25-900-330. However, for restoration projects, the owner may only use a trust fund as provided in 9VAC25-900-290 to demonstrate financial assurance for the long-term management fund as described in 9VAC25-900-230 C 2, unless a third-party long-term steward is approved by the department in accordance with 9VAC25-900-230 C 3.

B. The financial assurance mechanism used shall provide funding for the full amount of the cost estimate or of the sum of all cost estimates at all times.

C. The owner may only establish or continue to use insurance, as outlined in 9VAC25-900-330, to demonstrate financial assurance for that portion of the total cost estimate that does

not include credits that have been exchanged. On an annual basis, the owner shall either establish or increase the noninsurance mechanism outlined in 9VAC25-900-290 through 9VAC25-900-320 in an amount to be determined in accordance with the following formula:

$$CE/TCIAS * CEDAAP$$

where:

CE = Cost Estimate

TCIAS = Total Number of Credits Initially Available for Exchange

CEDAAP = Number of Credits Exchanged During the Applicable Annual Period

D. The owner shall establish or increase the mechanism as required by subsection C of this section no later than 30 days after the current anniversary date of the nutrient credit certification. The applicable annual period for credits exchanged is the one culminating on the anniversary date of the nutrient credit certification.

E. The financial assurance mechanisms used to provide evidence of the financial assurance shall ensure that the funds necessary will be available whenever they are needed.

F. After submittal of a complete financial assurance mechanism, the department shall notify the owner of the tentative decision to approve or reject the financial assurance mechanism.

G. A financial assurance mechanism must be in a form that ensures that the department will receive proper notification in advance of any termination or revocation. The owner may, at its discretion and with prior approval of the department, replace the financial assurance or financial institution that issued the financial assurance. The owner shall provide the department with prior notice of its desire to replace the issuing institution and a draft of the new mechanism for review. The provisions of the new mechanism shall conform to the provisions of the former mechanism and this part.

9VAC25-900-280. Allowable financial mechanisms.

A. Subject to the limitations and requirements outlined in 9VAC25-900-260 and 9VAC25-900-270, an owner of nutrient credit-generating project using structural BMPs to generate term or perpetual nutrient credits and required to submit financial assurance pursuant to 9VAC25-900-230 may use any one or combination of mechanisms listed in 9VAC25-900-290 through 9VAC25-900-330 to meet the financial assurance requirements of this chapter.

B. Subject to the limitation and requirements outlined in 9VAC25-900-270, an owner of a nutrient credit-generating project utilizing wetland or stream restoration practices to generate perpetual credits and required to submit financial assurance pursuant to 9VAC25-900-230, may use any one or combination of mechanisms listed in 9VAC25-900-290 through 9VAC25-900-330 to meet the financial assurance

Regulations

requirements for the monitoring plan; however, only a trust fund may be used to meet the financial assurance requirements for the long-term management fund, unless a third-party long-term steward is approved by the department in accordance with 9VAC25-230 C 3.

9VAC25-900-350. Wording of the financial assurance mechanism.

A. The wording of the financial assurance mechanisms shall be as provided in this section.

B. Wording of trust agreements.

(NOTE: Instructions in parentheses are to be replaced with the applicable information for the nutrient credit-generating project's practices (i.e., structural BMPs or wetland/stream restoration) and the non-relevant information and parentheses deleted.)

TRUST AGREEMENT

Trust agreement, the "Agreement," entered into as of (date) by and between (name of the owner), a (State) (corporation, partnership, association, proprietorship), the "Grantor," and (name of corporate trustee), a (State corporation) (national bank), the "Trustee."

Whereas, the State Water Control Board has established certain regulations applicable to the Grantor, requiring that the owner of a nutrient credit-generating project must provide assurance that funds will be available when needed for (operation and maintenance and/or repair or replacement of the project's structural BMPs) (monitoring and/or long-term maintenance of the project's wetland/stream restoration),

Whereas, the Grantor has elected to establish a trust to provide (all or part of) such financial assurance for the project identified herein,

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee,

Now, therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

A. The term "fiduciary" means any person who exercises any power of control, management, or disposition or renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of this trust fund, or has any authority or responsibility to do so, or who has any authority or responsibility in the administration of this trust fund.

B. The term "Grantor" means the owner who enters into this Agreement and any successors or assigns of the Grantor.

C. The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

Section 2. Identification of Project and Cost Estimates. This Agreement pertains to project(s) and cost estimates identified on attached Schedule A.

(NOTE: On Schedule A, for each project, list, as applicable, name, address, and the current cost estimates for operation and maintenance and/or repair or replacement for the project's structural BMPs; or the current cost estimates for the monitoring and/or long-term maintenance of the project's wetland/stream restoration, or portions thereof, for which financial assurance is demonstrated by this Agreement.)

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the benefit of the Department of Environmental Quality, Commonwealth of Virginia. The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. The Fund is established initially as property consisting of cash or securities, which are acceptable to the Trustee, described in Schedule B attached hereto. Such property and any other property subsequently transferred to the Trustee is referred to as the fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund will be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee undertakes no responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments to discharge any liabilities of the Grantor established by the Commonwealth of Virginia's Department of Environmental Quality.

Section 4. Payment for (operation and maintenance and/or repair or replacement for the project's structural BMPs) (monitoring and/or long-term maintenance for the project's wetland/stream restoration). The Trustee will make such payments from the Fund as the Department of Environmental Quality, Commonwealth of Virginia will direct, in writing, to provide for the payment of the costs of (operation and maintenance and/or repair or replacement for the project's structural BMPs) (monitoring and/or long-term maintenance for the project's wetland/stream restoration) of the project covered by this Agreement. The Trustee will reimburse the Grantor or other persons as specified by the Department of Environmental Quality, Commonwealth of Virginia, from the Fund for (operation and maintenance and/or repair or replacement for the project's structural BMPs) (monitoring and/or long-term maintenance for the project's wetland/stream restoration) expenditures in such amounts as the Department of Environmental Quality will direct, in writing. In addition, the Trustee will refund to the Grantor such amounts as the Department of Environmental Quality specifies in writing. Upon refund, such funds will no longer constitute part of the Fund as defined herein.

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the fund will consist of cash or securities acceptable to the Trustee.

Section 6. Trustee Management. The Trustee will invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with investment guidelines and objectives communicated in writing to the

Trustee from time to time by the Grantor, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling and managing the Fund, the Trustee or any other fiduciary will discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of any enterprise of a like character and with like aims; except that:

A. Securities or other obligations of the Grantor, or any other owner of the project, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 USC § 80a-2(a), will not be acquired or held, unless they are securities or other obligations of the federal or a state government;

B. The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the federal or state government; and

C. The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment. The Trustee is expressly authorized in its discretion:

A. To transfer from time to time any or all of the assets of the Fund to any common, commingled or collective trust fund created by the Trustee in which the Fund is eligible to participate subject to all of the provisions thereof, to be commingled with the assets of other trusts participating herein. To the extent of the equitable share of the Fund in any such commingled trust, such commingled trust will be part of the Fund; and

B. To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 USC § 80a-1 et seq., or one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustees may vote such shares in its discretion.

Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

A. To sell, exchange, convey, transfer or otherwise dispose of any property held by it, by private contract or at public auction. No person dealing with the Trustee will be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other dispositions;

B. To make, execute, acknowledge and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

C. To register any securities held in the fund in its own name or in the name of a nominee and to hold any security in bearer

form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States government, or any agency or instrumentality thereof with a Federal Reserve Bank, but the books and records of the Trustee will at all times show that all such securities are part of the Fund;

D. To deposit any cash in the fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

E. To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund will be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee will be paid from the Fund.

Section 10. Annual Valuation. The Trustee will annually, at the end of the month coincident with or preceding the anniversary date of establishment of the Fund, furnish the Grantor and to the director of the Department of Environmental Quality, Commonwealth of Virginia, a statement confirming the value of the Trust. Any securities in the Fund will be valued at market value as of no more than 30 days prior to the date of the statement. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and the director of the Department of Environmental Quality, Commonwealth of Virginia will constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 11. Advice of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee will be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 12. Trustee Compensation. The Trustee will be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 13. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or

Regulations

replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon acceptance of the appointment by the successor trustee, the Trustee will assign, transfer and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee and the date on which he assumes administration of the trust will be specified in writing and sent to the Grantor, the director of the Department of Environmental Quality, Commonwealth of Virginia, and the present trustees by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this section will be paid as provided in Section 9.

Section 14. Instructions to the Trustee. All orders, requests and instructions by the Grantor to the Trustee will be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendment to Exhibit A. The Trustee will be fully protected in acting without inquiry in accordance with the Grantor's orders, requests and instructions. All orders, requests, and instructions by the Director of the Department of Environmental Quality, Commonwealth of Virginia, to the Trustee will be in writing, signed by the Director and the Trustee will act and will be fully protected in acting in accordance with such orders, requests and instructions. The Trustee will have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the Commonwealth of Virginia's Department of Environmental Quality hereunder has occurred. The Trustee will have no duty to act in the absence of such orders, requests and instructions from the Grantor and/or the Commonwealth of Virginia's Department of Environmental Quality, except as provided for herein.

Section 15. Notice of Nonpayment. The Trustee will notify the Grantor and the Director of the Department of Environmental Quality, Commonwealth of Virginia, by certified mail within 10 days following the expiration of the 30-day period after the anniversary of the establishment of the Trust, if no payment is received from the Grantor during that period. After the pay-in period is completed, the Trustee is not required to send a notice of nonpayment.

Section 16. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the Director of the Department of Environmental Quality, Commonwealth of Virginia, or by the Trustee and the Director of the Department of Environmental Quality, Commonwealth of Virginia, if the Grantor ceases to exist.

Section 17. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 16, this Trust will be irrevocable and will continue until terminated at the written agreement of the Grantor, the Trustee, and the Director of the Department of Environmental Quality, Commonwealth of Virginia, or by the Trustee and the Director if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, will be delivered to the Grantor.

Section 18. Immunity and Indemnification. The Trustee will not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the Director of the Department of Environmental Quality, Commonwealth of Virginia, issued in accordance with this Agreement. The Trustee will be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 19. Choice of Law. This Agreement will be administered, construed and enforced according to the laws of the Commonwealth of Virginia.

Section 20. Interpretation. As used in the Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each section of this Agreement will not affect the interpretation of the legal efficacy of this Agreement.

In witness whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is substantively identical to the wording specified in 9VAC25-900-350 B, as such regulations were constituted on the date shown immediately below.

(Signature of Grantor)

By: (Title) (Date)

Attest:

(Title) (Date)

(Seal)

(Signature of Trustee)

By

Attest:

(Title)

(Seal) (Date)

Certification of Acknowledgment:

COMMONWEALTH OF VIRGINIA

STATE OF _____

CITY/COUNTY OF _____

On this date, before me personally came (owner) to me known, who being by me duly sworn, did depose and say that she/he resides at (address), that she/he is (title) of (corporation), the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.

(Signature of Notary Public)

C. Wording of surety bond guaranteeing performance or payment.

(NOTE: Instructions in parentheses are to be replaced with the applicable information for the nutrient credit-generating project's practices (i.e., structural BMPs or wetland/stream restoration) and the non-relevant information and parentheses deleted.)

PERFORMANCE OR PAYMENT BOND

Date bond executed: _____

Effective date: _____

Principal: (legal name and business address) _____

Type of organization: (insert "individual," "joint venture," "partnership," or "corporation") _____

State of incorporation: _____

Surety: (name and business address) _____

Name, address, and cost estimate or estimates for the project:

Penal sum of bond: \$ _____

Surety's bond number: _____

Know all men by these present, That we, the Principal and Surety hereto are firmly bound to the Department of Environmental Quality, Commonwealth of Virginia, (hereinafter called the Department) in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of each sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

Whereas, said Principal is required to have from the Department of Environmental Quality, Commonwealth of Virginia, in order to own or operate the, nutrient credit-generating project identified above, and

Whereas, said Principal is required to provide financial assurance for (operation and maintenance and/or repair or replacement for the project's structural BMPs) (monitoring

and/or long-term maintenance for the project's wetland/stream restoration) of the project as a condition of an order issued by the department,

Now, therefore the conditions of this obligation are such that if the Principal shall faithfully perform (operation and maintenance and/or repair or replacement of structural BMPs) (monitoring wetland/stream restoration), whenever required to do so, of the project identified above in accordance with the order or the (operation and maintenance and/or repair or replacement of structural BMPs) (monitoring wetland/stream restoration) submitted to receive and other requirements of as such plan and may be amended or renewed pursuant to all applicable laws, statutes, rules, and regulations, as such laws, statutes, rules, and regulations may be amended,

Or, if the Principal shall faithfully perform (operation and maintenance and/or repair or replacement of structural BMPs) (monitoring wetland/stream restoration) following an order to begin (operation and maintenance and/or repair or replacement of structural BMPs) (monitoring wetland/stream restoration) issued by the Commonwealth of Virginia's Department of Environmental Quality or by a court, or following a notice of termination of the permit,

Or, if the Principal shall provide alternate financial assurance as specified in the Department's regulations and obtain the director's written approval of such assurance, within 90 days of the date notice of cancellation is received by the Director of the Department of Environmental Quality from the Surety, then this obligation will be null and void, otherwise it is to remain in full force and effect for the life of the nutrient credit-generating project identified above.

The Surety shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above. Upon notification by the Director of the Department of Environmental Quality, Commonwealth of Virginia, that the Principal has been found in violation of the requirements of the Department's regulations, the Surety must either perform (operation and maintenance and/or repair or replacement of structural BMPs) (monitoring wetland/stream restoration) in accordance with the approved plan and other requirements or forfeit the (operation and maintenance and/or repair or replacement of structural BMPs) (monitoring wetland/stream restoration) amount guaranteed for the nutrient credit-generating project to the Commonwealth of Virginia.

Upon notification by the Director of the Department of Environmental Quality, Commonwealth of Virginia, that the Principal has been found in violation of an order to begin (operation and maintenance and/or replacement) the Surety must either perform (operation and maintenance and/or repair or replacement of structural BMPs) (monitoring wetland/stream restoration) in accordance with the order or forfeit the amount of the (operation and maintenance and/or repair or replacement of structural BMPs) (monitoring wetland/stream restoration) guaranteed for the nutrient credit-generating project to the Commonwealth of Virginia.

