



# VIRGINIA

## REGISTER OF REGULATIONS

VOL. 40 ISS. 1

PUBLISHED EVERY OTHER WEEK BY THE VIRGINIA CODE COMMISSION

August 28, 2023

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Virginia Code Commission

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

THE VIRGINIA REGISTER OF REGULATIONS (USPS 001-831) is published biweekly for \$263.00 per year by Matthew Bender & Company, Inc., 3 Lear Jet Lane, Suite 102, P.O. Box 1710, Latham, NY 12110. Periodical postage is paid at Easton, MD and at additional mailing offices. POSTMASTER: Send address changes to The Virginia Register of Regulations, 4810 Williamsburg Road, Unit 2, Hurlock, MD 21643.

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# THE VIRGINIA REGISTER INFORMATION PAGE

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

## ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

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

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

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

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

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

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

A regulation becomes effective at the conclusion of the 30-day final adoption period, or at any other later date specified by the promulgating agency, unless (i) a legislative objection has been filed, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the 21-day objection period; (ii) the Governor exercises his authority to require the agency to provide for additional public comment, in

which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the period for which the Governor has provided for additional public comment; (iii) the Governor and the General Assembly exercise their authority to suspend the effective date of a regulation until the end of the next regular legislative session; or (iv) the agency suspends the regulatory process, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the 30-day public comment period and no earlier than 15 days from publication of the readopted action.

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

## FAST-TRACK RULEMAKING PROCESS

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

## EMERGENCY REGULATIONS

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

**Members of the Virginia Code Commission:** John S. Edwards, Chair; James A. Leftwich, Jr., Vice-Chair; Ward L. Armstrong; Nicole Cheuk; Richard E. Gardiner; Ryan T. McDougle; Christopher R. Nolen; Steven Popps; Charles S. Sharp; Malfourd W. Trumbo; Amigo R. Wade; Wren M. Williams.

**Staff of the Virginia Register:** Holly Trice, Registrar of Regulations; Anne Bloomsburg, Assistant Registrar; Nikki Clemons, Regulations Analyst; Rhonda Dyer, Publications Assistant.

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# PUBLICATION SCHEDULE AND DEADLINES

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

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## September 2023 through September 2024

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
40:2	August 23, 2023	September 11, 2023
40:3	September 6, 2023	September 25, 2023
40:4	September 20, 2023	October 9, 2023
40:5	October 4, 2023	October 23, 2023
40:6	October 18, 2023	November 6, 2023
40:7	November 1, 2023	November 20, 2023
40:8	November 14, 2023 (Tuesday)	December 4, 2023
40:9	November 29, 2023	December 18, 2023
40:10	December 13, 2023	January 1, 2024
40:11	December 27, 2023	January 15, 2024
40:12	January 10, 2024	January 29, 2024
40:13	January 24, 2024	February 12, 2024
40:14	February 7, 2024	February 26, 2024
40:15	February 21, 2024	March 11, 2024
40:16	March 6, 2024	March 25, 2024
40:17	March 20, 2024	April 8, 2024
40:18	April 3, 2024	April 22, 2024
40:19	April 17, 2024	May 6, 2024
40:20	May 1, 2024	May 20, 2024
40:21	May 15, 2024	June 3, 2024
40:22	May 29, 2024	June 17, 2024
40:23	June 12, 2024	July 1, 2024
40:24	June 26, 2024	July 15, 2024
40:25	July 10, 2024	July 29, 2024
40:26	July 24, 2024	August 12, 2024
41:1	August 7, 2024	August 26, 2024
41:2	August 21, 2024	September 9, 2024
41:3	September 4, 2024	September 23, 2024

\*Filing deadlines are Wednesdays unless otherwise specified.

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# PETITIONS FOR RULEMAKING

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## TITLE 2. AGRICULTURE

### BOARD OF AGRICULTURE AND CONSUMER SERVICES

#### Initial Agency Notice

Title of Regulation: 2VAC5. None specified.

Statutory Authority: §§ 2.2-4007.02 and 3.2-109 of the Code of Virginia.

Name of Petitioner: animal partisan.

Nature of Petitioner's Request: The petitioner requests that the Board of Agriculture and Consumer Services promulgate regulations setting minimum standards of care for the transportation, handling, and lairage of poultry prior to slaughter within the Commonwealth.

Agency Plan for Disposition of Request: The Board of Agriculture and Consumer Services will consider this request at the board's next scheduled meeting following the public comment period. This meeting will occur on December 7, 2023.

Public Comment Deadline: September 18, 2023.

Agency Contact: Dr.Carolynn Bissett, Program Manager, Office of Veterinary Services, Department of Agriculture and Consumer Services, Oliver Hill Building, 102 Governor Street, Richmond, VA 23219, telephone (804) 786-4560, or email [carolynn.bissett@vdacs.virginia.gov](mailto:carolynn.bissett@vdacs.virginia.gov).

VA.R. Doc. No. PFR24-06; Filed August 7, 2023, 2:39 p.m.

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## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### BOARD OF MEDICINE

#### Agency Decision

Title of Regulation: 18VAC85-50. Regulations Governing the Practice of Physician Assistants.

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

Name of Petitioner: Jonathan Williams, Virginia Academy of Physician Assistants.

Nature of Petitioner's Request: The petitioner requests that the Board of Medicine amend subdivision 1 of 18VAC85-50-110 to state that the patient care team physician or podiatrist shall provide appropriate consultation or collaboration for complex clinical cases and patient emergencies as noted in the written or electronic practice agreement for the patient evaluation process.

Agency Decision: Request granted.

Statement of Reason for Decision: The Board of Medicine voted to amend subdivision 1 of 18VAC85-50-110 to state that the patient care team physician or podiatrist shall provide appropriate consultation or collaboration for complex clinical cases and patient emergencies as noted in the written or electronic practice agreement for the patient evaluation process.

Agency Contact: Jennifer Deschenes, Acting Executive Director, Board of Medicine, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 367-4462, or email [jennifer.deschenes@dhp.virginia.gov](mailto:jennifer.deschenes@dhp.virginia.gov).

VA.R. Doc. No. PFR23-31; Filed August 4, 2023, 11:02 a.m.

#### Agency Decision

Title of Regulation: 18VAC85-50. Regulations Governing the Practice of Physician Assistants.

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

Name of Petitioner: Jonathan Williams, Virginia Academy of Physician Assistants.

Nature of Petitioner's Request: The petitioner requests that the Board of Medicine amend 18VAC85-50-160 A to remove the requirement that the patient care team physician's name be included on any prescription for Schedules II through V drugs.

Agency Decision: Request granted.

Statement of Reason for Decision: The Board of Medicine will amend 18VAC85-50-160 A to remove the requirement that the patient care team physician's name be included on any prescription for Schedules II through V drugs.

Agency Contact: Jennifer Deschenes, Acting Executive Director, Board of Medicine, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 367-4462, or email [jennifer.deschenes@dhp.virginia.gov](mailto:jennifer.deschenes@dhp.virginia.gov).

VA.R. Doc. No. PFR23-32; Filed August 4, 2023, 10:58 a.m.

#### Agency Decision

Title of Regulation: 18VAC85-101. Regulations Governing the Practice of Radiologic Technology.

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

Name of Petitioner: Jeffrey LaPole.

Nature of Petitioner's Request: The petitioner requests that the Board of Medicine amend 18VAC85-101-92 to permit remote supervision of radiologist assistants for minimally invasive procedures and diagnostic imaging.

Agency Decision: Request denied.

Statement of Reason for Decision: The Board of Medicine voted at its meeting on August 4, 2023, to take no action on the

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# Petitions for Rulemaking

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petition because the issue presented was not defined or developed enough for the board to understand the scope of the changes requested.

Agency Contact: William L. Harp, M.D., Executive Director, Board of Medicine, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804)67-4558, or email [william.harp@dhp.virginia.gov](mailto:william.harp@dhp.virginia.gov).

VA.R. Doc. No. PFR23-30; Filed August 4, 2023, 10:46 a.m.

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## TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

### COMMISSION ON THE VIRGINIA ALCOHOL SAFETY ACTION PROGRAM

#### Initial Agency Notice

Title of Regulation: **24VAC35-60. Ignition Interlock Program Regulations.**

Statutory Authority: § 18.2 -270.2 of the Code of Virginia.

Name of Petitioner: Cynthia Hites.

Nature of Petitioner's Request: "Under § 2.2-4007, I submit the following petition, including attached documents:

July 2012: Virginia Alcohol Safety Action Program (VASAP) Interlock Inception. Paradoxically, the Virginia interlock performance standard was set as "alcohol specific," and the design standard was set as the fuel cell. (24VAC35-60-70 "the machines shall be specific to alcohol," 24VAC35-60-20 "Alcohol is defined as ethanol (C<sub>2</sub>H<sub>5</sub>OH)")

August 2020: Virginia Town Hall Form: TH-02 "Section 24VAC35-60-70 F 3 removes the reference to ignition interlocks being "alcohol specific" to prevent the public from assuming the device only detects ethanol to the exclusion of other types of alcohol."

January 2021: Virginia Town Hall, Form: TH-03: "VASAP recognizes that ignition interlocks can detect alcohols other than ethanol..."

March 2021: VASAP removes Virginia's interlock performance standard: "The term "alcohol specific" is being deleted to remove any suggested claim that interlocks will only detect ethanol," Virginia Register of Regulations Volume 37, Issue 14.

December 2021: Minutes of Quarterly VASAP Meeting, Chief Legislative Officer for Lifesafer, "Mr. Ken Denton clarified that ignition interlocks are screening devices unlike evidentiary breath alcohol machines..."

I submit the addition of the following verbiage to the end of 24VAC35-60-70 F 5: "Under no circumstance shall ignition interlock test results be used as evidence of noncompliance."

An ignition interlock device (IID) "prevents a motor vehicle ignition from starting if a driver's blood alcohol content exceeds 0.02%." (§ 18.2-270.1 of the Code of Virginia). If the IID test result is under 0.02% BrAC, the car is allowed to start. If the IID test result is over 0.02% BrAC, the car's engine will not start. This is the breadth and scope of the ignition interlock; it either allows the driver to start the car or it doesn't.

The IID fulfills the intent of the law, in its limited capacity as a preliminary breath test (PBT) for ethanol, by locking the ignition when a certain level of alcohol is detected. The only function of the device is to either lock the car's ignition or allow it to start. That is the punishment, and interlock *installation* is the compliance. This device will always stop the drunk driver from starting the car.