Regulations

The Surety hereby waives notification of amendments to the operation and maintenance and/or replacement, orders, applicable laws, statutes, rules, and regulations and agrees that such amendments shall in no way alleviate its obligation on this bond.

For purposes of this bond, (operation and maintenance and/or repair or replacement of structural BMPs) (monitoring wetland/stream restoration) shall be deemed to have been completed when the Director of the Department of Environmental Quality, Commonwealth of Virginia, determines that the conditions of the approved plan have been met.

The liability of the Surety shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but the obligation of the Surety hereunder shall not exceed the amount of said penal sum unless the Director of the Department of Environmental Quality, Commonwealth of Virginia, should prevail in an action to enforce the terms of this bond. In this event, the Surety shall pay, in addition to the penal sum due under the terms of the bond, all interest accrued from the date the Director of the Department of Environmental Quality, Commonwealth of Virginia, first ordered the Surety to perform. The accrued interest shall be calculated at the judgment rate of interest pursuant to § 6.2-302 of the Code of Virginia.

The Surety may cancel the bond by sending written notice of cancellation to the owner and to the Director of the Department of Environmental Quality, Commonwealth of Virginia, provided, however, that cancellation cannot occur (1) during the 120 days beginning on the date of receipt of the notice of cancellation by the director as shown on the signed return receipt; or (2) while an enforcement action is pending.

The Principal may terminate this bond by sending written notice to the Surety, provided, however, that no such notice shall become effective until the Surety receives written authorization for termination of the bond by the Director of the Department of Environmental Quality, Commonwealth of Virginia.

In witness whereof, the Principal and Surety have executed this Performance Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety and I hereby certify that the wording of this surety bond is substantively identical to the wording specified in 9VAC25-900-350 C as such regulations were constituted on the date shown immediately below.

Principal

Signature(s): _____

Name(s) and Title(s): (typed) _____

Corporate Surety

Name and Address: _____

State of Incorporation: _____

Liability Limit: \$ _____

Signature(s): _____

Name(s) and Title(s): (typed) _____

Corporate Seal:

D. Wording of irrevocable standby letter of credit.

(NOTE: Instructions in parentheses are to be replaced with the applicable information for the nutrient credit-generating project's practices (i.e., structural BMPs or wetland/stream restoration) and the non-relevant information and parentheses deleted.)

IRREVOCABLE STANDBY LETTER OF CREDIT

Director

Department of Environmental Quality

P.O. Box 1105

Richmond, Virginia 23218

Dear (Sir or Madam):

We hereby establish our Irrevocable Letter of Credit No..... in your favor at the request and for the account of (owner's name and address) up to the aggregate amount of (in words) U.S. dollars \$____, available upon presentation of

1. Your sight draft, bearing reference to this letter of credit No _____ together with
2. Your signed statement declaring that the amount of the draft is payable pursuant to regulations issued under the authority of the Department of Environmental Quality, Commonwealth of Virginia.

The following amounts are included in the amount of this letter of credit: (Insert the nutrient credit-generating project name and address, and the appropriate cost estimate or estimates, or portions thereof, for which financial assurance is demonstrated by this letter of credit.)

This letter of credit is effective as of (date) and will expire on (date at least one year later), but such expiration date will be automatically extended for a period of (at least one year) on (date) and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify you and (owner or operator's name) by certified mail that we decide not to extend the Letter of Credit beyond the current expiration date. In the event you are so notified, unused portion of the credit will be available upon presentation of your sight draft for 120 days after the date of receipt by you as shown on the signed return receipt or while a compliance procedure is pending, whichever is later.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we will duly honor such draft upon presentation to us, and we will pay to you the amount of the draft promptly and directly.

I hereby certify that I am authorized to execute this letter of credit on behalf of (issuing institution) and I hereby certify that

the wording of this letter of credit is substantively identical to the wording specified in 9VAC25-900-350 D as such regulations were constituted on the date shown immediately below.

Attest:

(Print name and title of official of issuing institution) (Date)

(Signature)

(Date)

This credit is subject to the most recent edition of the Uniform Customs and Practice for Documentary Credits, International Chamber of Commerce Publication No. 600, and any subsequent revisions thereof approved by a congress of the International Chamber of Commerce and adhered to by us. If this credit expires during an interruption of business as described in Article 36 of said Publication 600, the bank hereby specifically agrees to effect payment if this credit is drawn against within thirty (30) days after resumption of our business.

E. Assignment of certificate of deposit account.

City _____, 20__

FOR VALUE RECEIVED, the undersigned assigns all right, title and interest to the Virginia Department of Environmental Quality, Commonwealth of Virginia, and its successors and assigns the Virginia Department of Environmental Quality the principal amount of the instrument, including all moneys deposited now or in the future to that instrument, indicated below:

This assignment includes all interest now and hereafter accrued.

Certificate of Deposit Account No. _____

This assignment is given as security to the Virginia Department of Environmental Quality in the amount of _____ Dollars (\$_____).

Continuing Assignment. This assignment shall continue to remain in effect for all subsequent terms of the automatically renewable certificate of deposit.

Assignment of Document. The undersigned also assigns any certificate or other document evidencing ownership to the Virginia Department of Environmental Quality.

Additional Security. This assignment shall secure the payment of any financial obligation of the (name of owner) to the Virginia Department of Environmental Quality for (operation and maintenance and/or repair or replacement of structural BMPs) (monitoring wetland/stream restoration) at the (project name) located (physical address).

Application of Funds. The undersigned agrees that all or any part of the funds of the indicated account or instrument may be applied to the payment of any and all financial assurance obligations of (name of owner) to the Virginia Department of Environmental Quality for (operation and maintenance and/or repair or replacement) (monitoring) at the (project name and address). The undersigned authorizes the Virginia Department of Environmental Quality to withdraw any principal amount on

deposit in the indicated account or instrument including any interest, if indicated, and to apply it in the Virginia Department of Environmental Quality's discretion to fund (operation and maintenance and/or repair or replacement) (monitoring) at the (project name) or in the event of (owner) failure to comply with the 9VAC25-900. The undersigned agrees that the Virginia Department of Environmental Quality may withdraw any principal and/or interest from the indicated account or instrument without demand or notice. (The undersigned) agrees to assume any and all loss of penalty due to federal regulations concerning the early withdrawal of funds. Any partial withdrawal of principal or interest shall not release this assignment.

The party or parties to this Assignment set their hand or seals, or if corporate, has caused this assignment to be signed in its corporate name by its duly authorized officers and its seal to be affixed by authority of its Board of Directors the day and year above written.

SEAL

(Owner)

(print owner's name)

SEAL

(Owner)

(print owner's name)

THE FOLLOWING SECTION IS TO BE COMPLETED BY THE BRANCH OR LENDING OFFICE:

The signature(s) as shown above compare correctly with the name(s) as shown on record as owner(s) of the Certificate of Deposit indicated above. The above assignment has been properly recorded by placing a hold in the amount of \$ _____ for the benefit of the Department of Environmental Quality.

The accrued interest on the Certificate of Deposit indicated above shall be maintained to capitalize versus being mailed by check or transferred to a deposit account.

(Signature)

(Date)

(print name)

(Title)

F. Wording of insurance endorsement.

ENDORSEMENT.

(NOTE: Instructions in parentheses are to be replaced with the applicable information for the nutrient credit-generating project's practices (i.e., structural BMPs or restoration) and the non-relevant information and parentheses deleted.)

Name: (name of each covered location)

Address: (address of each covered location)

Regulations

Policy number:

Period of coverage: (current policy period)

Name of Insurer:

Address of Insurer:

Name of insured:

Address of insured:

Endorsement:

1. This endorsement certifies that the policy to which the endorsement is attached provides insurance covering the (operation and maintenance and/or repair or replacement of the nutrient credit-generating project's structural BMPs) (monitoring of the nutrient credit-generating project's wetland/stream restoration) in connection with the insured's obligation to demonstrate financial responsibility under the 9VAC25-900).

(List the name(s) and address(es) of the nutrient credit-generating project(s)) for (the operation and maintenance and/or repair or replacement of the nutrient credit-generating project's structural BMPs) (monitoring of the nutrient credit-generating project's wetland/stream restoration) in accordance with and subject to the limits of liability, exclusions, conditions, and other terms of the policy;

The limits of liability are (provide the dollar amount of the operation and maintenance, monitoring, and/or repair or replacement), exclusive of legal defense costs, which, if applicable, are subject to a separate limit under the policy. This coverage is provided under (provide the policy number). The effective date of said policy is (insert the effective date).

2. The insurance afforded with respect to such occurrences is subject to all of the terms and conditions of the policy; provided, however, that any provisions inconsistent with subsections (a) through (d) for occurrence policies and (a) through (e) for claims-made policies of this paragraph 2 are hereby amended to conform with subsections (a) through (e):

a. Bankruptcy or insolvency of the insured shall not relieve the insurer of its obligations under the policy to which this endorsement is attached.

b. The insurer is liable for the payment of amounts within any deductible applicable to the policy to the provider of monitoring, operation and maintenance and/or repair or replacement, with a right of reimbursement by the insured for any such payment made by the insurer. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in 9VAC25-900.

c. Whenever requested by the ~~State Water Control Board~~ Department of Environmental Quality, Commonwealth of Virginia, the insurer agrees to furnish to ~~State Water Control Board~~ the Department of Environmental Quality, Commonwealth of Virginia a signed duplicate original of the policy and all endorsements.

d. The insurer may not cancel or terminate the policy during the policy period except for failure to pay the premium. The policy shall automatically renew at the department's discretion on an annual basis for a period of up to ten years. The automatic renewal of the policy shall, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy.

e. The insured may cancel the insurance policy only if alternate financial assurance is substituted as specified in 9VAC25-900, or if the owner is no longer required to demonstrate financial responsibility in accordance with 9VAC25-900.

f. Cancellation for nonpayment of premium or misrepresentation by the insured will be effective only upon written notice and only after expiration of a minimum of 120 days after a copy of such written notice is received by the insured and the ~~State Water Control Board~~ Department of Environmental Quality, Commonwealth of Virginia.

(Insert for claims made policies:)

g. The insurance covers claims otherwise covered by the policy that are reported to the insurer within six months of the effective date of cancellation or nonrenewal of the policy except where the new or renewed policy has the same retroactive date or a retroactive date earlier than that of the prior policy, and which arise out of any covered occurrence that commenced after the policy retroactive date, if applicable, and prior to such policy renewal or termination date. Claims reported during such extended reporting period are subject to the terms, conditions, limits, including limits of liability, and exclusions of the policy.

I hereby certify that the wording of this endorsement is in no respect less favorable than the coverage specified in 9VAC25-900. I further certify that the insurer is licensed to transact the business of insurance or eligible to provide insurance as an excess or surplus lines insurer in the Commonwealth of Virginia.

(Signature of authorized representative of insurer)

(Name of the person signing)

(Title of the person signing), authorized representative of (name of the insurer)

(Address of the representative)

(Title of person signing)

Signature of witness or notary:

(Date)

VA.R. Doc. No. R22-7193; Filed July 19, 2022, 9:09 a.m.

◆ _____ ◆

TITLE 14. INSURANCE

STATE CORPORATION COMMISSION

Proposed Regulation

REGISTRAR'S NOTICE: The State Corporation Commission is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency that by the Constitution is expressly granted any of the powers of a court of record.

Titles of Regulations: **14VAC5-120. Rules Governing the Implementation of the Individual Accident and Sickness Insurance Minimum Standards Act with Respect to Specified Disease Policies (repealing 14VAC5-120-10 through 14VAC5-120-100).**

14VAC5-135. Rules Governing Individual and Small Group Market Health Benefit Plans (adding 14VAC5-135-10 through 14VAC5-135-60).

14VAC5-140. Rules Governing the Implementation of the Individual Accident and Sickness Insurance Minimum Standards Act (repealing 14VAC5-140-10 through 14VAC5-140-100).

14VAC5-141. Rules Governing Accident and Sickness Excepted Benefits Policies; Short-Term Limited Duration Insurance (adding 14VAC5-141-10 through 14VAC5-141-160).

Statutory Authority: §§ 12.1-13 and 38.2-223 of the Code of Virginia.

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

Public Comment Deadline: September 30, 2022.

Agency Contact: Elsie Andy, Manager, Bureau of Insurance, State Corporation Commission, P.O. Box 1157, Richmond, VA 23218, telephone (804) 371-9072, or email elsie.andy@scc.virginia.gov.

Summary:

The proposed amendments implement the provisions of Chapters 34 (§ 38.2-3400 et seq.) and 35 (§ 38.2-3500 et seq.) of Title 38.2 of the Code of Virginia by repealing 14VAC5-120 and 14VAC5-140 and adding two new chapters, Rules Governing Individual and Small Group Market Health Benefit Plans (14VAC5-135) and Rules Governing Accident and Sickness Excepted Benefits Policies; Short-Term Limited Duration Insurance (14VAC5-141). The new, separate chapters distinguish between two major categories of accident and sickness insurance to clearly identify the requirements for each category.

14VAC5-135 outlines minimum standards for those individual and small group market health benefit plans that are filed in accordance with Affordable Care Act,

including general policy and form requirements and certain prohibitions, limitations, and disclosures as well as standards for student health insurance coverage.

14VAC5-141 outlines minimum standards for the types of accident and sickness "excepted benefits" policies that may be filed in Virginia, including accident, disability income, limited scope benefits, specified disease, hospital, or other fixed indemnity and similar supplemental coverage as well as standards for short-term limited-duration insurance, including general policy provisions, prohibitions, limitations and disclosures, and requirements for replacement of coverage.

AT RICHMOND, JULY 15, 2022

CASE NO. INS-2022-00073

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

Ex Parte: In the matter of Repealing and Adopting Rules Governing Individual and Small Group Market Health Benefit Plans and Excepted Benefits Policies

ORDER TO TAKE NOTICE

Section 12.1-13 of the Code of Virginia ("Code") provides that the State Corporation Commission ("Commission") shall have the power to promulgate rules and regulations in the enforcement and administration of all laws within its jurisdiction, and § 38.2-223 of the Code provides that the Commission may issue any rules and regulations necessary or appropriate for the administration and enforcement of Title 38.2 of the Code.

The rules and regulations issued by the Commission pursuant to § 38.2-223 of the Code are set forth in Title 14 of the Virginia Administrative Code. A copy may also be found at the Commission's website: scc.virginia.gov/pages/Case-Information.

The Bureau of Insurance ("Bureau") proposes to update its current rules regarding accident and sickness insurance following significant changes in this area. As part of this update, the Bureau has submitted to the Commission a proposal to repeal two existing chapters and promulgate two new chapters. Specifically, the Bureau proposes to: (a) repeal the Rules in Chapter 120 of Title 14 of the Virginia Administrative Code entitled "Rules Governing the Implementation of the Individual Accident and Sickness Insurance Minimum Standards Act with Respect to Specified Disease Policies," which are set out at 14 VAC 5-120-10 through 14 VAC 5-120-100; (b) repeal the Rules in Chapter 140 of Title 14 of the Virginia Administrative Code entitled "Rules Governing the Implementation of the Individual Accident and Sickness Insurance Minimum Standards Act," which are set out at 14 VAC 5-140-10 through 14 VAC 5-140-100; (c) promulgate new Chapter 135 of Title 14 of the

Regulations

Virginia Administrative Code entitled "Rules Governing Individual and Small Group Market Health Benefit Plans," which sets forth new rules at 14 VAC 5-135-10 through 14 VAC 5-135-60; and (d) promulgate new Chapter 141 of Title 14 of the Virginia Administrative Code entitled "Rules Governing Accident and Sickness Excepted Benefits Policies; Short-Term Limited Duration Insurance," which sets forth new rules at 14 VAC 5-141-10 through 14 VAC 5-141-160.

The repeal of Chapters 120 and 140 as well as the adoption of Chapters 135 and 141 is necessary because of significant changes in the landscape of regulation pertaining to individual and small group health benefit plans, excepted benefits policies and short-term limited duration insurance in the last decade. Separate and distinct requirements for most health benefit plans now exist, and a bright line divides these types of plans and "excepted benefits" policies (as identified and defined in the Code of Virginia as well as the federal Public Health Service Act, 42 USC § 201 et seq.). In light of these changes, the Bureau recommends repealing outdated rules and implementing new, separate chapters that distinguish these two major categories of accident and sickness insurance to clearly identify the requirements for each category. Furthermore, these new chapters implement the provisions of Chapters 34 (§ 38.2-3400 et seq.) and 35 (§ 38.2-3500 et seq.) of Title 38.2 of the Code.

NOW THE COMMISSION is of the opinion that Chapter 120 and Chapter 140 of Title 14 of the Virginia Administrative Code should be repealed and that proposed new rules outlined at Chapter 135 and Chapter 141 as submitted by the Bureau should be considered for adoption on or about January 1, 2023.

Accordingly, IT IS ORDERED THAT:

(1) The proposal to repeal Rules at Chapter 120 entitled "Rules Governing the Implementation of the Individual Accident and Sickness Insurance Minimum Standards Act with Respect to Specified Disease Policies" and Chapter 140 entitled "Rules Governing the Implementation of the Individual Accident and Sickness Insurance Minimum Standards Act," and to adopt proposed new Rules designated as Chapter 135 entitled "Rules Governing Individual and Small Group Market Health Benefit Plans" and Chapter 141 entitled "Rules Governing Accident and Sickness Excepted Benefits Policies; Short-Term Limited Duration Insurance," are attached hereto and made a part hereof.

(2) All interested persons who desire to comment in support of or in opposition to, or request a hearing to consider, the repeal of Chapters 120 and 140 and the adoption of proposed Chapters 135 and 141 shall file such comments or hearing request on or before September 30, 2022, with the Clerk of the Commission, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218. Interested persons desiring to submit comments electronically may do so by following the instructions at the Commission's

website: scc.virginia.gov/pages/Case-Information. All comments shall refer to Case No. INS-2022-00073.

(3) If no written request for a hearing on the proposal to repeal and adopt new rules as outlined in this Order is received on or before September 30, 2022, the Commission, upon consideration of any comments submitted in support of or in opposition to the proposal, may repeal and adopt the rules as submitted by the Bureau.

(4) The Bureau shall provide notice of the proposal to repeal and adopt the new rules to all carriers licensed in Virginia to write accident and sickness insurance and to all interested persons.

(5) The Commission's Office of General Counsel shall cause a copy of this Order, together with the proposal to repeal and adopt new rules, to be forwarded to the Virginia Registrar of Regulations for appropriate publication in the Virginia Register of Regulations.

(6) The Commission's Division of Information Resources shall make available this Order and the attached proposal on the Commission's website: scc.virginia.gov/pages/Case-Information.

(7) The Bureau shall file with the Clerk of the Commission an affidavit of compliance with the notice requirements of Ordering Paragraph (4) above.

A COPY hereof shall be sent electronically by the Clerk of the Commission to:

C. Meade Browder, Jr., Senior Assistant Attorney General, Office of the Attorney General, Division of Consumer Counsel, 202 North 9th Street, 8th Floor, Richmond, Virginia 23219-3424, at MBrowder@oag.state.va.us; and a copy hereof shall be delivered to the Commission's Office of General Counsel and the Bureau of Insurance in care of Deputy Commissioner Julie Blauvelt.

Chapter 135
Rules Governing Individual and Small Group Market Health
Benefit Plans

14VAC5-135-10. Applicability and scope.

A. This chapter (14VAC5-135) implements the provisions of Chapters 34 (§ 38.2-3400 et seq.) and 35 (§ 38.2-3500 et seq.) of Title 38.2 of the Code of Virginia and sets forth the standards for compliance with the federal Affordable Care Act.

B. This chapter shall apply to all individual and small group market health benefit plans delivered or issued for delivery in this Commonwealth.

C. Health benefit plans filed in this Commonwealth and approved for sale in a health benefit exchange pursuant to § 38.2-326 of the Code of Virginia shall comply with the provisions of this chapter.

D. This chapter shall not apply to a grandfathered health plan, as defined in § 38.2-3438 of the Code of Virginia, for as long as the plan maintains its status in accordance with federal regulations.

E. This chapter shall not apply to excepted benefits policies, as defined in § 38.2-3431 of the Code of Virginia.

F. This chapter shall not apply to a short-term limited-duration medical plan, as defined in § 38.2-3407.21 of the Code of Virginia.

14VAC5-135-20. Definitions.

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

"Affordable Care Act" or "ACA" means the Patient Protection and Affordable Care Act (P.L. 111-148), as amended by the Health Care and Education Reconciliation Act of 2010 (P.L. 111-152) and any federal regulations issued pursuant thereto.

"Covered benefits" or "benefits" means those health care services to which an enrollee is entitled under the terms of a health benefit plan.

"Dependent" means the spouse, child, or other class of persons of an enrollee or eligible individual, subject to the applicable terms of the policy, contract, or plan.

"Eligible individual" means an employee of a small employer as shall be determined (i) in accordance with the terms of the group health benefit plan; (ii) as provided by the health carrier under rules of the health carrier that are uniformly applicable to employers in the small group market; and (iii) in accordance with all applicable laws of the Commonwealth.

"Enrollee" means a policyholder, subscriber, participant, member, insured, or other individual covered by a health benefit plan.

"Exchange" means either (i) the federal health benefit exchange established pursuant to § 1321 of the Affordable Care Act or (ii) the Virginia Health Benefit Exchange established pursuant to Chapter 65 (§ 38.2-6500 et seq.) of Title 38.2 of the Code of Virginia, through which qualified health plans and qualified dental plans are made available to qualified individuals.

"Group health plan" means an employee welfare benefit plan as defined in § 3(1) of the Employee Retirement Income Security Act of 1974 (ERISA) (29 USC § 1002(1)) to the extent that the plan provides medical care within the meaning of § 733(a) of ERISA (29 USC § 1191b(a)) to employees, including both current and former employees, or their dependents as defined under the terms of the plan directly or through insurance, reimbursement, or otherwise.

"Health benefit plan" means a policy, contract, certificate, or agreement offered by a health carrier to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services, except as otherwise specifically exempted. "Health benefit plan" does not include the "excepted benefits" as defined in § 38.2-3431 of the Code of Virginia.

"Health carrier" means an entity subject to the insurance laws and regulations of the Commonwealth and subject to the jurisdiction of the State Corporation Commission that contracts or offers to contract to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services, including a health carrier licensed to sell accident and sickness insurance, a health maintenance organization, a health services plan, or any other entity providing a plan of health insurance, health benefits, or health care services.

"Health insurance coverage" means benefits consisting of medical care (provided directly, through insurance or reimbursement, or otherwise) under any hospital or medical service policy or certificate, hospital or medical service plan contract, or health maintenance organization contract offered by a health carrier.

"Health status-related factor" means any of the following factors: health status; medical condition, including physical and mental illnesses; claims experience; receipt of health care services; medical history; genetic information; evidence of insurability, including conditions arising out of acts of domestic violence or extra-hazardous activities; disability; or any other health status-related factor as determined by federal regulation.

"Individual market" means the market for health insurance coverage offered to individuals other than in connection with a group health plan.

"Medical necessity" or "medically necessary" means appropriate and necessary health care services that are rendered for a condition that, according to generally accepted principles of good medical practice, requires the diagnosis or direct care and treatment of an illness, injury, or pregnancy-related condition, and are not provided only as a convenience.

"Premium" means all moneys paid by an employer, eligible individual, or enrollee as a condition of coverage from a health carrier, including fees and other contributions associated with the health benefit plan.

"Small group market" means the health insurance market under which eligible individuals obtain health benefit plans directly or through any arrangement on behalf of themselves and their dependents through a group health plan maintained by a small employer.

14VAC5-135-30. General policy requirements.

A. Each health benefit plan shall contain a guaranteed renewability provision in accordance with § 38.2-3430.7 or

Regulations

38.2-3432.1 of the Code of Virginia. The provision shall appear on the first page of the policy.

B. Each health benefit plan shall contain a termination, cancellation, or discontinuation of coverage policy provision in accordance with § 38.2-3430.7 or 38.2-3432.1 of the Code of Virginia.

C. Each health benefit plan shall contain a provision for grace periods:

1. An individual health benefit plan shall contain a grace period of not less than 31 days after the initial premium is paid. Further, in accordance with 45 CFR 156.270(d), an individual health benefit plan offered on the exchange shall also contain language that an enrollee receiving advance payments of the premium tax credit is instead subject to a grace period of three consecutive months, during which time the health carrier shall pay all appropriate claims for services rendered to the enrollee during the first month of the grace period and may pend claims for services rendered to the enrollee in the second and third months of the grace period. If the enrollee exhausts the three-month grace period, the health carrier shall terminate the policy effective the last day of the first month of the three-month grace period.

2. A group health benefit plan shall contain a grace period of not less than 31 days after the initial premium is paid.

D. A health benefit plan shall contain essential health benefits in accordance with § 38.2-3451 of the Code of Virginia. Benefits required by any applicable state or federal law shall also be covered.

E. The standard by which payment of benefits is made shall be clearly described in the policy. "Allowed amount" and other similar words shall be clearly defined.

14VAC5-135-40. Student health insurance coverage.

A. For purposes of this section, "student health insurance coverage" means a type of individual health insurance coverage offered in the individual market that (i) is provided pursuant to a written agreement between an institution of higher education, as defined by the Higher Education Act of 1965 (P.L. 89-329), and a health carrier and provided to students enrolled in that institution of higher education and their covered dependents; (ii) does not make health insurance coverage available other than in connection with enrollment as a student or as a covered dependent of a student of the institution of higher education; and (iii) does not condition eligibility for health insurance coverage on any health status-related factor related to a student or a covered dependent of the student.

B. Student health insurance coverage is subject to the requirements of the ACA, including essential health benefits, mental health parity, and the requirements of this chapter, except as noted in this section.

C. Student health insurance coverage is exempt from the guaranteed availability requirements of § 38.2-3430.3 of the Code of Virginia and the guaranteed renewability requirements of § 38.2-3430.7 of the Code of Virginia.

D. Student health insurance coverage is not subject to the single risk pool requirement outlined in § 1312(c) of the ACA.

E. Student health insurance coverage premium rates may be based on a school-specific community rating.

14VAC5-135-50. Prohibitions, limitations, and disclosures.

A. A health carrier shall not discriminate on the basis of race, color, national origin, disability, age, sex, gender identity, gender expression, sexual orientation, or status as a transgender individual. Nothing in this section shall be construed to prevent a health carrier from appropriately utilizing reasonable medical management techniques including medical necessity.

B. A policy shall not limit or exclude medically necessary services that arise out of complications from contractually excluded services.

C. If a health carrier offers an optional benefit to a health benefit plan, the health carrier may file a separate schedule that includes the additional benefit and identify the health benefit plan to which the schedule applies. A different plan identification is necessary to distinguish the health benefit plan with the additional benefit.

D. A health carrier may offer a health benefit plan that does not include pediatric oral health benefits if:

1. The health carrier is reasonably assured that pediatric oral health benefits are available to the purchaser of the health benefit plan in accordance with § 38.2-3451 B of the Code of Virginia, and

2. The plan contains the following statement on the first page of the policy and bold:

"This policy does not provide the ACA-required pediatric oral health benefits."

E. If an individual policy contains a military service exclusion or a provision that suspends coverage during military service, the policy shall provide for a refund of unearned premium upon receipt of written notice of the military service.

F. A policy application shall not contain questions about any health-status related factors other than age and tobacco use.

G. A policy shall only be rated on age, tobacco use, geographic location, plan category, and whether the policy covers dependents in accordance with § 38.2-3447 of the Code of Virginia.

H. No policy shall contain a provision that allows for increase in premium or change in deductible except during renewal.

I. A health benefit plan shall not impose any preexisting condition exclusion.

J. Policy exclusions may be no more restrictive than allowed by the state-selected essential health benefits benchmark plan.

14VAC5-135-60. Severability.

If any provision of this chapter or its application to any person or circumstance is for any reason held to be invalid, the remainder of the chapter and the application of the provisions to other persons or circumstances shall not be affected.