VASAP has criminalized a screening device by using IID readings as evidence of noncompliance. Chief Legislative Officer for Lifesafer "Mr. Ken Denton clarified that ignition interlocks are screening devices unlike evidentiary breath alcohol machines..." (12/2021 VASAP Quarterly Meeting minutes)

VASAP's IID program was based on the false premise that IID devices detect only alcohol. This is not true, as they detect many hydroxyl compounds, aka "alcohols." Sober people can receive failed readings for all sorts of causes, beyond their control, due to sources other than consumed alcohol. Routine metabolic processes and biomarkers for disease are just a few causes of sober failed readings.

Virginia Town Hall August 2020 states: "Section 24VAC35-60-70 F 3 removes the reference to ignition interlock being "alcohol specific" to prevent the public from assuming the device only detects ethanol to the exclusion of other types of alcohol." In January 2021 it was revealed on the same public forum that "VASAP recognizes that ignition interlocks can detect alcohols other than ethanol...The term "alcohol specific" is being deleted to remove any suggested claim that ignition interlocks will only detect ethanol."

In March of 2021, the law was changed to be even more deceptive. The required performance standard of being "alcohol specific" was removed, and the law now implies interlocks react to and measure only ethanol, neither of which is true.

It's also very important to understand that just because an interlock is calibrated for ethanol doesn't mean it can't detect other compounds at failing levels. In this case, being properly calibrated merely means that when ethanol is detected, the reading will be accurate. It doesn't mean the instrument detects only ethanol.

These devices are being grossly misused, but the solution is simple and cost effective. No IID readings can be used as evidence against someone. Interlocks are not rolling breathalyzers that have the capability of determining alcohol consumption. They interlock with the ignition if one or more hydroxyl compounds are detected; their function ceases once the ignition is on.

These instruments detect many compounds, that's why they're just screening devices for alcohol. VASAP has removed the standard for IIDs to be "alcohol specific" because the fuel cell cannot meet it, yet they are still holding Virginians to that standard, and this is unethical. Interlock readings cannot be used as evidence of noncompliance.

The VASAP IID User Agreement requires users to sign a document stating "Breath tests above the fail point...are considered violations," yet VASAP now understands it cannot be assumed a failed reading is due to ethanol.

Fuel cells are very sensitive to and very accurate for hydroxyls. They will lock the car every time a breath sample over 0.02% BrAC is registered, but IIDs can *never* determine which compounds within the alcohol family are being detected. Fuel cells can't qualify compounds, therefore can't quantify compounds.

In 2021, according to FOIA, there were 7,889 IIDs installed in Virginia. During this same timeframe, according to the 2021 VASAP Annual Executive Summary, there were 6,843 requests for secondary interlock reviews. This is an 86% failure rate. In 2022 there were 7,474 IIDs installed (FOIA) and 6,378 secondary reviews. (2022 VASAP Annual Executive Summary) This is an 85% failure rate.

These statistics are astronomically high and unacceptable, any way you interpret them. Either you have thousands of people trying to drive drunk with an interlock, which is bad, or you have thousands of fails for non-consumed alcohol, which is bad.

The fuel cell has extremely limited capability, and an interlock can only be used according to the law; as a screening lockout device. VASAP has been going above and beyond the law to keep people on the interlock in perpetuity by using failed readings as evidence.

The readings from this instrument do not qualify as an evidential breath test (EBT) because it's just a PBT. VASAP should never restart anyone's six month interlock time based on a failed IID reading because it can, knowingly, be a false positive for ethanol.

Interlocks can only be installed for a predetermined length of time because failed readings are expected with a non-alcohol-specific device, and now VASAP admits the interlock is non-alcohol specific. They quietly changed the law to reflect this but are still penalizing people for failed IID readings they know

can be generated from many compounds other than drinking alcohol.

VASAP has monetized the interlock requirement by criminalizing readings from a screening device. This entire program is based on the DUI catching, alcohol-specific fallacy when the ignition interlock is just a DUI *preventing* lockout device that should be installed only for a predetermined duration.

Humbly submitted, Cynthia Hites"

Agency Plan for Disposition of Request: This petition will be considered at the December 8, 2023, commission meeting.

Public Comment Deadline: September 18, 2023.

Agency Contact: Christopher Morris, Special Programs Coordinator, Commission on the Virginia Alcohol Safety Action Program, 1111 East Main Street, Suite 801, Richmond, VA 23219, telephone (804) 786-5895, or email [chris.morris@vasap.virginia.gov](mailto:chris.morris@vasap.virginia.gov).

VA.R. Doc. No. PFR24-02; Filed August 2, 2023, 9:13 a.m.

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# PERIODIC REVIEWS AND SMALL BUSINESS IMPACT REVIEWS

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## TITLE 1. ADMINISTRATION

### COMMISSION ON LOCAL GOVERNMENT

#### 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: **1VAC50-20, Organization and Regulations of Procedure**. The review of this regulation will be guided by the principles in Executive Order 19 (2022). The purpose of a periodic review is to determine whether this regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

Public comment period begins August 28, 2023, and ends September 18, 2023.

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

Contact Information: LeGrand Northcutt, Senior Policy Analyst, Department of Housing and Community Development, Main Street Center, 600 East Main Street, Richmond, VA 23219, telephone (804) 310-7151.



## TITLE 9. ENVIRONMENT

### STATE WATER CONTROL BOARD

#### Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Water Control Board conducted a periodic review and a small business impact review of **9VAC25-780, Local and Regional Water Supply Planning**, and determined that this regulation should be retained as is. The board is publishing its report of findings dated July 13, 2023, to support this decision.

This regulation continues to be needed to protect public health, safety, and welfare. The regulation establishes criteria that local and regional water supply plans must contain, and water supply planning plays a crucial role in ensuring that water will

be available in the future for public use while maintaining beneficial uses of state waters. The regulation is clearly written and easily understandable. This regulation is currently being amended to incorporate changes made to state law in 2020.

Revisions to this regulation are currently underway to incorporate changes that were made to state law in 2020. A Notice of Intended Regulatory Action (NOIRA) was published in 2021 to initiate the process to amend this regulation. The proposed regulatory amendments were published in Virginia Register Volume 39, Issue 20, on May 22, 2023, and comment was accepted on the proposed amendments through July 21, 2023. Since the process for making these changes is already underway, the result of this periodic review is to retain the regulation as is and continue processing the regulatory revisions to the regulation through the previously initiated regulatory action.

The regulation contains requirements for water supply planning to be conducted on local and regional levels. Localities also must plan how to meet future water supply needs and potentially increased demands for the future. The regulation has been written in a format to minimize its complexity. Under the current regulation, localities can choose to develop a plan independently (local plan) or may choose to plan regionally with other localities (regional plan). In total, 48 water supply plans were submitted in 2008, of which 10 were local plans and 38 were regional plans with the majority of those consisting of one county and one or more cities or incorporated towns located within the boundaries of the county. Planning regions were not specifically determined based on river basin or with respect to shared sources of water supply. In response to changes to state law, the proposed regulatory amendment requires that each locality in a particular regional planning area participate in cross jurisdictional, coordinated water resource planning, and all localities in each area shall together develop and submit a single regional plan. One commenter noted that the regulation as currently written was not consistent with current requirements of state law but acknowledged that amendments were proposed to this regulation.

The requirement for local and regional water supply plans to be developed is a state requirement; no equivalent federal requirement for these plans to be developed exists. This regulation is currently being amended to be consistent with current state law.

This regulation was last amended in 2015 to correct citations referenced in the regulation. The regulation requires local plans to be updated and resubmitted every 10 years, and changes in technology or economic conditions are reflected in the revised plan. There are no regulatory changes associated with this periodic review. A NOIRA was initiated to amend this regulation prior to the start of this periodic review. After comments are received on the proposed amendments, a final regulation will be presented to the State Water Control Board for consideration.

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# Periodic Reviews and Small Business Impact Reviews

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This regulation does not directly regulate small businesses. Localities develop local water supply plans and may choose to include provisions in their plan that minimize impacts on small businesses.

Contact Information: Hannah Somers, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 814-2780.

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## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### BOARD OF NURSING

#### Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board of Nursing conducted a periodic review and a small business impact review of **18VAC90-25, Regulations Governing Certified Nurse Aides**, and determined that this regulation should be amended. The board is publishing its report of findings dated July 31, 2023, to support this decision.

This regulation is necessary for the protection of public health, safety, and welfare because the regulation sets the requirements for certification and standards of practice for nurse aides. The regulation is necessary to continue to renew certifications for nurse aides and to issue new certifications for nurse aides, which the General Assembly determined is a necessary component of the provision of health care in the Commonwealth. The regulation is additionally necessary to protect public health, safety, and welfare by providing a basis for disciplinary actions against practitioners. The Board of Nursing has reviewed this regulation and determined that it is clearly written and understandable.

The board received no comments on this regulation. The regulation is not complex and does not overlap, duplicate, or conflict with state law or regulation. This chapter has been amended by regulatory action nine times since 2004. The board's decision will not minimize economic impacts on small businesses. The board's decision to retain and amend the regulation does not create an economic impact of any kind because specific amendments have not been considered or decided on by the board.

Contact Information: Jay P. Douglas, R.N., Executive Director, Board of Nursing, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 367-4520.

#### Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board of Nursing conducted a periodic review and a small business impact review of **18VAC90-27, Regulations for Nursing Education Programs**, and determined that this regulation should be amended. The board is publishing its report of findings dated July 18, 2023, to support this decision.

This regulation is necessary for the protection of public health, safety, and welfare because the regulation sets the requirements for education of nurses in the Commonwealth. The regulation is necessary to continue to educate nurses and to approve new nursing educational programs, which the General Assembly determined is a necessary component of the provision of health care in the Commonwealth. The Board of Nursing has reviewed this regulation and determined that it is clearly written and understandable.

The regulation is necessary for the protection of the public. Additionally, the General Assembly directed the board to oversee and regulate nursing education programs in the Commonwealth. The board has noted that regulatory amendments should be initiated and has determined it will amend the regulation.

The comments received regarding this regulation are summarized in the agency background document available on the Virginia Regulatory Town Hall. Comments generally pertain to nursing faculty requirements, simulation, and clinical site requirements. The regulation is not complex and does not overlap, duplicate, or conflict with state law or regulation. This is the first time this regulation, which was promulgated in 2017, has undergone a periodic review. The chapter has been revised three times since it was created. The board's decision will not minimize economic impacts on small businesses. The board's decision to amend the regulation does not create an economic impact of any kind because specific amendments have not been considered or decided on by the board.

Contact Information: Jay P. Douglas, R.N., Executive Director, Board of Nursing, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 367-4520.

#### Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board of Nursing conducted a periodic review and a small business impact review of **18VAC90-50, Regulations Governing the Licensure of Massage Therapists**, and determined that this regulation should be retained as is. The board is publishing its report of findings dated July 31, 2023, to support this decision.

This regulation is necessary for the protection of public health, safety, and welfare because the regulation sets the requirements for licensure and standards of practice for



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# Periodic Reviews and Small Business Impact Reviews

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massage therapists. The regulation is necessary to continue to renew licenses for massage therapists and to issue new licenses for massage therapists, which the General Assembly determined is a necessary component of the provision of health care in the Commonwealth. The regulation is additionally necessary to protect public health, safety, and welfare by providing a basis for disciplinary actions against practitioners. The Board of Nursing has reviewed this regulation and determined that it is clearly written and understandable.

The comment received on this regulation requested a regulatory amendment, which is not a topic the board generally places in regulation. The regulation is not complex and does not overlap, duplicate, or conflict with state law or regulation. This regulation has been amended by regulatory action 12 times since 2001. The board's decision will not minimize economic impacts on small businesses. The board's decision to retain the regulation as is does not create an economic impact of any kind because specific amendments have not been considered or decided on by the board.

Contact Information: Jay P. Douglas, R.N., Executive Director, Board of Nursing, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 367-4520.



## TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

### DEPARTMENT OF TRANSPORTATION

#### 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: **24VAC30-73, Access Management Regulations.**

The Notice of Intended Regulatory Action to amend 24VAC30-73, which is published in this issue of the Virginia Register, serves as the agency notice of announcement.

Contact Information: JoAnne P. Maxwell, Regulatory Coordinator, Governance and Legislative Affairs Division, Department of Transportation, 1401 East Broad Street, Richmond, VA 23219, telephone (804) 786-1830, FAX (804) 225-4700, or email [joanne.maxwell@vdot.virginia.gov](mailto:joanne.maxwell@vdot.virginia.gov).

## COMMONWEALTH TRANSPORTATION BOARD

### Agency Notice

Pursuant to Executive Order 19 (2022) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the following regulation is undergoing a periodic review and a small business impact review: **24VAC30-121, Comprehensive Roadside Management Program.**

The Notice of Intended Regulatory Action to amend 24VAC30-121, which is published in this issue of the Virginia Register, serves as the agency notice of announcement.

Contact Information: JoAnne P. Maxwell, Regulatory Coordinator, Governance and Legislative Affairs Division, Department of Transportation, 1401 East Broad Street, Richmond, VA 23219, telephone (804) 786-1830, FAX (804) 225-4700, or email [joanne.maxwell@vdot.virginia.gov](mailto:joanne.maxwell@vdot.virginia.gov).

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# NOTICES OF INTENDED REGULATORY ACTION

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## TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

### DEPARTMENT OF TRANSPORTATION

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Department of Transportation (VDOT) intends to consider amending **24VAC30-73, Access Management Regulations**. The purpose of the proposed action is to undertake a comprehensive review of the regulation, which enables VDOT to control access to state highways and set standards and policies for the entrances that provide this access. The intent of this action is to remove redundant or obsolete language, with the goal of identifying opportunities for regulatory reduction and streamlining in accordance with Executive Order 19 (2022). In addition, pursuant to § 2.2-4007.1 of the Code of Virginia, VDOT is conducting a periodic review and small business impact review of this regulation to determine whether this regulation should be terminated, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare; (ii) minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

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

Statutory Authority: § 33.2-245 of the Code of Virginia.

Public Comment Deadline: September 27, 2023.

Agency Contact: Jo Anne Maxwell, Director, Governance and Legislative Affairs, Department of Transportation, 1401 East Broad Street, Richmond, VA 23219, telephone (804) 786-1830, email [joanne.maxwell@vdot.virginia.gov](mailto:joanne.maxwell@vdot.virginia.gov).

VA.R. Doc. No. R24-7633; Filed August 3, 2023, 10:20 a.m.

### COMMONWEALTH TRANSPORTATION BOARD

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Commonwealth Transportation Board (CTB) intends to consider amending **24VAC30-92, Secondary Street Acceptance Requirements**. Chapter 425 of the 2022 Acts of Assembly directs the Department of Transportation (VDOT) to convene a stakeholder advisory group for the purpose of developing and recommending amendments to the Secondary Street Acceptance Requirements (SSAR) of the CTB. This mandate requires that the regulatory provisions of the SSARs contain flexibility related to its connectivity elements. VDOT established the stakeholder advisory group, which was composed of representatives from the development industry, local

governments, environmental advocacy organizations, and VDOT. The purpose of the proposed action is to implement the changes recommended by the advisory group and adopted by the CTB.

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

Statutory Authority: §§ 33.2-210 and 33.2-334 of the Code of Virginia.

Public Comment Deadline: September 27, 2023.

Agency Contact: Jo Anne Maxwell, Director, Governance and Legislative Affairs, Department of Transportation, 1401 East Broad Street, Richmond, VA 23219, telephone (804) 786-1830, email [joanne.maxwell@vdot.virginia.gov](mailto:joanne.maxwell@vdot.virginia.gov).

VA.R. Doc. No. R24-7622; Filed August 3, 2023, 10:20 a.m.

### COMMONWEALTH TRANSPORTATION BOARD

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Commonwealth Transportation Board (CTB) intends to consider amending **24VAC30-121, Comprehensive Roadside Management Program**. The purpose of the proposed action is to undertake a comprehensive review of the regulation, which establishes a program that enables private businesses, civic organizations, communities, individuals, and local governments to improve the appearance and safety of a state-maintained right-of-way by participating in project development, establishment, and maintenance of landscaping activities within the right-of-way. The intent of this action is to remove redundant or obsolete language, with the goal of identifying opportunities for regulatory reduction and streamlining in accordance with Executive Order 19 (2022). In addition, pursuant to § 2.2-4007.1 of the Code of Virginia, the CTB is conducting a periodic review and small business impact review of this regulation to determine whether this regulation should be terminated, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare; (ii) minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

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

Statutory Authority: §§ 33.2-210 and 33.2-265 of the Code of Virginia.

Public Comment Deadline: September 27, 2023.

Agency Contact: Jo Anne Maxwell, Director, Governance and Legislative Affairs, Department of Transportation, 1401 East Broad Street, Richmond, VA 23219, telephone (804) 786-1830, email [joanne.maxwell@vdot.virginia.gov](mailto:joanne.maxwell@vdot.virginia.gov).

VA.R. Doc. No. R24-7634; Filed August 3, 2023, 10:20 a.m.

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# REGULATIONS

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

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## 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.

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## TITLE 2. AGRICULTURE

### BOARD OF AGRICULTURE AND CONSUMER SERVICES

#### Forms

**REGISTRAR'S NOTICE:** Forms used in administering the regulation have been filed by the agency. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name of a form with a hyperlink to access it. The forms are also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, 900 East Main Street, 11th Floor, Richmond, Virginia 23219.

**Title of Regulation:** **2VAC5-620. Requirements Pertaining to the Establishment of the Dangerous Dog Registry.**

**Agency Contact:** Dr.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, or email [carolynn.bissett@vdacs.virginia.gov](mailto:carolynn.bissett@vdacs.virginia.gov).

#### FORMS

~~Dangerous Dog Registration Form and Registration Certificate, VDACS DDR 07 (eff. 12/12).~~

~~Dangerous Dog Renewal Form, VDACS DDR 08 (eff. 12/12).~~

~~Dangerous Dog Secondary Owner Form, VDACS DDR 09 (eff. 12/12).~~

[Dangerous Dog Registration Form and Registration Certificate, VDACS DDR 07 \(rev. 11/2018\)](#)

[Dangerous Dog Renewal Form, VDACS DDR 08 \(rev. 12/2018\)](#)

[Dangerous Dog Secondary Owner Form, VDACS DDR 09 \(rev. 11/2018\)](#)

VA.R. Doc. No. R24-7646; Filed July 27, 2023, 11:57 a.m.



## TITLE 9. ENVIRONMENT

### STATE WATER CONTROL BOARD

#### Final Regulation

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

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

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

**Effective Date:** January 1, 2024.

**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, or email [allan.brockenbrough@deq.virginia.gov](mailto:allan.brockenbrough@deq.virginia.gov).

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

**Summary:**

*Substantive amendments include (i) adding a new definition for "corrective action"; (ii) clarifying that consistency with a total maximum daily load (TMDL) is based on an applicable TMDL that is approved prior to the term of the general permit; (iii) clarifying registration questions; (iv) adding electronic submission registration requirements for reports when these are made available by the department; and (v) in the permit requirements, clarifying dust suppression allowances and updating TMDL requirements. Additionally, updates to the stormwater management requirements conform the requirements with the VPDES General Permit Regulation for Discharges of Stormwater Associated with Industrial Activity (9VAC25-151), including adding a section on corrective actions. Clarifying changes to the proposed regulation have been made in response to feedback on the regulation by U.S. Environmental Protection Agency and include moving the definition of the acronym for total petroleum hydrocarbons, removing "discharge limitations" from the column heading for a table, and revising a table footnote.*

Chapter 193

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

**9VAC25-193-10. Definitions.**

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

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

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

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

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

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

1. North American Industry Classification System (NAICS) Code 327331 - Concrete Block and Brick Manufacturing, (Executive Office of the President, Office of Management and Budget, United States, 2017) and Standard Industrial Classification (SIC) Code 3271 - Concrete Block and Brick (Office of Management and Budget (OMB) SIC Manual, 1987);
2. NAICS Code 327332 Concrete Pipe Manufacturing, NAICS Code 327390 Other Concrete Product Manufacturing, NAICS Code 327999 All Other Miscellaneous Nonmetallic Mineral Product Manufacturing (dry mix concrete manufacturing only) and SIC Code 3272 - Concrete Products, Except Block and Brick; or
3. NAICS Code 327320 Ready-Mix Concrete Manufacturing and SIC Code 3273 - Ready-Mixed Concrete, including both permanent and portable plants.

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

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

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

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

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

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

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

"Vehicle or equipment degreasing" means the washing or steam cleaning of engines or other drive components of a

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vehicle or piece of equipment in which the purpose is to degrease and clean petroleum products from the equipment for maintenance purposes. Removing sediment and concrete residue is not considered vehicle or equipment degreasing.