Chapter 141

Rules Governing Accident and Sickness Excepted Benefits Policies; Short-Term Limited Duration Insurance

14VAC5-141-10. Applicability and scope.

A. This chapter implements the provisions of Chapters 34 (§ 38.2-3400 et seq.) and 35 (§ 38.2-3500 et seq.) of Title 38.2 of the Code of Virginia as it applies to excepted benefits as defined in § 38.2-3431 of the Code of Virginia, 45 CFR § 146.145, and 45 CFR 148.220, as well as short-term limited-duration insurance.

B. This chapter applies to all individual and group market insurance policies delivered or issued for delivery in Virginia that qualify as accident and sickness excepted benefits.

C. This chapter applies to all short-term limited-duration insurance delivered or issued for delivery in Virginia, including a certificate delivered in Virginia that is issued under a short-term limited-duration plan in any other jurisdiction.

D. This chapter outlines the types of accident and sickness excepted benefits policies and the allowable combinations of such policies that may be approved for use in Virginia. No other combinations or types of such policies may be filed without prior approval by the commission.

E. This chapter does not apply to Medicare Supplement policies, which are governed under Rules Governing Minimum Standards for Medicare Supplement Policies (14VAC5-170) and long-term care insurance, which is governed under Rules Governing Long-Term Care Insurance (14VAC5-200).

14VAC5-141-20. Definitions.

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

"Accident" means an unintentional or unexpected event or circumstance that results in injury.

"Accident only coverage" means a policy that provides benefits for accidental injury.

"Accidental injury" means bodily injury sustained by the insured that is the direct result of an accident independent of disease, infirmity, or any other cause. "Accidental injury" shall

not include words that establish an accidental means test or use words such as "external," "violent," "visible wounds," or similar words of description or characterization.

"Commission" means the State Corporation Commission.

"Disability income insurance" means a policy that provides for weekly or monthly periodic payments for a specified period during the continuance of the insured's partial or total disability resulting from either sickness or injury or a combination of the two.

"Elimination period" means a period of time between the date of loss and when benefits commence. An elimination period may only be included in a disability income policy or a short-term convalescent care policy, unless otherwise specified in this chapter.

"Excepted benefits" has the same meaning as in § 38.2-3431 of the Code of Virginia. For purposes of this regulation:

1. The following benefits are excepted in all circumstances:
 - a. Coverage only for accident (including accidental death and dismemberment); or
 - b. Disability income insurance.

2. The following benefits are excepted if the benefits are provided under a separate individual or group policy, certificate, or contract of insurance, or are not an integral part of the group health plan:

- a. Limited scope dental, limited scope vision, or limited scope hearing benefits; or
- b. Other similar, limited benefits as may be filed and approved by the commission.

3. The following benefits are excepted if offered as independent, noncoordinated benefits:
 - a. Specified disease or critical illness; or
 - b. Hospital indemnity or other fixed indemnity insurance.

4. Similar supplemental coverage qualifies as excepted benefits if the coverage supplements and fills gaps in a group health plan and is provided in a separate policy.

"Hospital" means a facility licensed as a hospital under state law. The term "hospital" may be defined with no further restrictions than the applicable licensure requirements.

"Major medical coverage" or "minimum essential coverage" as defined in 45 CFR 156.600 means any of the following:

1. Employer-sponsored coverage (including Consolidated Omnibus Budget Reconciliation Act (COBRA) coverage and retiree coverage);
2. Coverage purchased in the individual market, including a qualified health plan offered through the Health Insurance Marketplace (also known as the Health Benefit Exchange);
3. Coverage under a grandfathered health plan;

Regulations

4. Medicare Part A coverage and Medicare Advantage plans;
5. Most Medicaid coverage, except for limited coverage plans;
6. Children's Health Insurance Program (CHIP) coverage;
7. Most student health plans;
8. Certain types of veterans' health coverage administered by the Department of Veterans Affairs;
9. TRICARE;
10. Coverage provided to Peace Corps volunteers;
11. Coverage under the Nonappropriated Fund Health Benefit Program;
12. Refugee Medical Assistance supported by the Administration for Children and Families; or
13. State high-risk pools for plan or policy years that started on or before December 31, 2014.

"Partial disability" or "residual disability," if such term is used in the policy or certificate, means the insured's inability to perform one or more but not all of the major or essential duties of employment or occupation or may be related to a percentage of time worked, a specified number of hours, or amount of compensation. Where a policy provides total and partial or residual disability benefits, no more than one elimination period may be required for any one period of disability.

"Policy" means an insurance policy, contract, certificate, evidence of coverage, or other agreement of insurance, including any attached rider, endorsement, or application.

"Preexisting condition" means a disease or physical condition that, during a one-year period immediately preceding the effective date of coverage or treatment was received. "Preexisting condition" shall not include congenital anomalies of a covered dependent child.

A preexisting condition exclusion shall not exceed one year for individual policies, unless otherwise specified in this chapter.

A preexisting condition exclusion for group policies shall not apply to loss incurred or disability commencing after the earlier of (i) the end of a continuous period of 12 months commencing on or after the effective date of the person's coverage during which the person receives no medical advice or treatment in connection with the disease or physical condition, or (ii) the end of the two-year period commencing on the effective date of the person's coverage, unless otherwise specified in this chapter.

"Renewable" means the right of a policyholder to continue the policy in force by the timely payment of premiums, during which period the insurer shall not unilaterally make any change in any provision of the policy while the policy is in force;

however, the insurer may adjust premium rates upon renewal in accordance with rate filing requirements.

"Short-term limited-duration insurance" means health insurance coverage in which the period of coverage or policy duration is three months or less and complies with the requirements of § 38.2-3407.21 of the Code of Virginia. "Short-term limited-duration insurance" is not individual health insurance coverage and is not excepted benefits as those terms are defined in § 38.2-3431 of the Code of Virginia.

"Sickness" means an illness, disease, condition, or disorder.

"Total disability" means the insured's inability to perform the substantial and material duties of the insured's regular occupation or the insured's inability to engage in an employment or occupation for which the insured is or becomes qualified by reason of education, training, or experience. Total disability shall not be based solely upon an insured's inability to (i) perform any occupation, any occupational duty, any and every duty of the insured's occupation, or words of similar meaning; or (ii) engage in any training or rehabilitation program.

"Waiting period" means the period of time commencing from the effective date of coverage during which no benefits are provided under the policy.

14VAC5-141-30. General policy provisions.

A. Each excepted benefits policy shall contain a notice displayed prominently in advertising, application and plan materials and on the face of the policy in at least 14-point type the following language:

"THIS IS AN EXCEPTED BENEFITS POLICY. IT PROVIDES COVERAGE ONLY FOR THE LIMITED BENEFITS OR SERVICES SPECIFIED IN THE POLICY."

B. A policy that is intended to cover specific types of benefits or services may not then exclude the same or similar types of conditions, illnesses, or events, except for any preexisting condition limitations. Benefits shall be reasonable in relation to the premium charged and specific prohibitions shall be limited as determined by the commission.

C. Each individual policy issued under this chapter may be renewable at the option of the insured, unless otherwise specified in this chapter. The renewability provisions shall appear on the first page of the policy and be appropriately captioned.

D. If covered, pregnancy, childbirth, or miscarriage shall be treated like any other sickness.

E. In the event an insurer cancels an individual policy in accordance with § 38.2-3504 of the Code of Virginia, any coverage for pregnancy shall provide for an extension of benefits for the duration of the pregnancy if the pregnancy commenced while the policy was in force and for which benefits would be payable had the policy remained in force.

F. A policy that provides for the payment of benefits based on standards described as "usual and customary," "reasonable and customary," or similar words shall include an explanation of these terms.

G. An individual policy that provides for dependent coverage shall provide that in the event of the insured's death, a covered spouse of the insured shall become the insured.

H. A policy may only exclude services performed by a member of the covered person's immediate family and services for which no charge is normally made in the absence of insurance.

I. If a policy contains a military service exclusion or a provision that suspends coverage during military service, the policy shall provide for a refund or credit of unearned premium upon receipt of written notice of the military service.

J. For any individual policy, if additional premium is charged for benefits provided in connection with a rider or endorsement, a separate premium amount shall be stated in the policy.

K. If a policy contains any preexisting condition limitations, these shall appear in a separate paragraph in the policy and labeled as "Preexisting Conditions Limitation."

L. If age is used to reduce the maximum aggregate benefits available in the policy, this shall be prominently stated in the policy.

M. If a policy contains a conversion provision, it shall appear in a separate paragraph and shall state eligibility requirements, limitations on the conversion, and the benefits provided.

14VAC5-141-40. Prohibitions, limitations and disclosures.

A. No excepted benefits policy or short-term limited-duration insurance policy may be advertised, offered for sale, or sold as minimum essential coverage.

B. A policy shall not have a waiting period that exceeds 30 days, unless otherwise specified in this chapter.

C. If a policy contains a preexisting condition exclusion, it shall conform to the requirements included in the definition of "preexisting condition" in this chapter, unless otherwise specified in this chapter.

D. Any limit or reduction of coverage or benefits for specifically named or described preexisting conditions that goes beyond the limitations in subsection C of this section or extrahazardous activity that is a condition of issuance, renewal, or reinstatement requires a signed acceptance by the policyholder and shall be attached to the policy.

E. Except for riders or endorsements by which the insurer fulfills a request made in writing by the policyholder, an insurer shall not reduce or eliminate benefits or coverage except at reinstatement or renewal. After the date of policy issue and during the policy term, any rider or endorsement that

increases benefits or coverage with an increase in premium shall be agreed to in writing by the policyholder, except if the increased benefits or coverage is required by law.

14VAC5-141-50. Accident.

A. Accident only coverage is a benefit provided for accidental bodily injury sustained by the insured person. Accident only coverage shall not contain a waiting period.

B. Accident only coverage may be filed in combination with the following:

1. Accidental death and dismemberment;
2. Disability income; or
3. Hospital indemnity or fixed indemnity.

C. A policy that covers an accidental injury may provide that injuries shall not include:

1. Injuries for which benefits are provided under any workers' compensation, employer's liability or similar law, or motor vehicle no-fault plan, unless prohibited by law; or
2. Injuries incurred while the insured person is engaged in any activity pertaining to any trade, business, employment, or occupation for wage or profit.

D. Accidental death and dismemberment benefits shall be payable if the loss occurs within 180 days from the date of the accident, the loss is a result of the accident, and the policy was in force at the time of the accident.

E. Specific dismemberment benefits shall not be payable in lieu of other benefits under the policy unless the specific dismemberment benefit equals or exceeds any other benefits contained in the policy.

F. An elimination period may be applied to an incidental benefit that is in addition to the accident benefit, such as a fixed or lump-sum payment for a coma resulting from an accident.

14VAC5-141-60. Disability income insurance.

A. Disability income insurance is a policy that provides for weekly or monthly periodic payments for a specified period during the continuance of partial or total disability resulting from either sickness or injury or a combination of the two.

B. Disability income insurance may be filed in combination with the following:

1. Accident only coverage;
2. Accidental death and dismemberment; or
3. Hospital indemnity or fixed indemnity.

C. A disability income policy may contain an elimination period no greater than:

Regulations

1. 30 days in the case of coverage providing a benefit of one year or less, unless otherwise provided in subsection F of this section;

2. 90 days in the case of coverage providing a benefit of more than one year but not greater than two years; or

3. 180 days in all other cases during the continuance of disability resulting from sickness or injury.

D. A disability income policy shall allow at least 30 days after the date of an accident for a covered loss to start.

E. A disability policy shall cover complications arising out of pregnancy, childbirth, or miscarriage.

F. A disability income individual policy shall contain a minimum period of time for which benefits are paid that is not less than 180 days. A disability income group policy may contain a minimum period of time for which benefits are paid that is not less than 90 days. A policy that is 90 days but less than 180 days may have an elimination period of not more than seven days.

G. If a disability income policy contains a provision for recurrent disabilities, the period of time required between recurrent disabilities shall be no greater than six months.

H. If the insurer terminates a disability income policy, any claim for a covered loss that commenced while the policy was in force shall not be affected, subject to the terms and conditions of the policy.

I. If a disability income policy contains a return of premium or cash value benefit, it shall not be reduced by an amount greater than the aggregate of claims paid under the policy. The insurer shall also demonstrate that the reserve basis for the policy is adequate.

J. A rider or endorsement that provides a specific dollar payment to the employer or business that may suffer a financial loss in the event of the disability of a key person may be attached to a disability income policy.

K. If a disability income policy provides coverage for disability from childbirth, it shall provide for a payable benefit of at least 12 weeks immediately following childbirth in accordance with § 38.2-3407.11:4 of the Code of Virginia. No waiting or elimination period shall apply.

14VAC5-141-70. Limited scope benefits - dental, vision, and hearing.

A. Limited scope dental, limited scope vision, and limited scope hearing are plans that provide for benefits primarily for the treatment of the mouth, eyes, and ears, respectively.

B. Limited scope dental, limited scope vision, and limited scope hearing plans may be provided either as separate policies, certificates, or contracts of insurance, or not part of an integral group health plan. Benefits are not part of an integral group health plan if the participant has the right to opt-out of

coverage, or if claims for the benefits are administered under a separate contract from the claims administration for any other benefits under the group health plan.

C. Except for basic or preventive benefits, a limited scope dental plan may apply waiting periods that exceed 30 days but no longer than 12 months to specific services or benefits.

D. For any limited scope dental plan to be recognized as meeting essential health benefits in accordance with § 38.2-3451 of the Code of Virginia and be treated as a qualified health plan in accordance with 45 CFR 155.1065, pediatric dental essential health benefits shall be included in the plan.

E. In addition to the notice required in 14VAC5-141-30 A, any limited scope dental plan that is not an exchange certified stand-alone dental plan shall include the following language on the face of the policy:

"THIS IS A STAND-ALONE DENTAL POLICY THAT IS NOT EXCHANGE CERTIFIED AND MAY NOT PROVIDE MINIMUM ESSENTIAL PEDIATRIC DENTAL BENEFITS."

14VAC5-141-80. Limited scope benefits - accident and sickness insurance while traveling.