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

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

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

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

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

## **9VAC25-193-50. Authorization to discharge.**

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

1. The owner submits a registration statement in accordance with 9VAC25-193-60, and that registration statement is accepted by the ~~board~~ department;
2. The owner submits the required permit fee;
3. The owner complies with the applicable effluent limitations and other requirements of 9VAC25-193-70; and
4. The ~~board~~ department has not notified the owner that the discharge is not eligible for coverage in accordance with subsection B of this section.

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

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

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

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

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

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

D. Continuation of permit coverage.

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

- a. Issues coverage to the owner under this general permit; or
- b. Notifies the owner that the discharge is not eligible for coverage under this general permit.

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

- a. Initiate enforcement action based upon the general permit coverage that has been continued;
- b. Issue a notice of intent to deny coverage under the reissued general permit. If the general permit coverage is denied, the owner would then be required to cease the discharges authorized by the continued general permit coverage or be subject to enforcement action for discharging without a permit;
- c. Issue an individual permit with appropriate conditions; or
- d. Take other actions authorized by the VPDES Permit Regulation (9VAC25-31).

## **9VAC25-193-60. Registration statement.**

A. Deadlines for submitting registration statement. Any owner seeking coverage under this general permit shall submit a complete VPDES general permit registration statement in

accordance with this ~~section~~ chapter, which shall serve as a notice of intent for coverage under the general VPDES permit for concrete products facilities.

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

2. Existing facilities.

a. Any owner covered by an individual VPDES permit that is proposing to be covered by this general permit shall submit a complete registration statement at least 240 days prior to the expiration date of the individual VPDES permit or a later submittal established by the department.

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

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

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

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

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

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

4. Nature of business at facility;

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

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

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

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

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

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

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

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

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

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

a. The locations of the outfalls;

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

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

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

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

16. Whether the facility will discharge to a municipal separate storm sewer system (MS4). If "yes," the facility owner shall ~~notify~~ provide evidence that the MS4 owner has been notified of the existence of the discharge ~~at the time of registration under this permit and include that notification with the registration statement~~. The notification shall include the following information: the name of the facility, a contact

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person and contact information (telephone number and email), the location of the discharge, the nature of the discharge, and the facility's VPDES general permit number (if assigned by DEQ);

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

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

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

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

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

## 9VAC25-193-70. General permit.

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

General Permit No: VAG11

Effective Date: January 1, ~~2019~~ 2024

Expiration Date: December 31, ~~2023~~ 2028

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

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

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

#### Part I

#### Effluent Limitations, Monitoring Requirements, Special Conditions.

##### A. Effluent limitations and monitoring requirements.

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

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

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS			MONITORING REQUIREMENTS	
	Average	Maximum	Minimum	Frequency <sup>(3)</sup>	Sample Type
Flow (MGD)	NL	NL	NA	1/3 Months	Estimate
Total Suspended Solids (mg/l)	30	60	NA	1/3 Months	Grab

pH (standard units)	NA	9.0 <sup>(1)</sup>	6.0 <sup>(1)</sup>	1/3 Months	Grab
Total Petroleum Hydrocarbons <sup>(2)</sup> (mg/l)	NA	15	NA	1/3 Months	Grab

NL = No limitation, monitoring required

NA = Not applicable

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

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

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

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

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

EFFLUENT CHARACTERISTICS	[ DISCHARGE LIMITATIONS ] BENCHMARK MONITORING		MONITORING REQUIREMENTS <sup>(3)</sup> , <sup>(5)</sup>	
	Maximum	Minimum	Frequency <sup>(4)</sup>	Sample Type
Flow (MG)	NL	NA	1/Year	Estimate <sup>(1)</sup>
Total Suspended Solids (mg/l)	[ <del>NL 100</del> ] <sup>(2)</sup>	NA	1/Year	Grab <sup>(2)</sup>
pH (standard units)	[ <del>NL 9.0</del> ] <sup>(2)</sup>	[ <del>NL 6.0</del> ] <sup>(2)</sup>	1/Year	Grab <sup>(2)</sup>

NL = No limitation, monitoring required

NA = Not applicable

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

<sup>(2)</sup> If the benchmark monitoring for total suspended solids (TSS) exceeds 100 mg/l maximum or the pH falls outside of the range of 6.0-9.0 standard units, the permittee shall evaluate the overall effectiveness of the stormwater pollution prevention plan (SWPPP) in controlling the discharge of pollutants to receiving waters [ or if corrective actions are needed (Part II A 4) ]. Benchmark concentration values are not effluent limitations. Exceedance of a benchmark concentration does not constitute a violation of this permit and does not indicate that violation of a water quality standard has occurred; however, it does signal that modifications to the SWPPP are necessary, unless justification is provided in the routine facility inspection.

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

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

<sup>(5)</sup>Quarterly visual monitoring shall be performed and recorded in accordance with Part II [ € A 1 ].

**B. Special conditions.**

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

2. Except as expressly authorized by this permit, no product, materials, industrial wastes, or other wastes resulting from

the purchase, sale, mining, extraction, transport, preparation, or storage of raw or intermediate materials, final product, byproduct, or wastes shall be handled, disposed of, or stored so as to permit a discharge of such product, materials, industrial wastes, or other wastes to surface waters.

3. Vehicles and equipment utilized during the industrial activity on a site must be operated and maintained in such a manner as to minimize the potential or actual point source pollution of surface waters. Fuels, lubricants, coolants, and



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hydraulic fluids, or any other petroleum products, shall not be disposed of by discharging on the ground or into surface waters. Spent fluids shall be disposed of in a manner so as not to enter the surface or ground waters of the state and in accordance with the applicable state and federal disposal regulations. Any spilled fluids shall be cleaned up and disposed of in a manner so as not to allow their entry into the surface or ground waters of the state.

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

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

6. Wastewater should be reused or recycled whenever feasible.

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

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

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

- (1) O&M practices for the process wastewater treatment units, if applicable, and chemical and material storage areas;
- (2) Methods for estimating process wastewater flows, if applicable;
- (3) Management and disposal procedures of process wastewater solids, if applicable;
- (4) Temporary and long-term facility closure plans that shall include (i) treatment, removal, and final disposition of residual wastewater, if applicable, contaminated stormwater held at the facility, and solids; (ii) fate of structures; (iii) a removal plan for all exposed industrial materials; and (iv) description of the stabilization of land in which they were stored or placed;
- (5) Testing requirements and procedures;
- (6) Recordkeeping and reporting requirements; and
- (7) Duties and roles of responsible officials.

b. The permittee shall operate the treatment works in accordance with the O&M manual. The O&M manual

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

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

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

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

11. Process wastewater, commingled process wastewater, and stormwater or stormwater treatment units designed to operate as "no discharge" shall have no discharge of wastewater or pollutants except in storm events greater than a 25-year, 24-hour storm event. In the event of such a discharge, the permittee shall report an unusual or extraordinary discharge per Part III H of this permit. No sampling or DMR is required for these discharges as they are considered to be discharging in emergency discharge conditions. All other conditions in Part I B, Part II, and Part III apply. Any other discharge from this type of system is prohibited and shall be reported as an unauthorized

discharge per Part III G of this permit. The operation of these systems shall not contravene the Water Quality Standards (9VAC25-260), as adopted and amended by the board, or any provision of the State Water Control Law.

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

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

- (1) One hundred micrograms per liter (100 µg/l) of the toxic pollutant;
- (2) Two hundred micrograms per liter (200 µg/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 µg/l) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;
- (3) Five times the maximum concentration value reported for that pollutant in the permit application; or
- (4) The level established by the ~~board~~ department in accordance with 9VAC25-31-220 F.

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

- (1) Five hundred micrograms per liter (500 µg/l) of the toxic pollutant;
- (2) One milligram per liter (1 mg/l) for antimony;
- (3) Ten times the maximum concentration value reported for that pollutant in the permit application; or
- (4) The level established by the ~~board~~ department in accordance with 9VAC25-31-220 F.

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

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

may be used on site for the purpose of dust suppression or for spraying stockpiles. Dust suppression shall not occur during a "measurable" rain event (a storm event that results in an actual discharge from the site).

15. Compliance reporting under Part I A.

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

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

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

b. Reporting.

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

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

(3) Any single datum required shall be reported as "<QL" if it is less than the QL listed in [ ~~subdivision Part I B~~ ] 15 a [ ~~of this subsection~~ ]. Otherwise the numerical value shall be reported. The QL must be less than or equal to the QL in [ ~~subdivision Part I B~~ ] 15 a [ ~~of this subsection~~ ].

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

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

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

18. Notice of termination.

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

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

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

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

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

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

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

(2) Facility name and location;

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

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

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

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

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

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

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

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

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

19. Temporary closure at inactive and unstaffed sites waiver.

a. A waiver of the effluent monitoring, benchmark monitoring, visual monitoring, and routine facility inspections may be granted by the ~~board~~ department at a facility that is both inactive and unstaffed and there are no industrial materials or activities exposed to stormwater. The waiver request shall be submitted to the ~~board~~ department for approval and shall include the information in the temporary closure plan specified in Part I B 8 a (4); the facility's VPDES general permit registration number; a contact person, telephone number, and email address (if available); the reason for the request; the date the facility became or will become inactive and unstaffed; and the

date the closure plan will be completed. The waiver shall be signed and certified in accordance with Part III K. If this waiver is granted, the permittee must retain a copy of the request and the ~~board's~~ department's written approval of the waiver in the SWPPP. The permittee is required to conduct an annual routine facility inspection in accordance with Part II ~~F 6 f (5) D 2 e~~. A stormwater discharge is not required at the time of this annual routine facility inspection.

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

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

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

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

Part II  
Stormwater Management.

A. Monitoring instructions requirements.

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

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

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

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

d. If no storm event resulted in discharge from the facility during a monitoring quarter, the permittee is excused from visual monitoring for that quarter provided that documentation is included with the monitoring records.

e. When adverse weather conditions prevent the collection of samples, a substitute sample may be taken during a storm event that results in a discharge from the site in the next monitoring period. Adverse weather conditions are those that are dangerous or create inaccessibility for personnel and may include such things as local flooding, high winds, electrical storms, or situations that otherwise make sampling impracticable, such as drought or extended frozen conditions. Narrative documentation of conditions necessitating the use of the waiver shall be kept with the stormwater pollution prevention plan (SWPPP).

f. Visual monitoring documentation shall be maintained on site with the SWPPP and shall include:

(1) Outfall location;

(2) Monitoring date and time;

(3) Monitoring personnel;

(4) Nature of the discharge (i.e., runoff or snow melt);

(5) Visual quality of the stormwater discharge, including observations of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and other obvious indicators of stormwater pollution; and

(6) Probable sources of any observed stormwater contamination.

2. Benchmark monitoring. If the benchmark monitoring for total suspended solids exceeds 100 mg/l maximum or the pH falls outside of the range of 6.0 to 9.0 standard units, the permittee shall evaluate the overall effectiveness of the SWPPP in controlling the discharge of pollutants to receiving waters [ or if corrective actions (Part II A 4) are needed ]. Benchmark concentration values are not effluent limitations. Exceedance of a benchmark concentration does not constitute a violation of this permit and does not indicate that violation of a water quality standard has occurred; however, it does signal that modifications to the SWPPP are necessary, unless justification is provided in a routine facility inspection.

3. Monitoring instructions.

4. a. Collection and analysis of samples. Sampling requirements shall be assessed on an outfall by outfall basis. Samples shall be collected and analyzed in accordance with the requirements of Part III A.

2. b. When and how to sample. A minimum of one grab sample shall be taken resulting from a storm event that results in an actual discharge from the site (~~defined as a "measurable storm event"~~), providing the interval from the preceding measurable storm event discharge is at least 72 hours. The 72-hour storm interval is waived if the permittee is able to document with the DMR that less than

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a 72-hour interval is representative for local storm events during the sampling period. The grab sample shall be taken during the first 30 minutes of the discharge. If it is not practicable to take the sample during the first 30 minutes, the sample may be taken during the first three hours of discharge provided that the permittee explains with the SWPPP why a grab sample during the first 30 minutes was impractical.

~~3.~~ c. Recording of results. For each discharge measurement or sample taken pursuant to the storm event monitoring requirements of this permit, the permittee shall record and report with the DMR the following information:

~~a.~~ (1) Date ~~and duration (in hours)~~ of the storm events sampled;

~~b.~~ (2) Rainfall measurements or estimates (in inches) of the storm event that generated the sampled discharge; and

~~e.~~ Duration (3) Interval between the storm event sampled and the end of the previous ~~measurable~~ storm event that resulted in a discharge from the site.

4. Corrective actions. The permittee shall review the SWPPP and modify it as necessary to address any deficiencies noted in Part II A 4 a and 4 b. Revisions to the SWPPP shall be completed within 60 days following the discovery of the deficiency. When control measures need to be modified or added, implementation shall be completed before the next anticipated storm event if possible, but no later than 60 days after the deficiency is discovered, or as otherwise provided or approved by the department. In cases where construction is necessary to implement control measures, the permittee shall include a schedule in the SWPPP that provides for the completion of the control measures as expeditiously as practicable, but no later than three years after the deficiency is discovered. Where a construction compliance schedule is included in the SWPPP, the SWPPP shall include appropriate nonstructural and temporary controls to be implemented in the affected portion of the facility prior to completion of the permanent control measure. The amount of time taken to modify a control measure or implement additional control measures shall be documented in the SWPPP. The permittee shall take corrective action whenever:

a. Benchmark monitoring; routine facility inspections; inspections by local, state, or federal officials; or any other process, observation, or event result in a determination that modifications to the stormwater control measures are necessary to meet the permit requirements; or

b. The department determines or the permittee becomes aware that the stormwater control measures are not stringent enough for the discharge to meet applicable water quality standards.

Any corrective actions taken shall be documented and retained with the SWPPP.

B. Representative outfalls - substantially identical outfalls. If a facility has two or more exclusively stormwater outfalls that discharge substantially identical effluents, based on similarities of the industrial activities, significant materials, size of drainage areas, and stormwater management practices occurring within the drainage areas of the outfalls, frequency of discharges, and stormwater management practices occurring within the drainage areas of the outfalls, the permittee may monitor the ~~effluent stormwater~~ of just one of the outfalls and report that the observations also apply to the substantially identical outfall. ~~Representative outfalls must be identified in the registration statement submitted for coverage under this permit.~~ Substantially identical outfall monitoring can apply to quarterly visual and benchmark monitoring. The permittee must include the following information in the SWPPP:

1. The locations of the outfalls;

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

3. Estimates of the size of the drainage area (in square feet) for each of the outfalls; and

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

~~C. Quarterly visual monitoring of stormwater quality. The permittee shall perform and document visual monitoring of stormwater discharges associated with industrial activity from each outfall, except discharges waived in Part II C 4. The visual monitoring must be made during normal working hours, at least once in each of the following three month periods: January through March, April through June, July through September, and October through December.~~

~~1. Samples will be in a clean, colorless glass or plastic container and examined in a well lit area.~~

~~2. Samples will be collected within the first 30 minutes (or as soon thereafter as practical, but not to exceed three hours, provided that the permittee explains in the SWPPP why an examination during the first 30 minutes was impractical) of when the runoff or snowmelt begins discharging. All such samples shall be collected from the discharge resulting from a storm event that results in an actual discharge from the site (defined as a "measurable storm event") providing the interval from the preceding measurable storm event is at least 72 hours. The required 72-hour storm event interval is waived where the preceding measurable storm event did not result in a measurable discharge from the facility. The 72-hour storm event interval may also be waived where the permittee documents that less than a 72-hour interval is representative for local storm events during the season when sampling is being conducted.~~

~~3. The examination shall observe color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and other obvious indicators of stormwater pollution.~~

~~4. If no qualifying storm event resulted in discharge from the facility during a monitoring period, or adverse weather conditions create dangerous conditions for personnel during each measurable storm event during a monitoring period, visual monitoring is exempted provided this is documented in the SWPPP.~~

~~5. Visual monitoring reports shall be maintained onsite with the SWPPP. The report shall include the outfall location, the monitoring date and time, monitoring personnel, the nature of the discharge (i.e., runoff or snow melt), visual quality of the stormwater discharge (including observations of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and other obvious indicators of stormwater pollution), and probable sources of any observed stormwater contamination.~~

~~6. Whenever the visual monitoring shows obvious indicators of stormwater pollution, the SWPPP and stormwater controls shall be updated per Part II F.~~

~~D. Allowable nonstormwater discharges. The following nonstormwater discharges are authorized by this permit.~~

- ~~1. Discharges from emergency firefighting activities;~~
- ~~2. Fire hydrant flushings;~~
- ~~3. Potable water including water line flushings;~~
- ~~4. Uncontaminated condensate from air conditioners, coolers, and other compressors and from the outside storage of refrigerated gases or liquids;~~
- ~~5. Irrigation drainage;~~
- ~~6. Landscape watering provided all pesticides, herbicides, and fertilizer have been applied in accordance with the approved labeling;~~
- ~~7. Pavement wash waters where no detergents or hazardous cleaning products are used and no spills or leaks of toxic or hazardous materials have occurred (unless all spilled material has been removed). Pavement wash waters shall be managed to prevent the discharge of pollutants;~~
- ~~8. Routine external building washdown that does not use detergents or hazardous cleaning products;~~
- ~~9. Uncontaminated ground water or spring water;~~
- ~~10. Foundation or footing drains where flows are not contaminated with process materials; and~~
- ~~11. Incidental windblown mist from cooling towers that collects on rooftops or adjacent portions of the facility, but not intentional discharges from the cooling tower (e.g., "piped" cooling tower blowdown or drains).~~

~~E. C. Releases of hazardous substances or oil in excess of reportable quantities. The discharge of hazardous substances or oil in the stormwater discharges from this facility shall be prevented or minimized in accordance with the SWPPP for the facility. This permit does not authorize the discharge of hazardous substances or oil resulting from an onsite on-site spill. This permit does not relieve the permittee of the reporting requirements of 40 CFR Part 110, 40 CFR Part 117, and 40 CFR Part 302 or § 62.1-44.34:19 of the Code of Virginia.~~

~~Where a release containing a hazardous substance or oil in an amount equal to or in excess of a reportable quantity established under either 40 CFR Part 110, 40 CFR Part 117, or 40 CFR Part 302 occurs during a 24-hour period:~~

- ~~1. The permittee is required to notify the department in accordance with the requirements of Part III G as soon as he the permittee has knowledge of the discharge;~~
- ~~2. Where a release enters a municipal separate storm sewer system (MS4), the permittee shall also notify the owner of the MS4; and~~
- ~~3. The SWPPP required by this permit shall be reviewed to identify measures to prevent the reoccurrence of such releases and to respond to such releases, and the plan must be modified where appropriate.~~

~~F. D. Stormwater pollution prevention plans (SWPPP). A An SWPPP shall be developed and implemented for the facility covered by this permit. The SWPPP shall include best management practices (BMPs) that are reasonable, economically practicable, and appropriate in light of current industry practices. The BMPs shall be selected, designed, installed, implemented, and maintained in accordance with good engineering practices to eliminate or reduce the pollutants in all stormwater discharges from the facility. The SWPPP shall also include any control measures necessary for the stormwater discharges to meet applicable water quality standards. The SWPPP is intended to document the selection, design, and installation of control measures, including BMPs, to minimize the pollutants in all stormwater discharges from the facility and to meet applicable effluent limitations and water quality standards.~~

The SWPPP requirements of this general permit may be fulfilled, in part, by incorporating by reference other plans or documents, such as an erosion and sediment control plan, a spill prevention control and countermeasure (SPCC) plan developed for the facility under § 311 of the Clean Water Act, or BMP programs otherwise required for the facility provided that the incorporated plan meets or exceeds the SWPPP requirements of Part II F-6 (Contents of SWPPP) D 2. All plans incorporated by reference into the SWPPP become enforceable under this permit. If a plan incorporated by reference does not contain all the requirements of Part II F-6 D 2, the permittee shall develop the missing SWPPP elements and include them in the required plan.

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## 1. Deadlines for SWPPP preparation and compliance.

a. Owners of existing facilities that ~~were covered under the 2013 Concrete Products General Permit~~ who are continuing coverage under this general permit shall update and implement any revisions to the SWPPP within 60 days of the ~~board~~ department granting coverage under this permit.

b. Owners of new facilities, facilities previously covered by an expiring individual permit, and existing facilities not currently covered by a VPDES permit ~~who that~~ elect to be covered under this general permit shall prepare the SWPPP 60 days prior to commencing operations and implement the SWPPP prior to ~~commencing operations~~ a stormwater discharge.

c. Where the owner of an existing facility that is covered by this permit changes, the new owner of the facility shall update and implement any revisions to the SWPPP within 60 days of the ownership change.

d. Upon a showing of good cause, the director may establish a later date in writing for the preparation and compliance with the SWPPP.