A. Limited scope accident and sickness insurance while traveling is a separate policy providing accident and sickness benefits only for the limited duration of an insured's trip.

B. A limited scope accident and sickness insurance while traveling policy:

1. Shall not contain preexisting condition exclusions;

2. Shall not contain a waiting period;

3. Shall not contain a deductible applied to benefits;

4. Shall not coordinate benefits with any other accident and sickness policy;

5. Shall not be renewable;

6. Shall not include benefits for trip interruption or trip cancellation; and

7. Shall provide accident and sickness benefits only for the limited duration of an insured's trip.

C. Travel insurance in which the primary purpose of the insurance is trip cancellation or interruption shall be reviewed as miscellaneous casualty insurance in accordance with § 38.2-111 of the Code of Virginia and is exempt from this chapter.

14VAC5-141-90. Limited scope benefits - short-term convalescent care.

A. A short-term convalescent care policy may include care provided in a nursing home, assisted living facility, hospice, adult day care center, or home. A short-term convalescent care policy is a policy with a maximum lifetime benefit period that

does not exceed 364 days and that is provided under a separate policy, certificate, or contract of insurance.

B. There is no coordination of benefits with any other accident and sickness policy.

C. A short-term convalescent care policy shall contain the following provisions:

1. Eligibility for benefits shall be based on loss due to accident or sickness and loss of functional capacity or cognitive impairment.

2. Once the maximum benefit period under the policy has been exhausted, the policy may not be renewed.

3. If a policy contains a period in which benefits may be restored, the maximum period of time between benefit periods shall be no more than 180 days.

4. If a policy conditions benefits on an insured's inability to perform activities of daily living or on cognitive impairment, such requirements shall be defined.

5. Eligibility for benefits shall not be more restrictive than the presence of cognitive impairment or a deficiency of no more than two activities of daily living.

6. Reimbursement for any covered service that is legally performed by a person licensed to perform such services may not be denied.

D. If a policy provides short-term convalescent care or extended care benefits following hospitalization, qualification for benefits for the convalescent care or extended care facility shall not require admission less than 14 days after discharge from the hospital.

E. In addition to the provisions of 14VAC5-141-30 A, the following disclosure shall appear on the face of the policy:

"This is a policy that provides benefits for short-term convalescent care. THIS IS NOT A LONG-TERM CARE POLICY."

14VAC5-141-100. Limited scope benefits - group blanket policies.

A. A group blanket insurance policy is a policy of limited accident and sickness insurance that provides coverage for specified circumstances and a specific class of persons defined in the policy issued to a master policyholder. Such policy does not specifically name persons covered, by certificate or otherwise, although a statement of the coverage provided may be given, or required by the policy to be given, to eligible persons.

B. An individual application is not required from a person covered under a blanket insurance policy.

C. No insurer issuing a blanket insurance policy shall be required to furnish a certificate to each person covered by the policy.

D. A blanket insurance policy to be issued or issued for delivery in Virginia shall comply with the requirements of § 38.2-3521.2 of the Code of Virginia.

14VAC5-141-110. Specified disease insurance.

A. Specified disease insurance is a policy that pays benefits for the diagnosis or treatment of a specifically named disease or a critical illness.

B. Specified disease insurance benefits shall be provided under a separate policy, certificate, or contract of insurance.

C. Any policy provision that provides for the coordination or reduction of benefits because benefits are payable under any other health insurance coverage is prohibited.

D. A specified disease policy shall not exclude coverage for any subtype of disease or illness covered under the policy. The dollar value of benefits may only be limited based on the severity of the disease or illness where the insurer shows actuarial justification for the lower amount.

E. As a condition for eligibility for benefits under the policy, a clinical diagnosis shall be accepted if a pathological diagnosis cannot be reasonably obtained.

F. If a policy provides convalescent care or extended care benefits following hospitalization, qualification for benefits for the convalescent care or extended care facility shall not require admission less than 14 days after discharge from the hospital.

G. Policy benefits shall begin with the first day of care or confinement if the care or confinement is for a covered disease or illness even though a diagnosis is made at a later date. The retroactive application of coverage may not be limited to less than 90 days prior to the diagnosis.

H. If a specified disease policy contains a return of premium or cash value benefit, it shall not be reduced by an amount greater than the aggregate of claims paid under the policy. The insurer shall also demonstrate that the reserve basis for the policy is adequate.

14VAC5-141-120. Hospital indemnity or other fixed indemnity insurance.

A. Hospital indemnity or other fixed indemnity insurance means a policy that provides supplementary benefits that are paid to the insured in a single lump sum or a fixed dollar amount per specified event, per day, or per other period of hospitalization or illness regardless of the amount of expenses incurred. The policy shall not be a substitute for major medical coverage.

B. Hospital indemnity or other fixed indemnity insurance that is offered in the individual market shall meet the following criteria:

1. Benefits shall be provided under a separate policy, certificate, or contract of insurance;

Regulations

2. Benefits paid may be a single lump sum or a fixed dollar amount per service, per specified event, per day, or per other period of time. Benefits shall be determined based on the category of services and not the billed amount. Dollar amounts shall be expressed in the policy;

3. There is no coordination between the provision of benefits and an exclusion of benefits under any other health coverage;

4. A pregnancy that exists on the effective date of coverage may be considered a preexisting condition;

5. No waiting period shall be applied to loss due to accidental injury; and

6. In addition to the notice required in 14VAC5-141-30 A, the following notice shall be displayed prominently on the face of the policy: "THIS IS A SUPPLEMENT TO HEALTH INSURANCE AND IS NOT A SUBSTITUTE FOR MAJOR MEDICAL COVERAGE."

C. Hospital indemnity or other fixed indemnity insurance offered in the group market shall meet the following criteria:

1. There is no coordination between the provision of the benefits and an exclusion of benefits under any group health plan maintained by the same plan sponsor;

2. The benefits are paid with respect to an event without regard to whether benefits are provided with respect to the event under any group health plan maintained by the same plan sponsor; and

3. Benefits shall be paid in a single lump sum or a fixed dollar amount per day or other period of hospitalization or illness regardless of the amount of expenses incurred. A group policy shall not pay benefits on a per service basis. Benefits shall not be determined based on the billed amount. Dollar amounts shall be expressed in the policy.

14VAC5-141-130. Similar supplemental coverage.

A. Similar supplemental coverage that qualifies as excepted benefits is coverage that supplements and fills gaps in a group health plan. The supplemental coverage shall:

1. Cover benefits that are not covered by the primary coverage and are not essential health benefits as described in § 38.2-3451 of the Code of Virginia; or

2. Fill gaps in cost-sharing for primary coverage, including copayments, coinsurance, and deductibles.

B. Similar supplemental coverage shall be provided under a separate policy.

C. Similar supplemental coverage does not include coverage that becomes secondary or supplemental only under a coordination of benefits provision.

14VAC5-141-140. Short-term limited-duration insurance coverage.

A. Short-term limited-duration insurance is health insurance coverage in which the period of coverage or policy duration is three months or less. Based on the insured's eligibility, coverage may be renewed or extended so that coverage may not exceed six months in any 12-month period in accordance with § 38.2-3407.21 of the Code of Virginia. An application form shall include a question on whether the applicant had any short-term limited-duration coverage within 12 months of the application date.

B. A short-term limited-duration insurance policy issued by a health maintenance organization shall cover basic health care services as defined in § 38.2-4300 of the Code of Virginia. A short-term limited-duration insurance policy issued by any health carrier other than a health maintenance organization shall include at a minimum emergency services, hospital and physician care, outpatient medical services, surgical benefits, and radiology and laboratory benefits.

C. Short-term limited-duration insurance coverage may be nonrenewable or renewable, but not guaranteed renewable in accordance with § 38.2-3514.2 of the Code of Virginia.

1. A nonrenewable short-term limited-duration policy shall include all applicable state mandates that do not specifically exempt short-term nonrenewable policies.

2. A renewable short-term limited-duration policy shall include all applicable state mandates, including those mandates that exempt short-term nonrenewable policies.

D. A policy shall not subject a person to a preexisting condition exclusion of more than three months in any 12-month period. Any preexisting condition exclusion shall credit for any prior creditable coverage.

E. A short-term limited-duration policy shall not contain any waiting period or elimination period prior to receiving benefits.

F. Any advertising, sales call, solicitation, or other marketing practices shall include a disclosure that a short-term limited-duration policy is not minimum essential coverage or major medical coverage.

G. Each short-term limited-duration policy shall contain the following notice displayed prominently in the application, plan materials and on the face of the policy in at least 14-point type:

"THIS COVERAGE IS NOT REQUIRED TO COMPLY WITH FEDERAL MARKET REQUIREMENTS FOR HEALTH INSURANCE, PRINCIPALLY THOSE CONTAINED IN THE AFFORDABLE CARE ACT. Be sure to check your policy carefully to make sure you are aware of any exclusions or limitations regarding coverage of preexisting conditions or health benefits (such as hospitalization, emergency services, maternity care, preventive care, prescription drugs, and mental health and

substance use disorder services). Your policy might also have lifetime and/or annual dollar limits on health benefits. If this coverage expires or you lose eligibility for this coverage, you might have to wait until an open enrollment period to get other health insurance coverage."

H. Short-term limited-duration insurance forms and rates shall be filed with and approved by the commission in accordance with §§ 38.2-316 and 38.2-316.1 of the Code of Virginia.

I. A short-term limited-duration insurance policy shall be subject to internal appeal process requirements and external review requirements of Chapter 35.1 (§ 38.2-3556 et seq.) of Title 38.2 of the Code of Virginia.

J. An insurer shall not issue a short-term limited-duration policy during any open enrollment period. No application for short-term limited-duration insurance may be accepted during any open enrollment period.

14VAC5-141-150. Requirements for replacement of an individual policy.

A. The application form for an excepted benefits or short-term limited-duration policy shall include a question regarding whether the insurance to be issued is intended to replace any other insurance presently in force.

B. An insurer may not replace any policy that qualifies as minimum essential coverage with an excepted benefits or a short-term limited-duration policy unless specifically requested in writing by the insured.

C. If the sale will involve replacement, an insurer or its agent shall furnish to the applicant prior to issuance or delivery of the policy the notice required in subsection D of this section. A direct response insurer shall deliver the notice to the applicant upon issuance of the policy. A copy signed by the applicant shall be retained by the insurer.

D. Notice to applicants shall be provided in substantially the following form:

"NOTICE TO APPLICANT REGARDING REPLACEMENT OF AN INSURANCE POLICY

According to your application, you intend to lapse or otherwise terminate an existing policy and replace it with an excepted benefits or short-term limited-duration policy issued by (insert Company Name). In accordance with the terms of your policy, you may have at least 10 days to decide without cost whether you desire to keep the policy. For your own protection you should consider certain factors that may affect the insurance provisions available to you under the new policy.

1. Preexisting conditions may not be immediately or fully covered under the new policy. This could result in denial or delay of a claim for benefits under the new policy, where a similar claim may have been payable under your present policy.

2. You may wish to consult with your present insurer or its agent regarding the proposed replacement of your present policy. It is your right and in your best interest to make sure you understand all the factors involved in replacing your present coverage.

3. If you still wish to terminate your present policy and replace it with new coverage, carefully check all the information in the application before you sign it.

The above "Notice to Applicant" was delivered to the applicant on (date).

(Applicant's signature _____)"

14VAC5-141-160. Severability.

If any provision of this chapter or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the chapter and the application of such provision to other persons or circumstances shall not be affected.

VA.R. Doc. No. R22-4101; Filed July 18, 2022, 11:57 a.m.

Proposed Regulation

REGISTRAR'S NOTICE: The State Corporation Commission is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency that by the Constitution is expressly granted any of the powers of a court of record.

Title of Regulation: 14VAC5-260. **Rules Governing Insurance Holding Companies (amending 14VAC5-260-30, 14VAC5-260-80; adding 14VAC5-260-87).**

Statutory Authority: §§ 12.1-13 and 38.2-223 of the Code of Virginia.

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

Public Comment Deadline: September 15, 2022.

Agency Contact: Katie Johnson, Insurance Policy Advisor, Bureau of Insurance, State Corporation Commission, P.O. Box 1157, Richmond, VA 23218, telephone (804) 371-9688, or email katie.johnson@scc.virginia.gov.

Summary:

Pursuant to Chapter 113 of the 2022 Acts of Assembly, the proposed amendments require certain insurers that are members of an insurance holding company system to file a group capital calculation in accordance with the National Association of Insurance Commissioners (NAIC) Group Capital Calculation Instructions. The proposed amendments (i) establish criteria for when the Commissioner of Insurance may exempt an insurance holding company system from filing the annual group capital calculation and accept a limited filing or report; (ii) establish criteria for when a nonreciprocal

Regulations

jurisdiction is considered to recognize and accept the group capital calculation as the worldwide group capital assessment for the U.S. insurance groups that operate in that jurisdiction; (iii) incorporate 2022 amendments to § 38.2-1330 of the Code of Virginia regarding provisions to ensure the continuity of essential services and functions to an insurer in receivership and further clarify ownership of data and records of the insurer; and (iv) align the regulations with the current NAIC Holding Company System Model Regulation, which was revised most recently in August 2021, and update the NAIC Accounting Practices & Procedures Manual incorporated by reference and a required form.

AT RICHMOND, JULY 26, 2022

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. INS-2022-00072

Ex Parte: In the matter of Amending Rules

Governing Insurance Holding Companies

ORDER TO TAKE NOTICE

Section 12.1-13 of the Code of Virginia ("Code") provides that the State Corporation Commission ("Commission") shall have the power to promulgate rules and regulations in the enforcement and administration of all laws within its jurisdiction, and § 38.2-223 of the Code provides that the Commission may issue any rules and regulations necessary or appropriate for the administration and enforcement of Title 38.2 of the Code.

The rules and regulations issued by the Commission pursuant to § 38.2-223 of the Code are set forth in Title 14 of the Virginia Administrative Code. A copy also may be found here: law.lis.virginia.gov/admincode/title14/agency5/.

The Bureau of Insurance ("Bureau") has submitted to the Commission proposed revisions to the rules set forth in Chapter 260 of Title 14 of the Virginia Administrative Code, entitled "Rules Governing Insurance Holding Companies" ("Chapter 260").

The revisions to Chapter 260 are necessary to implement 2022 General Assembly Session amendments to § 38.2-1329 of the Code,¹ which require certain insurers that are members of an insurance holding company system to file a group capital calculation in accordance with the National Association of Insurance Commissioners ("NAIC") Group Capital Calculation Instructions. The proposed revisions to Chapter 260 establish criteria for when the Commissioner of Insurance may: (1) exempt an insurance holding company system from filing the annual group capital calculation; and (2) accept a limited filing or report. The proposed revisions also establish criteria for when a non-reciprocal jurisdiction is considered to recognize and accept the group capital calculation as the worldwide group capital assessment for the U.S. insurance groups that operate in that jurisdiction. The proposed revisions

include changes to definitions to align those terms with the new, proposed criteria.

The General Assembly also amended § 38.2-1330 of the Code,² regarding provisions to ensure the continuity of essential services and functions to an insurer in receivership as well as to further clarify ownership of data and records of the insurer. The proposed revisions to Chapter 260 clarify that the terms of cost sharing agreements between an insurer and an affiliated entity must include terms related to the insurer's ownership of data and records; the duty of the affiliated entity to furnish data and records in usable format in the event of seizure, conservatorship or receivership; and the continued provision by an affiliate of essential services and systems in the event of seizure, conservatorship or receivership.

Additionally, the proposed revisions to Chapter 260 will more closely align the regulations with current guidance prepared by the NAIC in its Insurance Holding Company System Model Regulation, which was revised most recently in August 2021.

NOW THE COMMISSION is of the opinion that the proposal to amend the rules set forth in Chapter 260 of Title 14 of the Virginia Administrative Code as submitted by the Bureau should be considered for adoption with a proposed effective date of November 1, 2022.

Accordingly, IT IS ORDERED THAT:

(1) The proposed amendments to the Rules Governing Insurance Holding Companies, as set out at 14VAC 5-260-30, 14VAC5-260-80 and 14VAC5-260-87 of the Virginia Administrative Code, are attached hereto and made a part hereof.

(2) All interested persons who desire to comment in support of or in opposition to, or request a hearing to oppose, the adoption of the proposed amended rules shall file such comments or hearing request on or before September 15, 2022, with the Clerk of the Commission, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218 and shall refer to Case No. INS-2022-00072. Any request for hearing shall state why a hearing is necessary and why the issues raised in the request for hearing cannot be addressed adequately in written comments. Interested persons desiring to submit comments electronically may do so by following the instructions at the Commission's website: scc.virginia.gov/pages/Case-Information. All comments shall refer to Case No. INS-2022-00072.

(3) If no written request for a hearing on the adoption of the proposed amended rules as outlined in this Order is received on or before September 15, 2022, the Commission, upon consideration of any comments submitted in support of or in opposition to the proposal, may adopt the rules as submitted by the Bureau.

(4) The Bureau shall provide notice of the proposal to all carriers licensed in Virginia and to all interested persons.

(5) The Commission's Office of General Counsel shall cause a copy of this Order, together with the proposal to amend the rules, to be forwarded to the Virginia Registrar of Regulations for appropriate publication in the Virginia Register of Regulations.

(6) The Commission's Division of Information Resources shall make available this Order and the attached proposal on the Commission's website: scc.virginia.gov/pages/Case-Information.

(7) The Bureau shall file with the Clerk of the Commission a certificate of compliance with the notice requirements of Ordering Paragraph (4) above.

(8) This matter is continued.

A COPY hereof shall be sent by the Clerk of the Commission to: C. Meade Browder, Senior Assistant Attorney General, at MBrowder@oag.state.va.us, Office of the Attorney General, Division of Consumer Counsel, 202 N. 9th Street, 8th Floor, Richmond, Virginia 23219-3424; and a copy hereof shall be delivered to the Commission's Office of General Counsel and the Bureau of Insurance in care of Deputy Commissioner Douglas C. Stolte.

¹See 2022 Va. Acts Ch. 113.

²Id.

14VAC5-260-30. Definitions.

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

"Commission" means the State Corporation Commission.

~~"Commissioner of Insurance" means the administrative or executive officer of the division or bureau of state government established to administer the insurance laws of a state other than Virginia.~~

"Commissioner" means the Commissioner of Insurance of Virginia.

"Executive officer" means chief executive officer, chief operating officer, chief financial officer, president, vice president, treasurer, secretary, controller, and any other individual performing functions corresponding to those performed by the foregoing officers under whatever title.

"Foreign insurer" shall include an alien insurer except where clearly noted otherwise.

"NAIC" means National Association of Insurance Commissioners.

"The Act" means Articles 5 and 6 of Chapter 13 (§ 38.2-1322 et seq. and § 38.2-1335 et seq.) of Title 38.2 of the Code of Virginia.

~~"Ultimate controlling person" means that person which is not controlled by any other person.~~

Other terms found in this chapter are used as defined in § 38.2-1322 of the Code of Virginia, or industry usage if not defined by the Code of Virginia.

14VAC5-260-80. Transactions subject to prior notice filing.

A. An insurer required to give notice of a proposed transaction pursuant to § 38.2-1330 B of the ~~Act~~ Code of Virginia shall furnish the required information in the format designated on Form D, as specified in the instructions of that form, which is a part of this chapter.

B. Agreements for cost-sharing services and management services ~~shall at a minimum and as applicable~~ must:

1. Identify the person providing services and the nature of such services;
2. Set forth the methods to allocate costs;
3. Require timely settlement, ~~not less frequently than on at least~~ a quarterly basis, and compliance with the requirements in the ~~National Association of Insurance Commissioners NAIC Accounting Practices and Procedures Manual, As of March 2014~~ 2022;
4. Prohibit advancement of funds by the insurer to ~~the an~~ an affiliate except to pay for services defined in the agreement;
5. State that the insurer will maintain oversight for functions provided to the insurer by ~~the an~~ an affiliate and that the insurer will monitor services annually for quality assurance;
6. Define ~~books and records and data~~ books and records and data of the insurer to include all ~~books and records and data~~ books and records and data developed or maintained under or related to the agreement ~~that are otherwise the property of the insurer, in whatever form maintained, including (i) claims and claim files, (ii) policyholder lists, (iii) application files, (iv) litigation files, (v) premium records, (vi) rating manuals and rating algorithms, (vii) underwriting manuals, (viii) personnel records, (ix) financial records, or (x) similar records within the possession, custody, or control of the affiliate;~~
7. Specify that all ~~books and records and data~~ books and records and data of the insurer are and remain the property of the insurer and are (i) subject to control of the insurer, (ii) identifiable, and (iii) segregated from all other persons' records and data or readily capable of segregation at no additional cost to the insurer;
8. State that all funds and invested assets of the insurer are the exclusive property of the insurer, held for the benefit of the insurer, and subject to the control of the insurer;
9. Include standards for termination of the agreement with and without cause;
10. Include provisions for indemnification of the insurer in the event of gross negligence or willful misconduct on the

Regulations

part of the affiliate providing the services and for any actions by the affiliate that violate provisions of the agreement required in subdivisions 11 through 15 of this subsection;

11. Specify ~~that~~, if the insurer is placed in supervision, seizure, conservatorship, or receivership or seized by the commission under the Rehabilitation and Liquidation of Insurers statute (Chapter 15 (§ 38.2-1500 et seq.) of Title 38.2 of the Code of Virginia):

a. ~~All of the~~ rights of the insurer under the agreement extend to the receiver or commission pursuant to Title 38.2 of the Code of Virginia; and

b. ~~All books and records will immediately be made available to the receiver or the commission, and shall be turned over to the receiver or commission immediately upon the receiver or the commission's request and data of the insurer must be identifiable and segregated from all other persons' records and data or must be readily capable of segregation at no additional cost to the receiver or the commission;~~

c. A complete set of records and data of the insurer will be provided to the receiver or the commission immediately in a usable format upon the receiver or the commission's request, and any cost to transfer data to the receiver or the commission shall be fair and reasonable; and

d. Affiliates will make available all employees essential to the operations of the insurer and the services associated with the operations of the insurer for the immediate continued performance of the essential services ordered or directed by the receiver or commission;

12. Specify that ~~the an~~ affiliate has no automatic right to terminate the agreement if the insurer is placed ~~in~~ into supervision, seizure, conservatorship, or receivership pursuant to Chapter 15 of Title 38.2 of the Code of Virginia; ~~and~~

13. Specify that an affiliate will provide essential services for a specific period of time after termination of the agreement if the insurer is placed into supervision, seizure, conservatorship, or receivership pursuant to Chapter 15 of Title 38.2 of the Code of Virginia as ordered or directed by the receiver or commission. Performance of the essential services will continue to be provided without regard to pre-receivership unpaid fees, as long as an affiliate continues to receive timely payment for post-receivership services rendered unless such affiliate is released by the receiver, commission, or supervising court;

14. Specify that ~~the an~~ affiliate will continue to maintain any systems, programs, or other infrastructure notwithstanding a ~~seizure by the commission~~ supervision, seizure, conservatorship, or receivership under Chapter 15 of Title 38.2 of the Code of Virginia, and will make them available ~~to the receiver for so~~ as ordered or directed by the receiver or commission as long as the such affiliate continues to

receive timely payment for post-receivership services rendered unless such affiliate is released by the receiver, commission, or supervising court; and

15. Specify that, in furtherance of the cooperation between the receiver and the affected guaranty association and subject to the receiver's authority over the insurer, if the insurer is placed into supervision, seizure, conservatorship, or receivership pursuant to Chapter 15 of Title 38.2 of the Code of Virginia and portions of the insurer's policies or contracts are eligible for coverage by one or more guaranty associations, the affiliate's commitments under subdivisions 11 through 14 of this subsection will extend to such guaranty association.

C. The approval of any material transactions pursuant to § 38.2-1330 B of the ~~Aet~~ Code of Virginia shall be deemed an amendment to an insurer's registration statement under § 38.2-1329 C 6 of the ~~Aet~~ Code of Virginia without further filing other than written confirmation under oath or affirmation by the registrant that the transaction as approved by the commission has been consummated. The confirmation shall be filed within two business days following consummation of the approved transaction.

14VAC5-260-87. Group capital calculation.

A. Where an insurance holding company system has previously filed the annual group capital calculation at least once, the commissioner, if the lead state commissioner, has the discretion to exempt the ultimate controlling person from filing the annual group capital calculation if the commissioner makes a determination based upon that filing that the insurance holding company system meets all of the following criteria:

1. Has annual direct written and unaffiliated assumed premium (including international direct and assumed premium), but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, of less than \$1 billion;

2. Has no insurers within its holding company structure that are domiciled outside of the United States or one of its territories;

3. Has no banking, depository, or other financial entity that is subject to an identified regulatory capital framework within its holding company structure;

4. The holding company system attests that there are no material changes in the transactions between insurers and non-insurers in the group that have occurred since the last filing of the annual group capital; and

5. The non-insurers within the holding company system do not pose a material financial risk to the insurer's ability to honor policyholder obligations.

B. Where an insurance holding company system has previously filed the annual group capital calculation at least

once, the commissioner, if the lead state commissioner, has the discretion to accept in lieu of the group capital calculation a limited group capital filing if the insurance holding company system has annual direct written and unaffiliated assumed premium (including international direct and assumed premium), but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, of less than \$1 billion, and all of the following additional criteria are met:

1. Has no insurers within its holding company structure that are domiciled outside of the United States or one of its territories;
2. Does not include a banking, depository, or other financial entity that is subject to an identified regulatory capital framework; and
3. The holding company system attests that there are no material changes in transactions between insurers and non-insurers in the group that have occurred since the last filing of the report to the commissioner, and the non-insurers within the holding company system do not pose a material financial risk to the insurers' ability to honor policyholder obligations.

C. For an insurance holding company that has previously met an exemption with respect to the group capital calculation pursuant to subsection A or B of this section, the commissioner, if the lead state commissioner, may require at any time the ultimate controlling person to file an annual group capital calculation, completed in accordance with the NAIC Group Capital Calculation Instructions, if any of the following criteria are met:

1. Any insurer within the insurance holding company system is in a Risk-Based Capital action level event as set forth in § 38.2-5503 of the Code of Virginia or a similar standard for a non-U.S. insurer;
2. Any insurer within the insurance holding company system meets one or more of the standards of an insurer deemed to be in hazardous financial condition as defined in 14VAC5-290-30; or
3. Any insurer within the insurance holding company system otherwise exhibits qualities of a troubled insurer as determined by the commissioner based on unique circumstances including the type and volume of business written, ownership and organizational structure, federal agency requests, and international supervisor requests.

D. A non-U.S. jurisdiction is considered to recognize and accept the group capital calculation if the jurisdiction satisfies the following criteria.

1. The non-U.S. jurisdiction provides confirmation by a competent regulatory authority in such jurisdiction that information regarding insurers and their parent, subsidiary, or affiliated entities, if applicable, shall be provided to the

commissioner, if the lead state commissioner, in accordance with a memorandum of understanding or similar document between the commission and such jurisdiction. Such memorandum of understanding or similar document may include the International Association of Insurance Supervisors Multilateral Memorandum of Understanding or other multilateral memoranda of understanding coordinated by the NAIC. The commission shall determine, in consultation with the NAIC, if the requirements of the information sharing agreements are in force.

2. In addition to the requirements in subdivision 1 of this subsection, one of the following provisions applies:

- a. The non-U.S. jurisdiction recognizes the U.S. state regulatory approach to group supervision and group capital by providing confirmation by a competent regulatory authority in such jurisdiction that insurers and insurance groups whose lead state is accredited by the NAIC shall be subject only to worldwide prudential insurance group supervision, including worldwide group governance, solvency and capital, and reporting, as applicable, by the lead state and will not be subject to group supervision, including worldwide group governance, solvency and capital, and reporting, at the level of the worldwide parent undertaking of the insurance or reinsurance group by the non-U.S. jurisdiction; or
- b. Where no U.S. insurance groups operate in the non-U.S. jurisdiction, that non-U.S. jurisdiction indicates formally in writing to the lead state, with a copy to the International Association of Insurance Supervisors, that the group capital calculation is an acceptable international capital standard. This will serve as the documentation otherwise required in subdivision 2 a of this subsection.