## 2. ~~Signature and SWPPP review.~~

~~a. The SWPPP shall be signed in accordance with Part III K and be retained on site at the facility covered by this permit in accordance with Part III B. For inactive sites, the SWPPP may be kept at the nearest office of the permittee.~~

~~b. The permittee shall make the SWPPP or other information available to the department upon request.~~

~~c. The director, or his designee, may notify the permittee in writing at any time that the SWPPP, BMPs, or other components of the facility's stormwater program do not meet one or more of the requirements of this part. Such notification shall identify specific provisions of the permit that are not being met and may include required modifications to the stormwater program, additional monitoring requirements, and special reporting requirements. Within 60 days of such notification from the director, or as otherwise provided by the director, the permittee shall make the required changes to the SWPPP and shall submit to the department a written certification that the requested changes have been made.~~

## 3. Maintaining an updated SWPPP. The permittee shall review and amend the SWPPP as appropriate whenever:

~~a. There is construction or a change in design, operation, or maintenance that has a significant effect on the discharge or the potential for the discharge of pollutants to surface waters;~~

~~b. Routine inspections or visual monitoring determine that there are deficiencies in the BMPs;~~

~~c. Inspections by local, state, or federal officials determine that modifications to the SWPPP are necessary;~~

~~d. There is a spill, leak, or other release at the facility; or~~

~~e. There is an unauthorized discharge from the facility.~~

~~4. SWPPP modifications shall be made within 60 calendar days after discovery, observation, or event requiring a SWPPP modification. Implementation of new or modified BMPs (distinct from regular preventive maintenance of existing BMPs described in Part II F 7) shall be initiated before the next storm event if possible, but no later than 60 days after discovery, or as otherwise provided or approved by the director. The amount of time taken to modify a BMP or implement additional BMPs shall be documented in the SWPPP.~~

~~5. If the SWPPP modification is based on a release or unauthorized discharge, include a description and date of the release, the circumstances leading to the release, actions taken in response to the release, and measures to prevent the recurrence of such releases. Unauthorized releases and discharges are subject to the reporting requirements of Part III G of this permit.~~

## 6. 2. Contents of SWPPP. The SWPPP shall include, at a minimum, the following items:

a. Pollution prevention team. Each SWPPP shall identify the staff individuals by name or title that comprise the facility's stormwater pollution prevention team. The pollution prevention team is responsible for assisting the facility or plant manager in developing, implementing, maintaining, revising, and ensuring compliance with the facility's SWPPP. Specific responsibilities of each staff individual on the team shall be identified and listed.

b. Site description. The site description shall include the following:

(1) A description of the industrial activities at the facility.

(2) A site map identifying the following:

(a) Boundaries of the property and the size of the property in acres;

(b) Location and extent of significant structures and impervious surfaces;

(c) Locations of all stormwater conveyances, including ditches, pipes, swales, and inlets, and the directions of stormwater flow using arrows to indicate which direction stormwater will flow;

(d) Locations of stormwater control measures, including BMPs;

(e) Locations of all surface water bodies, including wetlands;

(f) Locations of identified potential pollutant sources identified in Part II D 2 c;

(g) Locations where significant spills or leaks identified under Part II D 2 c (3) have occurred;

(h) Locations of stormwater outfalls, monitoring locations, an approximate outline of the area draining to each outfall, the drainage area of each outfall in acres, the

longitude and latitude of each outfall, the location of any municipal separate storm system (MS4) conveyance receiving discharge from the facility, and each outfall identified with a unique numerical identification code. For example: Outfall number 001, Outfall Number 002;

(i) Location and description of all nonstormwater discharges;

(j) Location of any storage piles containing salt;

(k) Location and source of suspected run-on to the site from an adjacent property if the run-on is suspected of containing significant quantities of pollutants; and

(l) Locations of fueling stations, vehicle or equipment degreasing activities, maintenance areas, loading or unloading areas, vehicle washdown areas, vehicle washout areas, bag house or other dust control device, recycle ponds, sedimentation ponds, or clarifiers or other devices used for the treatment of process wastewater (and the areas that drain to the treatment device).

c. Summary of potential pollutant sources. The ~~plan~~ SWPPP shall identify each separate area at the facility where industrial materials or activities at the facility are exposed to stormwater. Industrial materials or activities include: material handling equipment or activities, industrial machinery, raw materials, industrial production and processes, intermediate products, byproducts, final products, and waste products. Material handling activities include: the storage, loading and unloading, transportation, disposal, or conveyance of any raw material, intermediate product, final product, or waste product. The description shall include:

(1) Activities in area. A list of the industrial activities (e.g., material storage, equipment fueling and cleaning, cutting steel beams); and exposed to stormwater.

(2) Pollutants. A list of the associated pollutants, pollutant constituents, or industrial chemicals for each industrial activity that could potentially be exposed to stormwater. The pollutant list shall include all significant materials handled, treated, stored, or disposed that have been exposed to stormwater in the three years prior to the date this SWPPP was prepared or amended. This list shall include any hazardous substances or oil at the facility.

e. Site map. The site map shall document:

~~(1) An outline of the drainage area of each stormwater outfall that are within the facility boundaries;~~

~~(2) Each existing structural control measure to reduce pollutants in stormwater runoff;~~

~~(3) Surface water bodies;~~

~~(4) Locations where materials are exposed to precipitation;~~

~~(5) Locations where major spills or leaks identified under Part II F 6 d have occurred;~~

~~(6) Locations of fueling stations, vehicle or equipment degreasing activities, maintenance areas, loading or unloading areas, vehicle wash down areas, vehicle wash out areas, bag house or other dust control device, recycle ponds, sedimentation ponds, or clarifiers or other devices used for the treatment of process wastewater (and the areas that drain to the treatment device);~~

~~(7) Locations used for the storage or disposal of wastes; liquid storage tanks; processing areas; and storage areas;~~

~~(8) Outfall locations, designation (e.g., 001) and the types of discharges contained in the drainage areas of the outfalls;~~

~~(9) For each area of the facility that generates stormwater discharges associated with industrial activity with a potential for containing significant amounts of pollutants, locations of stormwater conveyances including ditches, pipes, swales, and inlets, and the directions of stormwater flow and an identification of the types of pollutants that are likely to be present in stormwater discharges associated with industrial activity. Factors to consider include the toxicity of the chemicals; quantity of chemicals used, produced, or discharged; the likelihood of contact with stormwater; and history of leaks or spills of toxic or hazardous pollutants; and~~

~~(10) Flows with a potential for causing erosion shall be identified.~~

~~(3) Spills and leaks. A The SWPPP shall clearly identify areas where potential spills and leaks that can contribute pollutants to stormwater discharges can occur and their corresponding outfalls. The SWPPP shall include a list of significant spills and leaks of toxic or hazardous pollutants that actually occurred at exposed areas or that are exposed to precipitation or that otherwise drain to a stormwater conveyance at the facility after the date of three years prior to the date of coverage under this general permit. Such list shall be updated as appropriate during the term of the permit drained to a stormwater conveyance during the three-year period prior to the date this SWPPP was prepared or amended. The list shall be updated within 60 days of the incident if significant spills or leaks occur in exposed areas of the facility during the term of the permit.~~

~~(4) Sampling data. The plan SWPPP shall include a summary of existing stormwater discharge sampling data taken at the facility. The summary shall include, at a minimum, any data collected during the previous three years.~~

f. d. Stormwater controls.

(1) BMPs Control measures shall be implemented for all areas identified in Part II F 6 b D 2 c to prevent or control pollutants in stormwater discharges from the facility. All reasonable steps shall be taken to control or address the quality of discharges from the site that may not originate at the facility If applicable, regulated stormwater



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discharges from the facility include stormwater run-on that commingles with stormwater discharges associated with industrial activity at the facility. The SWPPP shall describe the type, location, and implementation of all BMPs control measures for each area where industrial materials or activities are exposed to stormwater. Selection of control measures shall take into consideration:

(a) That preventing stormwater from coming into contact with polluting materials is generally more effective and less costly than trying to remove pollutants from stormwater;

(b) Control measures generally must be used in combination with each other for most effective water quality protection;

(c) Assessing the type and quantity of pollutants, including their potential to impact receiving water quality, is critical to designing effective control measures;

(d) That minimizing impervious areas at the facility can reduce runoff and improve groundwater recharge and stream base flows in local streams; however, care must be taken to avoid groundwater contamination;

(e) Flow attenuation by use of open vegetated swales and natural depressions can reduce instream impacts of erosive flows;

(f) Conservation or restoration of riparian buffers will help protect streams from stormwater runoff and improve water quality; and

(g) Treatment interceptors (e.g., swirl separators and sand filters) may be appropriate in some instances to minimize the discharge of pollutants.

(2) Good housekeeping measures. ~~Good housekeeping requires the clean and orderly maintenance of areas that may contribute pollutants to stormwater discharges.~~ The permittee shall keep clean all exposed areas of the facility that are potential sources of pollutants in stormwater. ~~Particular attention should be paid to areas where raw materials are stockpiled, material handling areas, storage areas, liquid storage tanks, vehicle fueling and maintenance areas, and loading or unloading areas. The SWPPP shall describe procedures performed to prevent~~ The permittee shall perform the following good housekeeping measures to minimize pollutant discharges:

(a) Include a schedule for regular pickup and disposal of waste materials, along with routine inspections for leaks and conditions of drums, tanks, and containers;

(b) Sweep or vacuum as feasible;

(c) Store materials in containers constructed of appropriate materials;

(d) Manage all waste containers to prevent a discharge of pollutants;

(e) Minimize the potential for waste, garbage, and floatable debris to be discharged by keeping areas exposed to stormwater free of such materials or by intercepting such materials prior to discharge; and

(f) Prevent or minimize the discharge of: spilled cement, aggregate (including sand and gravel), kiln dust, fly ash, settled dust, or other significant material in stormwater from paved portions of the site that are exposed to stormwater. Sweep or vacuum paved surfaces of the site that are exposed to stormwater at regular intervals or use other equivalent measures to minimize the potential discharge of these materials in stormwater. Indicate in the SWPPP the frequency of sweeping, vacuuming, or other equivalent measures (e.g., wash down the area and collect or treat and properly dispose of the washdown water). Determine the frequency based on the amount of industrial activity occurring in the area and the frequency of precipitation, but sweeping, vacuuming, or other equivalent measures shall be performed at least once a week in areas where cement, aggregate, kiln dust, fly ash, or settled dust are being handled or processed. Prevent the exposure of fine granular solids (including cement, fly ash, and kiln dust), to stormwater, where practicable, by storing these materials in enclosed silos, hoppers, or buildings or under other covering. The generation of dust and off-site vehicle tracking of raw, final, or waste materials, or sediments shall be minimized.