E. 1. A list of jurisdictions that recognize and accept the group capital calculation is published by the NAIC to assist the lead state commissioner in determining which insurers shall file an annual group capital calculation. The list will clarify those situations in which an insurance company holding system may be exempted from filing a group capital calculation. The list will also identify whether a jurisdiction for an insurance company holding system that is exempted requires a group capital calculation filing for any U.S. based insurance group's operations in that non-U.S. jurisdiction.

2. For a non-U.S. jurisdiction where no U.S. insurance groups operate, the confirmation provided to meet the requirement of subdivisions D 2 b of this section will serve as support for recommendation to be published by the NAIC as a jurisdiction that recognizes and accepts the group capital calculation.

3. If the commissioner, if the lead state commissioner, makes a determination that differs from the NAIC list, the commissioner shall provide thoroughly documented justification to the NAIC and other states.

Regulations

4. Upon determination by the commissioner, if the lead state commissioner, that a non-U.S. jurisdiction no longer meets one or more of the requirements to recognize and accept the group capital calculation, the commissioner may provide a recommendation to the NAIC that the non-U.S. jurisdiction be removed from the list of jurisdictions that recognize and accepts the group capital calculation.

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

FORMS (14VAC5-260)

~~Form A, Instructions for Application for Approval of Acquisition of Control of or Merger with a Domestic Insurer Pursuant to § 38.2-1323 of the Code of Virginia, and Application (rev. 1/15)~~

[Form A, Instructions for Application for Approval of Acquisition of Control of or Merger with a Domestic Insurer Pursuant to § 38.2-1323 of the Code of Virginia, and Application \(rev. 7/2022\)](#)

[Form B, Instructions for Insurance Holding Company System Annual Registration Statement Pursuant to § 38.2-1329 of the Code of Virginia, and Statement \(rev. 1/2015\)](#)

[Form C, Instructions for Summary of Changes to Registration Statement Pursuant to § 38.2-1329 of the Code of Virginia, and Summary \(rev. 1/2015\)](#)

[Form D, Instructions for Prior Notice and Application for Approval of Certain Transactions Pursuant to § 38.2-1330 B of the Code of Virginia, and Notice and Application \(rev. 1/2015\)](#)

[Form E, Instructions for Pre-Acquisition Notification Form Regarding the Potential Competitive Impact of a Proposed Merger or Acquisition by a Non-Domiciliary Insurer Doing Business in this Commonwealth or by a Domestic Insurer Pursuant to § 38.2-1323 of the Code of Virginia, and Notification \(rev. 1/2015\)](#)

[Form F, Instructions for Enterprise Risk Report Pursuant to § 38.2-1329 L of the Code of Virginia, and Report \(eff. 1/2015\)](#)

[Form G, Instructions for Notice of Dividends and Distributions to Shareholders Pursuant to §§ 38.2-1329 F and 38.2-1330.1 of the Code of Virginia, and Notice \(rev. 1/2015\)](#)

DOCUMENTS INCORPORATED BY REFERENCE (14VAC5-260)

~~Accounting Practices & Procedures Manual, As of March 2014,~~

[NAIC Accounting Practices & Procedures Manual March 2022](#), National Association of Insurance Commissioners, 1100 Walnut Street, Suite 1500, Kansas City, MO 64106, www.naic.org

VA.R. Doc. No. R22-7136; Filed July 26, 2022, 12:20 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF PHARMACY

Final Regulation

REGISTRAR'S NOTICE: The Board of Pharmacy is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 13 of the Code of Virginia, which exempts amendments to regulations of the board to schedule a substance in Schedule I or II pursuant to subsection D of § 54.1-3443 of the Code of Virginia. The board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **18VAC110-20. Regulations Governing the Practice of Pharmacy (amending 18VAC110-20-322).**

Statutory Authority: §§ 54.1-2400 and 54.1-3443 of the Code of Virginia.

Effective Date: September 14, 2022.

Agency Contact: Caroline Juran, RPh, Executive Director, Board of Pharmacy, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4456, FAX (804) 527-4472, or email caroline.juran@dhp.virginia.gov.

Summary:

The amendments add 10 compounds into Schedule I as recommended by the Department of Forensic Science pursuant to § 54.1-3443 of the Code of Virginia. These compounds added by regulatory action will remain in effect for 18 months or until the compounds are placed in Schedule I by legislative action of the General Assembly.

18VAC110-20-322. Placement of chemicals in Schedule I.

A. Pursuant to subsection D of § 54.1-3443 of the Code of Virginia, the Board of Pharmacy places the following in Schedule I of the Drug Control Act:

1. Synthetic opioid. N,N-diethyl-2-[(4-methoxyphenyl)methyl]-1H-benzimidazole-1-ethanamine (other name: Metodesnitazene), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation.

2. Compounds expected to have hallucinogenic properties.

- a. 4-fluoro-3-methyl-alpha-pyrrolidinovalerophenone (other name: 4-fluoro-3-methyl-alpha-PVP), its salts, isomers (optical, position, and geometric), and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.
- b. 4-fluoro-alpha-methylamino-valerophenone (other name: 4-fluoropentedrone), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers (optical, position, and geometric), and salts of isomers is possible within the specific chemical designation.
- c. N-(1,4-dimethylpentyl)-3,4-dimethoxyamphetamine (other name: N-(1,4-dimethylpentyl)-3,4-DMA), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers (optical, position, and geometric), and salts of isomers is possible within the specific chemical designation.
- d. 4,5-methylenedioxy-N,N-diisopropyltryptamine (other name: 4,5-MDO-DiPT), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers (optical, position, and geometric), and salts of isomers is possible within the specific chemical designation.
- e. Alpha-pyrrolidinocyclohexanophenone (other name: alpha-PCYP), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers (optical, position, and geometric), and salts of isomers is possible within the specific chemical designation.
- f. 3,4-methylenedioxy-alpha-pyrrolidinoheptiophenone (other name: MDPV8), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers (optical, position, and geometric), and salts of isomers is possible within the specific chemical designation.

3. Compounds expected to have depressant properties.

- a. Bromazolam, its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.
- b. Deschloroetizolam, its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.
- c. 7-chloro-5-(2-fluorophenyl)-1,3-dihydro-1,4-benzodiazepin-2-one (other name: Norfludiazepam), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

4. Cannabimimetic agents.

- a. Methyl 2-[1-(4-fluorobutyl)-1H-indole-3-carboxamido]-3,3-dimethylbutanoate (other name: 4-fluoro-MDMB-BUTICA), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and

salts of isomers is possible within the specific chemical designation.

- b. Ethyl 2-[1-(5-fluoropentyl)-1H-indole-3-carboxamido]-3-methylbutanoate (other name: 5-fluoro-EMB-PICA), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

The placement of drugs listed in this subsection shall remain in effect until October 27, 2022, unless enacted into law in the Drug Control Act.

B. Pursuant to subsection D of § 54.1-3443 of the Code of Virginia, the Board of Pharmacy places the following in Schedule I of the Drug Control Act:

1. Synthetic opioids.

- a. 1-{1-[1-(4-bromophenyl)ethyl]-4-piperidinyl}-1,3-dihydro-2H-benzimidazol-2-one (other name: Brorphine), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation.
- b. N-(4-chlorophenyl)-N-[1-(2-phenylethyl)-4-piperidinyl]-propanamide (other names: para-chlorofentanyl, 4-chlorofentanyl), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation.
- c. 2-[(4-methoxyphenyl)methyl]-N,N-diethyl-5-nitro-1H-benzimidazole-1-ethanamine (other name: Metonitazene), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation.
- d. N,N-diethyl-2-[[4-ethoxyphenyl) methyl]-1H-benzimidazol-1-yl]-ethan-1-amine (other name: Etazene, Desnitroetionitazene), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation.

2. Depressant. 5-(2-chlorophenyl)-1,3-dihydro-3-methyl-7-nitro-2H-1,4-benzodiazepin-2-one (other name: Meclonazepam), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

3. Cannabimimetic agent. Ethyl-2-[1-(5-fluoropentyl)-1H-indole-3-carboxamido]-3,3-dimethylbutanoate (other name: 5-fluoro EDMB-PICA), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

Regulations

The placement of drugs listed in this subsection shall remain in effect until December 23, 2022, unless enacted into law in the Drug Control Act.

C. Pursuant to subsection D of § 54.1-3443 of the Code of Virginia, the Board of Pharmacy places the following in Schedule I of the Drug Control Act:

1. Compound expected to have hallucinogenic properties. 4-chloro-alpha-methylaminobutiophenone (other name: 4-chloro Buphedrone), its salts, isomers (optical, position, and geometric), and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

2. Cannabimimetic agents.

a. Ethyl-2-[1-(5-fluoropentyl)-1H-indazole-3-carboxamido]-3-methylbutanoate (other names: 5-fluoro-EMB-PINACA, 5F-AEB), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

b. N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(pent-4-enyl)indazole-3-carboxamide (other name: ADB-4en-PINACA), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

The placement of drugs listed in this subsection shall remain in effect until March 14, 2023, unless enacted into law in the Drug Control Act.

D. Pursuant to subsection D of § 54.1-3443 of the Code of Virginia, the Board of Pharmacy places the following in Schedule I of the Drug Control Act:

1. Synthetic opioid. 1-(4-cinnamyl-2,6-dimethylpiperazin-1-yl)propan-1-one (other name: AP-238), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation.

2. Compounds expected to have hallucinogenic properties.

a. 4-methylallyloxy-3,5-dimethoxyphenethylamine (other name: Methallylescaline), its salts, isomers (optical, position, and geometric), and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

b. Alpha-pyrrolidino-2-phenylacetophenone (other name: alpha-D2PV), its salts, isomers (optical, position, and geometric), and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

3. Cannabimimetic agents.

a. Ethyl 2-[1-pentyl-1H-indazole-3-carboxamido]-3,3-dimethylbutanoate (other name: EDMB-PINACA), its

salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

b. N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-phenethyl-1H-indazole-3-carboxamide (other name: ADB-PHETINACA), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

The placement of drugs listed in this subsection shall remain in effect until August 16, 2023, unless enacted into law in the Drug Control Act.

E. Pursuant to subsection D of § 54.1-3443 of the Code of Virginia, the Board of Pharmacy places the following in Schedule I of the Drug Control Act:

1. Synthetic opioid. 2-(4-ethoxybenzyl)-5-nitro-1-(2-(pyrrolidin-1-yl)ethyl)-1H-benzimidazole (other names: N-pyrrolidino etonitazene, etonitazepyne), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation.

2. Compounds expected to have hallucinogenic properties.

a. 1-(1,3-benzodioxol-5-yl)-2-(propylamino)-1-butanone (other names: 3,4-Methylenedioxy-alpha-propylaminobutiophenone; N-propyl butylone), its salts, isomers (optical, position, and geometric), and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

b. 2-(ethylamino)-1-phenylpentan-1-one (other names: N-ethylpentedrone, alpha-ethylaminopentiophenone), its salts, isomers (optical, position, and geometric), and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

c. 3,4-methylenedioxy-alpha-cyclohexylaminopropiophenone (other name: Cyputylone), its salts, isomers (optical, position, and geometric), and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

d. 3,4-methylenedioxy-alpha-cyclohexylmethylamino propiophenone (other name: 3,4-Methylenedioxy-N,N-cyclohexylmethcathinone), its salts, isomers (optical, position, and geometric), and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

e. 3,4-methylenedioxy-alpha-isopropylaminobutiophenone (other name: N-isopropyl butylone), its salts, isomers (optical, position, and geometric), and salts of isomers whenever the existence of such salts, isomers, and salts of

isomers is possible within the specific chemical designation.

f. 4-chloro-N-butylcathinone (other names: 4-chlorobutylcathinone, para-chloro-N-butylcathinone), its salts, isomers (optical, position, and geometric), and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

g. 4-hydroxy-N-methyl-N-ethyltryptamine (other names: 4-hydroxy MET, Metocin), its salts, isomers (optical, position, and geometric), and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

3. Central nervous system stimulant. 4-methylmethamphetamine (other names: N-alpha,4-trimethyl-benzeneethanamine, 4-MMA), including its salts, isomers, and salts of isomers.

4. Cannabimimetic agent. N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1H-indole-3-acetamide (other names: ADB-FUBIATA, AD-18, FUB-ACADB), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

The placement of drugs listed in this subsection shall remain in effect until March 14, 2024, unless enacted into law in the Drug Control Act.

VA.R. Doc. No. R22-7200; Filed July 22, 2022, 9:53 a.m.

GUIDANCE DOCUMENTS

PUBLIC COMMENT OPPORTUNITY

Pursuant to § 2.2-4002.1 of the Code of Virginia, a certified guidance document is subject to a 30-day public comment period after publication in the Virginia Register of Regulations and prior to the guidance document's effective date. During the public comment period, comments may be made through the Virginia Regulatory Town Hall website (<http://www.townhall.virginia.gov>) or sent to the agency contact. Under subsection C of § 2.2-4002.1, the effective date of the guidance document may be delayed for an additional period. The guidance document may also be withdrawn.

The following guidance documents have been submitted for publication by the listed agencies for a public comment period. Online users of this issue of the Virginia Register of Regulations may click on the name of a guidance document to access it. Guidance documents are also available on the Virginia Regulatory Town Hall (<http://www.townhall.virginia.gov>) or from the agency contact or may be viewed at the Office of the Registrar of Regulations, 900 East Main Street, Richmond, Virginia 23219.

BOARD OF ACCOUNTANCY

Title of Document: [Disposition of Cases Involving Unlicensed Use of the CPA Title or the Practice of Public Accounting by Previously Licensed Individuals Applying for Reinstatement.](#)

Public Comment Deadline: September 14, 2022.

Effective Date: September 15, 2022.

Agency Contact: Vasa Clarke, Regulatory Coordinator, Board of Accountancy, 9960 Mayland Drive, Suite 402, Henrico, VA 23233, email vasa.clarke@boa.virginia.gov.

DEPARTMENT FOR AGING AND REHABILITATIVE SERVICES

Title of Document: [Vocational Rehabilitation Manual - Selected Chapters.](#)

Public Comment Deadline: September 14, 2022.