(3) Preventive maintenance. A preventive maintenance program shall involve regular inspection, testing, maintenance, and repairing of all industrial equipment and systems to avoid breakdowns or failures that could result in leaks, spills, and other releases. This program is in addition to the specific BMP maintenance required under Part II F.7 (Maintenance of BMPs) E.

(4) Spill prevention and response procedures. The SWPPP shall describe the procedures that will be followed for preventing and responding to spills and leaks, including:

(a) Preventive measures include, such as barriers between material storage and traffic areas, secondary containment provisions, and procedures for material storage and handling;

(b) Response procedures shall include (i), including notification of appropriate facility personnel, emergency agencies, and regulatory agencies and (ii) procedures for stopping, containing, and cleaning up spills. Measures for cleaning up hazardous material spills or leaks shall be consistent with applicable RCRA Resource Conservation and Recovery Act regulations at 40 CFR Part 264 and 40 CFR Part 265. Employees who may cause, detect, or respond to a spill or leak shall be trained in these procedures and have necessary spill response equipment available. If possible, one of these individuals shall be a member of the pollution prevention team;

(c) Procedures for plainly labeling containers (e.g., "used oil," "spent solvents," "fertilizers and pesticides," etc.) that could be susceptible to spillage or leakage to encourage proper handling and facilitate rapid response if spills or leaks occur; and

(d) Contact information for individuals and agencies that must be notified in the event of a spill shall be included in the SWPPP and in other locations where it will be readily available.

~~(5) Routine facility inspections.~~

~~(a) During normal facility operating hours inspections of areas of the facility covered by the requirements in this permit must be conducted and shall include observations of the following:~~

~~(i) Areas where industrial materials or activities are exposed to stormwater, including material handling areas, above ground storage tanks, hoppers or silos, dust collection or containment systems, and truck wash down or equipment cleaning areas;~~

~~(ii) Discharge points; and~~

~~(iii) Best management practices.~~

~~(b) Inspections shall be conducted at least quarterly. At least once each calendar year, the routine facility inspection should be conducted during a period when a stormwater discharge is occurring.~~

~~(c) Inspections shall be performed by personnel who possess the knowledge and skills to assess conditions and activities that could impact stormwater quality at the facility and who can also evaluate the effectiveness of BMPs. At least one member of the stormwater pollution prevention team shall participate.~~

~~(d) Routine facility inspections shall be documented and maintained with the SWPPP. Document all findings including:~~

~~(i) Inspection date;~~

~~(ii) Names of the inspectors; and~~

~~(iii) Observations of any discharges; the physical condition of and around all outfalls (e.g., concrete product in the stream or turbidity); leaks or spills from industrial equipment, drums, tanks or other containers; offsite tracking of industrial materials or sediment; any additional best management practices that need to be repaired, maintained, or added; and any incidents of noncompliance.~~

~~(e) A set of tracking or followup procedures shall be used to ensure that appropriate actions are taken in response to the inspections. Records of inspections shall be maintained with the SWPPP. Any deficiencies in the implementation of the SWPPP that are found shall be corrected as soon as practicable, but not later than within 60 days of the inspection, unless permission for a later date is granted in writing by the director. The results of the~~

~~inspections shall be documented in the SWPPP, along with the dates and descriptions of any corrective actions that were taken in response to any deficiencies or opportunities for improvement that were identified.~~

~~(f) The requirement for routine facility inspections is waived for facilities that have maintained an active VEEP E3/E4 status.~~

~~(5) Eliminating and minimizing exposure. To the extent practicable, manufacturing, processing, and material storage areas, including loading and unloading, storage, disposal, cleaning, maintenance, and fueling operations, shall be located inside or protected by a storm-resistant covering to prevent exposure to rain, snow, snowmelt, and runoff. Unless infeasible, facilities shall implement the following:~~

~~(a) Use grading, berming, or curbing to prevent runoff of contaminated flows and divert run-on away from potential sources of pollutants;~~

~~(b) Locate materials, equipment, and activities so that potential leaks and spills are contained or able to be contained or diverted before discharge;~~

~~(c) Clean up spills and leaks immediately upon discovery of the spills or leaks, using dry methods (e.g., adsorbents) to prevent the discharge of pollutants;~~

~~(d) Store leaking vehicles and equipment indoors, or if leaking vehicles and equipment must be stored outdoors, use drip pans and adsorbents;~~

~~(e) Utilize appropriate spill or overflow protections equipment;~~

~~(f) Perform all vehicle maintenance or equipment maintenance or equipment cleaning operations indoors, under cover, or in bermed areas that prevent runoff and run-on and also capture any overspray; and~~

~~(g) Drain fluids from equipment and vehicles that will be decommissioned, and for any equipment and vehicles that remain unused for extended periods of time, inspect at least monthly for leaks.~~

(6) Employee training. The permittee shall implement a stormwater employee training program for the facility. The SWPPP shall include a schedule for all types of necessary training and shall document all training sessions and the employees who received the training. Training shall be provided at least annually for all employees who work in areas where industrial materials or activities are exposed to stormwater and for employees who are responsible for implementing activities identified in the SWPPP (e.g., inspectors, maintenance personnel, etc.). The training shall cover the components and goals of the SWPPP and include such topics as spill response, good housekeeping, material management practices, BMP operation, and maintenance, etc. The SWPPP shall include a summary of any training performed.

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(7) Sediment and erosion control. The SWPPP shall identify areas at the facility that, due to topography, land disturbance (e.g., construction, landscaping, sit grading), or other factors, have a potential for soil erosion. The permittee shall identify and implement structural, vegetative, or stabilization BMPs control measures to prevent or control on-site and off-site erosion and sedimentation. Flow velocity dissipation devices shall be placed at discharge locations and along the length of any outfall channel if the flows would otherwise create erosive conditions.

(8) Management of runoff. The SWPPP shall describe the stormwater run-off management practices (i.e., permanent structural BMPs control measures) for the facility. These types of [ BMPs ] are typically control measures shall be used to divert, infiltrate, reuse, or otherwise reduce pollutants in stormwater discharges from the site. Appropriate measures may include: vegetative swales and practices, reuse of collected stormwater (such as for a process or as an irrigation source), inlet controls (such as oil/water separators), snow management activities, infiltration devices, wet detention/retention devices; or other equivalent measures. Some structural BMPs Structural control measures may require a separate permit under § 404 of the Clean Water Act and the Virginia Water Protection Permit Program Regulation (9VAC25-210) before installation begins.

7- e. Routine facility inspections. Personnel who possess the knowledge and skills to assess conditions and activities that could impact stormwater quality at the facility and who can also evaluate the effectiveness of control measures shall regularly inspect all areas of the facility where industrial materials or activities are exposed to stormwater. At least one member of the stormwater pollution prevention team shall participate.

(1) Inspections include areas where industrial materials or activities are exposed to stormwater, including material handling areas, aboveground storage tanks, hoppers or silos, dust collection or containment systems, and truck washdown or equipment cleaning areas, discharge points, and control measures.

(2) Inspections shall be conducted at least quarterly during normal facility operating hours. At least once each calendar year, the routine facility inspection should be conducted during a period when a stormwater discharge is occurring.

(3) The inspections shall include at a minimum:

(a) Inspection date;

(b) Names of the inspectors; and

(c) Observations of any discharges; the physical condition of and around all outfalls (e.g., concrete product in the stream or turbidity); leaks or spills from industrial equipment, drums, tanks or other containers; off-site

tracking of industrial materials or sediment; any additional best management practices that need to be repaired, maintained, or added; and any incidents of noncompliance.

(4) A set of tracking or follow-up procedures shall be used to ensure that appropriate actions are taken in response to the inspections. Records of inspections shall be maintained with the SWPPP. Any deficiencies in the implementation of the SWPPP that are found shall be corrected as soon as practicable, but not later than within 60 days of the inspection, unless permission for a later date is granted in writing by the director. The results of the inspections shall be documented in the SWPPP, along with the dates and descriptions of any corrective actions that were taken in response to any deficiencies or opportunities for improvement that were identified.

(5) The requirement for routine facility inspections is waived for facilities that have maintained an active Virginia Environmental Excellence Program E3 or E4 status.

E. Maintenance of BMPs. All BMPs identified in the SWPPP shall be maintained in effective operating condition. Stormwater BMPs identified in the SWPPP shall be observed during active operation where feasible (i.e., during a stormwater runoff event) to ensure that they are functioning correctly. Where discharge locations are inaccessible, nearby downstream locations shall be observed. The observations shall be documented in the SWPPP.

1. The SWPPP shall include a description of procedures and a regular schedule for preventive maintenance of all BMPs control measures and shall include a description of the back-up practices that are in place should a runoff event occur while a BMP control measure is ~~off-line~~ off-line. The effectiveness of nonstructural BMPs shall also be maintained by appropriate means (e.g., spill response supplies available and personnel trained, etc.).

2. All control measures identified in the SWPPP shall be maintained in effective operating condition and shall be observed at least annually when a stormwater discharge is occurring to ensure that they are functioning correctly. Where discharge locations are inaccessible, nearby downstream locations shall be observed. The observations shall be documented in the SWPPP.

3. If ~~site~~ routine facility inspections required by Part II F-6 f (5) (Routine facility inspections) D 2 d identify BMPs control measures that are not operating effectively, repairs or maintenance shall be performed before the next anticipated storm event. If maintenance prior to the next anticipated storm event is not possible, maintenance shall be scheduled and accomplished as soon as practicable. In the interim, back-up measures shall be employed and documented in the SWPPP until repairs or maintenance is complete. Documentation shall be kept with the SWPPP of

maintenance and repairs of BMPs, including the dates of regular maintenance, dates of discovery of areas in need of repair or replacement, and for repairs, dates that the BMPs returned to full function, and the justification for any extended maintenance or repair schedules.

8. F. Nonstormwater discharges.

~~a. Except for flows from emergency firefighting activities, the SWPPP must include:~~

- ~~(1) Identification of each allowable nonstormwater source;~~
- ~~(2) The location where it is likely to be discharged; and~~
- ~~(3) Descriptions of appropriate BMPs for each source.~~

~~b. Documentation that all outfalls have been evaluated annually for the presence of unauthorized discharges (i.e., discharges other than stormwater, the authorized nonstormwater discharges described in Part II D, or discharges covered under a separate VPDES permit or this permit).~~

1. Discharges of certain sources of nonstormwater listed in Part II F 3 are allowable discharges under this permit. All other nonstormwater discharges are not authorized and shall be either eliminated or covered under a separate VPDES permit.