Effective Date: September 15, 2022.

Agency Contact: Charlotte Arbogast, Senior Policy Analyst/Regulatory Coordinator, Department for Aging and Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, VA 23229, telephone (804) 662-7093, or email charlotte.arbogast@dars.virginia.gov.

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Title of Document: [Virginia Cooperative Spongy Moth \(formerly Gypsy Moth\) \(Lymantria dispar dispar\) Suppression Program, 2023 Guidelines for Participation Aerial Treatments.](#)

Public Comment Deadline: September 14, 2022.

Effective Date: September 15, 2022.

Agency Contact: David Gianino, Program Manager, Office of Plant Industry Services, Department of Agriculture and Consumer Services, Oliver Hill Building, 102 Governor Street, Richmond, VA 23219, telephone (804) 786-3515, or email david.gianino@vdacs.virginia.gov.

DEPARTMENT OF CONSERVATION AND RECREATION

VIRGINIA SOIL AND WATER CONSERVATION BOARD

Title of Document: [2023 Grant Manual for the Virginia Dam Safety, Flood Prevention and Protection Assistance Fund.](#)

Public Comment Deadline: September 14, 2022.

Effective Date: September 15, 2022.

Agency Contact: Christine Watlington Jones, Policy and Regulatory Coordinator, Department of Conservation and Recreation, 600 East Main Street, Richmond, VA 23219, telephone (804) 786-3319, or email christine.watlington@dcr.virginia.gov.

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

Title of Document: [Guidance for Granting Internship Extensions.](#)

Public Comment Deadline: September 14, 2022.

Effective Date: September 15, 2022.

Agency Contact: Erin Barrett, Senior Policy Analyst, 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.

DEPARTMENT OF MOTOR VEHICLES

Titles of Documents: [Class A Driver Training School Instructor/Owner Background Check Policy.](#)

[Class B Driver Training School Instructor/Owner Background Check Policy.](#)

[Infracciones de la Circulación y Cálculo de Puntos, Programa de mejoramiento para conductores de Virginia.](#)

[Moving Violations and Point Assessments, the Virginia Driver Improvement Program.](#)

Public Comment Deadline: September 14, 2022.

Effective Date: September 15, 2022.

Agency Contact: Melissa K. Velazquez, Legislative Director, Department of Motor Vehicles, 2300 West Broad Street, Richmond, VA 23220, telephone (804) 367-1844, or email melissa.velazquez@dmv.virginia.gov.

SAFETY AND HEALTH CODES BOARD

Title of Document: [Virginia Occupational Safety and Health Procedures to comply with Occupational and Safety Health Administration \(OSHA\) Enforcement Exemptions and Limitations under the Federal Appropriations Act, OSHA Instruction CPL 02-00-051 formerly CPL 2-0.51J; Appendix "A" Revision.](#)

Public Comment Deadline: September 14, 2022.

Effective Date: September 15, 2022.

Agency Contact: Cristin Bernhardt, Regulatory Coordinator, Department of Labor and Industry, Main Street Centre, 600 East Main Street, Richmond, VA 23219, telephone (804) 786-2392, or email cristin.bernhardt@doli.virginia.gov.

GENERAL NOTICES

STATE BOARD OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

Initial Draft of a New Center-Based Service Specific Chapter for 12VAC35-105, Rules and Regulations for Licensing Providers by the Department of Behavioral Health and Developmental Services, Available for Review

To: Providers Licensed by the Department of Behavioral Health and Developmental Services

From: Jae Benz, Director, Office of Licensing

Subject: Response to Periodic Review: Overhaul of Licensing Regulations to Service

Specific Chapters - Initial drafts of Center-Based Chapter and Case Management Chapter

Background. In late 2017, the Department of Behavioral Health and Developmental Services (DBHDS) conducted a periodic review of the Rules and Regulations for Licensing Providers by the Department of Behavioral Health and Developmental Services (12VAC35-105) (Licensing Regulations). At the completion of that review, the department decided amendments to the regulation were needed. After researching other states and other agencies within Virginia, the Office of Licensing decided to split the regulation into several separate regulatory chapters, revising both the structure and the content.

In response to significant public comment, the structure will include one overarching General Chapter that will apply to all providers and five service specific chapters: Residential, Home/Non-Center Based, Center-Based, Case Management, and Crisis. Please see the list of chapters at the end of this notice. This methodology allows DBHDS to write more detailed service specific regulations that will assist providers in understanding exactly which regulatory provisions apply to their services.

In late 2019, the Office of Licensing published an initial draft of the General Chapter for public comment and also held two regulatory advisory panel (RAP) meetings to receive technical assistance on the content of that initial draft. Since reviewing the public comments received and the feedback provided by the RAP, DBHDS published in 2021 a revised draft of the General Chapter and also initial drafts of a Residential Chapter and a Home/Non-Center Based Chapter.

Drafts for Comment. DBHDS is releasing initial drafts of the Center-Based and the Case Management chapters for public comment.

Public comment: August 15, 2022, to September 30, 2022.

All drafts are accessible at <https://townhall.virginia.gov/L/generalnotice.cfm>. The link to the initial draft of the Center-Based Chapter is

<https://dbhds.virginia.gov/wp-content/uploads/2022/07/Center-Based-Service-Chapter.2022.7.12.pdf>. Both drafts and this memo are posted at <https://dbhds.virginia.gov/quality-management/Office-of-Licensing>.

Provide feedback via the public comment forums for any of the draft chapters using the links or by emailing Susan Puglisi, Regulatory Research Specialist, DBHDS Office of Regulatory Affairs, at susan.puglisi@dbhds.virginia.gov. Public comments may also be submitted by fax (804) 371-4609, or by postal mail to Susan Puglisi, DBHDS, Jefferson Building, Room 411, 1220 Bank Street, Richmond, VA 23219. Direct questions to Susan Puglisi or to Ruth Anne Walker, Director of the Office of Regulatory Affairs at ruthanne.walker@dbhds.virginia.gov.

Future Drafts. Work continues on the last of the newly structured chapter, the initial draft Crisis Chapter, and continued revisions to previously published chapters.

Response to Periodic Review versus Behavioral Health Redesign. It is important to distinguish this drafting effort of the response to periodic review of the Licensing Regulations from other current discussions and regulatory actions regarding only behavioral health redesign (Project BRAVO).

Response to Periodic Review: Draft changes for the response to periodic review will be in a separate action and are not expected to take effect until 2024 following the rulemaking process of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia), which takes an average of 18 months to two years to complete. These are only drafts at this time; no formal regulatory action has been filed.

Behavioral Health Redesign (Project BRAVO): The Licensing Regulations will be the vehicle for any required department regulatory changes that come from the behavioral health redesign, currently in effect through emergency regulations authorized by the General Assembly at <http://register.dls.virginia.gov/details.aspx?id=9389>.

List of Drafts in Progress.

Initial Draft for Services by chapter:

Center-Based Chapter:

- Center-based day support service
- Mental health intensive outpatient service
- Mental health outpatient service
- Mental health partial hospitalization
- Substance abuse partial hospitalization
- Psychosocial rehabilitation service
- Substance abuse intensive outpatient
- Substance abuse outpatient

- Center based therapeutic day treatment for children and adolescents
- Center based respite service
- Medication assisted opioid treatment programs

Case Management Chapter:

- Case management

Drafts Under Development for Crisis Chapter:

- 23-Hour crisis stabilization
- Crisis intervention
- Emergency services
- Community based crisis stabilization
- Crisis stabilization unit
- Residential crisis stabilization
- Non-residential crisis stabilization
- REACH

Contact Information: Susan H. Puglisi, Regulatory Research Specialist, Office of Regulatory Affairs, Department of Behavioral Health and Developmental Services, 1220 Bank Street, Room 411, Richmond, VA 23219, telephone (804) 371-8043, FAX (804) 371-4609, TDD (804) 371-8977, or email susan.puglisi@dbhds.virginia.gov.

Initial Draft of a New Case Management Service Specific Chapter for 12VAC35-105, Rules and Regulations for Licensing Providers by the Department of Behavioral Health and Developmental Services, Available for Review

To: Providers Licensed by the Department of Behavioral Health and Developmental Services

From: Jae Benz, Director, Office of Licensing

Subject: Response to Periodic Review: Overhaul of Licensing Regulations to Service Specific Chapters - Initial DRAFTS of Center-Based Chapter' and 'Case Management Chapter

Background. In late 2017, the Department of Behavioral Health and Developmental Services (DBHDS) conducted a periodic review of the Rules and Regulations for Licensing Providers by the Department of Behavioral Health and Developmental Services (12VAC35-105) (Licensing Regulations). At the completion of that review, the department decided amendments to the regulation were needed. After researching other states and other agencies within Virginia, the Office of Licensing decided to split the regulations into several separate regulatory chapters, revising both the structure and the content.

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General Notices

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- Center based respite service
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Case Management Chapter:

- Case management

Drafts Under Development for Crisis Chapter:

- 23-Hour crisis stabilization
- Crisis intervention
- Emergency services
- Community based crisis stabilization
- Crisis stabilization unit
- Residential crisis stabilization
- Non-residential crisis stabilization
- REACH

Contact Information: Susan H. Puglisi, Regulatory Research Specialist, Office of Regulatory Affairs, Department of Behavioral Health and Developmental Services, 1220 Bank Street, Room 411, Richmond, VA 23219, telephone (804) 371-8043, FAX (804) 371-4609, TDD (804) 371-8977, or email susan.puglisi@dbhds.virginia.gov.

Notice of Periodic Review

A periodic review will be conducted as part of a regulatory action to amend 12VAC35-230, Operation of the Individual and Family Support Program at <https://townhall.virginia.gov/l/ViewAction.cfm?actionid=5999>.

Contact Information: Ruth Anne Walker, Director of Regulatory Affairs, Jefferson Building, Department of Behavioral Health and Developmental Services, 1220 Bank Street, 4th Floor, Richmond, VA 23219, telephone (804) 225-2252, FAX (804) 371-4609.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Proposed Enforcement Action for Chaney Enterprises Limited Partnership

An enforcement action has been proposed for Chaney Enterprises Limited Partnership for violations of State Water Control Law and regulations and applicable permit at the Chaney Enterprises facility located in Gainesville, Virginia. The proposed consent order is available from the Department of Environmental Quality (DEQ) contact or at www.deq.virginia.gov/permits-regulations/public-notices. The DEQ contact will accept written comments from August 16, 2022, to September 15, 2022.

Contact Information: Jim Datko, Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, or email james.datko@deq.virginia.gov.

Proposed Enforcement Action for the Fort Powhatan Solar Project

The Department of Environmental Quality (DEQ) proposes to issue a consent special order to Virginia Electric and Power Company doing business as Dominion Energy Virginia for alleged violation of the State Water Control Law at the Fort Powhatan Solar Project located off Wards Creek Road and Fort Powhatan Road in Prince George County, Virginia. A description of the proposed action is available at the DEQ office listed or online at <https://www.deq.virginia.gov/permits-regulations/public-notices/enforcement-orders>. The staff contact person will accept comments by email from August 15, 2022, through September 15, 2022.

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 LGI Homes - Virginia LLC

The Department of Environmental Quality proposes to issue a consent special order to LGI Homes - Virginia LLC for alleged violation of the State Water Control Law at the Meadows Sections 3 site located off Meadowview Boulevard in Prince George County, Virginia. A description of the proposed action is available at the Department of Environmental Quality office listed or online at <https://www.deq.virginia.gov/permits-regulations/public-notices/enforcement-orders>. The staff contact person will accept comments by email or postal mail from August 15, 2022, through September 14, 2022.

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.

Shifting Sands Solar Project Notice of Intent for Small Renewable Energy Project (Solar) - Henry County

Shifting Sands Solar LLC has provided the Department of Environmental Quality a notice of intent to submit the necessary documents for a permit by rule for a small renewable energy project (solar) in Henry County. Shifting Sands Solar Project will be located in Ridgeway, Virginia. Latitude and longitude coordinates are 36.617650, -79.850742. The proposed project is an approximately 18.8-megawatt alternative current photovoltaic ground-mounted solar facility. The footprint area of the project is approximately 260 acres. The solar array will use approximately 51,000 photovoltaic solar panels.

Contact Information: Susan Tripp, Department of Environmental Quality, 1111 East Main Street, Richmond, VA 23219, telephone (804) 664-3470, FAX (804) 698-4178, or email susan.tripp@deq.virginia.gov.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Draft Nursing Facilities Provider Manual

The draft Nursing Facilities Provider Manual Chapter II and Appendix H are now available on the Department of Medical Assistance Services website at <https://www.dmas.virginia.gov/for-providers/general-information/medicaid-provider-manual-drafts/> for public comment until August 18, 2022.

Contact Information: Meredith Lee, Policy, Regulations, and Manuals Supervisor, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-0552, FAX (804) 786-1680, or email meredith.lee@dmas.virginia.gov.

VIRGINIA CODE COMMISSION

Notice to State Agencies

Contact Information: *Mailing Address:* Virginia Code Commission, Pocahontas Building, 900 East Main Street, 8th Floor, Richmond, VA 23219; *Telephone:* (804) 698-1810; *Email:* varegs@dls.virginia.gov.

Meeting Notices: Section 2.2-3707 C of the Code of Virginia requires state agencies to post meeting notices on their websites and on the Commonwealth Calendar at <https://commonwealthcalendar.virginia.gov>.

Cumulative Table of Virginia Administrative Code Sections Adopted, Amended, or Repealed: A table listing regulation sections that have been amended, added, or repealed in the *Virginia Register of Regulations* since the regulations were originally published or last supplemented in the print version of the Virginia Administrative Code is available at <http://register.dls.virginia.gov/documents/cumultab.pdf>.

Filing Material for Publication in the *Virginia Register of Regulations*: Agencies use the Regulation Information System (RIS) to file regulations and related items for publication in the *Virginia Register of Regulations*. The Registrar's office works closely with the Department of Planning and Budget (DPB) to coordinate the system with the Virginia Regulatory Town Hall. RIS and Town Hall complement and enhance one another by sharing pertinent regulatory information.

General Notices