2. Annual outfall evaluation for unauthorized discharges. The SWPPP shall include documentation that all stormwater outfalls associated with industrial activity have been evaluated annually for the presence of unauthorized discharges. The documentation shall include:

- (1) a. The date of the evaluation;
- (2) b. A description of the evaluation criteria used;
- (3) c. A list of the outfalls or ~~onsite~~ on-site drainage points that were directly observed during the evaluation;
- (4) d. A description of the results of the evaluation for the presence of unauthorized discharges; and
- (5) e. The actions taken to eliminate identified unauthorized discharges.

3. The following nonstormwater discharges are authorized by this permit:

- a. Discharges from emergency firefighting activities;
- b. Fire hydrant flushing, managed in a manner to avoid an instream impact;
- c. Potable water, including water line flushing, managed in a manner to avoid an instream impact;
- d. Uncontaminated condensate from air conditioners, coolers, and other compressors and from the outside storage of refrigerated gases or liquids;
- e. Irrigation drainage;

f. Landscape watering; provided all pesticides, herbicides, and fertilizers have been applied in accordance with the approved labeling;

g. Pavement wash waters where no detergents or hazardous cleaning products are used and no spills or leaks of toxic or hazardous materials have occurred, unless all spilled material has been removed. Pavement wash waters shall be managed in a manner to avoid an instream impact;

h. Routine external building washdown that does not use detergents or hazardous cleaning products;

i. Uncontaminated groundwater or spring water;

j. Foundation or footing drains where flows are not contaminated with process materials; and

k. Incidental windblown mist from cooling towers that collects on rooftops or adjacent portions of the facility, but not intentional discharges from the cooling tower (e.g., "piped" cooling tower blowdown or drains).

G. Signature and SWPPP review.

1. Signature and location. The SWPPP, including any revisions to the SWPPP to document any corrective actions taken as required by Part II A 4, shall be signed in accordance with Part III K, dated, and retained on site at the facility covered by this permit. All other changes to the SWPPP, and other permit compliance documentation, must be signed and dated by the person preparing the change or documentation. For inactive or unstaffed facilities, the plan may be kept at the nearest office of the permittee.

2. Availability. The permittee shall retain a copy of the current SWPPP required by this permit at the facility, and it shall be immediately available to the department, EPA, or the operator of an MS4 receiving discharges from the site at the time of an on-site inspection or upon request.

3. Required modifications. The permittee shall modify the SWPPP whenever necessary to address all corrective actions required by Part II A 4. Changes to the SWPPP shall be made in accordance with the corrective action deadlines in Part II A 4 and shall be signed and dated in accordance with Part III K. The director may notify the permittee at any time the SWPPP, control measures, or other components of the facility's stormwater program do not meet one or more of the requirements of this permit. The notification shall identify specific provisions of the permit that are not being met and may include required modifications to the stormwater program, additional monitoring requirements, and special reporting requirements. The permittee shall make any required changes to the SWPPP within 60 days of receipt of such notification, unless permission for a later date is granted in writing by the director, and shall submit a written certification to the director that the requested changes have been made.

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## H. Maintaining an updated SWPPP.

1. The permittee shall review and amend the SWPPP as appropriate whenever:

a. There is construction or a change in design, operation, or maintenance at the facility that has an effect on the discharge, or the potential for the discharge, of pollutants from the facility;

b. Routine inspections or visual monitoring determine that there are deficiencies in the control measures, including BMPs;

c. Inspections by local, state, or federal officials determine that modifications to the SWPPP are necessary;

d. There is a significant spill, leak, or other release at the facility;

e. There is an unauthorized discharge from the facility; or

f. The department notifies the permittee that a TMDL has been developed and applies to the permitted facility, consistent with Part I B 16.

2. SWPPP modifications shall be made within 60 calendar days after the discovery, observation, or event requiring an SWPPP modification. Implementation of new or modified control measures shall be initiated before the next storm event if possible but no later than 60 days after discovery or as otherwise provided or approved by the director. The amount of time taken to modify a control measure or implement additional control measures shall be documented in the SWPPP.

3. If the SWPPP modification is based on a significant spill, leak, release, or unauthorized discharge, a description and date of the incident, the circumstances leading to the incident, actions taken in response to the incident, and measures to prevent the recurrence of such releases must be included. Unauthorized discharges are subject to the reporting requirements of Part III G of this permit.

### Part III

#### Conditions Applicable to All VPDES Permits.

##### A. Monitoring.

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

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

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

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

46 (Accreditation for Commercial Environmental Laboratories).

##### B. Records.

1. Records of monitoring information shall include:

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

b. The individuals who performed the sampling or measurements;

c. The dates and times analyses were performed;

d. The individuals who performed the analyses;

e. The analytical techniques or methods used; and

f. The results of such analyses.

2. The permittee shall retain (i) records of all monitoring information including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, (ii) copies of all reports required by this permit, and (iii) records of all data used to complete the registration statement for this permit for a period of at least three years from the date that coverage under this permit expires or is terminated. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to the permittee, or as requested by the ~~board~~ department.

##### C. Reporting monitoring results.

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

2. Monitoring results shall be reported on a ~~Discharge Monitoring Report (DMR)~~ DMR or on forms provided, approved, or specified by the department. Following notification from the department of the start date for the required electronic submission of monitoring reports, as provided for in 9VAC25-31-1020, such forms and reports submitted after that date shall be electronically submitted to the department in compliance with 9VAC25-31-1020 and this section. There shall be at least a three-month notice provided between the notification from the department and the date after which such forms and reports must be submitted electronically.

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

submitted in the DMR or reporting form specified by the department.

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

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

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

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

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; or
2. Otherwise alter the physical, chemical, or biological properties of such state waters and make them detrimental to the public health, or to animal or aquatic life, or to the use of such waters for domestic or industrial consumption, for recreation, or for other uses.

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

1. A description of the nature and location of the discharge;
2. The cause of the discharge;
3. The date on which the discharge occurred;
4. The length of time that the discharge continued;

5. The volume of the discharge;

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

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

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

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

H. Reports of unusual or extraordinary discharges. If any unusual or extraordinary discharge including a bypass or upset should occur from a treatment works and the discharge enters or could be expected to enter state waters, the permittee shall promptly notify (see Part III I 3), in no case later than 24 hours, the department ~~by telephone~~ after the discovery of the discharge. This notification shall provide all available details of the incident, including any adverse effects on aquatic life and the known number of fish killed. The permittee shall reduce the report to writing and shall submit it to the department within five days of discovery of the discharge in accordance with Part III I 1 b. Unusual and extraordinary discharges include any discharge resulting from:

1. Unusual spillage of materials resulting directly or indirectly from processing operations;
2. Breakdown of processing or accessory equipment;
3. Failure or taking out of service some or all of the treatment works; and
4. Flooding or other acts of nature.

I. Reports of noncompliance.

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

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

- (1) Any unanticipated bypass; and
- (2) Any upset that causes a discharge to surface waters.

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

- (1) A description of the noncompliance and its cause;
- (2) The period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and

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(3) Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

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

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

~~NOTE: 3.~~ The immediate (within 24 hours) reports required in Part III G, H, and I ~~may~~ shall be made to the department's regional office by ~~telephone, FAX, or online at <http://www.deq.virginia.gov/Programs/PollutionResponsePreparedness/MakingReport.aspx>~~. Reports may be made by telephone, FAX, or online at <https://www.deq.virginia.gov/get-involved/pollution-response> (online reporting preferred). For reports outside normal working hours, ~~leave a message and this shall fulfill the immediate reporting requirement~~ the online portal shall be used. For emergencies, ~~call the Virginia Department of Emergency Services maintains a 24-hour telephone service~~ Management's Emergency Operations Center (24-hours) at 1-800-468-8892.

~~3.~~ 4. Where the permittee becomes aware that it failed to submit any relevant facts in a permit registration statement, or submitted incorrect information in a permit registration statement or in any report to the department, it shall promptly submit such facts or information.

## J. Notice of planned changes.

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

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

(1) After promulgation of standards of performance under § 306 of Clean Water Act that are applicable to such source; or

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

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

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

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

## K. Signatory requirements.

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

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

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

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

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

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

b. The authorization specifies either an individual or a position having responsibility for the overall operation of

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

c. The written authorization is submitted to the department.

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

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

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

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

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

M. Duty to reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee shall apply for and obtain coverage under a new permit. All permittees with currently effective permit coverage shall submit a new application at least 60 days before

the expiration date of the existing permit, unless permission for a later date has been granted by the ~~board~~ department. The ~~board~~ department shall not grant permission for applications to be submitted later than the expiration date of the existing permit.

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

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

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

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

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

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

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



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## U. Bypass.

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

### 2. Notice.

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

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

### 3. Prohibition of bypass.

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

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

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

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

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

## V. Upset.

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

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

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

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

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

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

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

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

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

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

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

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

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

X. Permit actions. Permit coverage may be terminated for cause. The filing of a request by the permittee for a permit termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

## Y. Transfer of permit coverage.

1. Permits are not transferable to any person except after notice to the department.

2. Coverage under this permit may be automatically transferred to a new permittee if:

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

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

c. The ~~board~~ department does not notify the existing permittee and the proposed new permittee of its intent to deny the new permittee coverage under the permit. If this

notice is not received, the transfer is effective on the date specified in the agreement mentioned in Part III Y 2 b.

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

VA.R. Doc. No. R22-6952; Filed August 4, 2023, 2:18 p.m.

**TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING**

**BOARD FOR BARBERS AND COSMETOLOGY**

**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. Registrar Notice is not available

**Titles of Regulations: 18VAC41-50. Tattooing Regulations.**

**18VAC41-60. Body-Piercing Regulations.**

**Agency Contact:** Tamika Rodriguez, Regulatory Operations Administrator, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Perimeter Center, Suite 400, Richmond, VA 23233, telephone (804) 367-8590, FAX (866) 245-9693, or email [barbercosmo@dpor.virginia.gov](mailto:barbercosmo@dpor.virginia.gov).

FORMS (18VAC41-50)

~~Tattooer Examination & License Application, A450-1231EXLIC v16 (eff. 5/2022)~~

[Tattooer Examination & License Application, A450-1231EXLIC-v17 \(rev. 9/2023\)](#)

[Training Verification Form, A450-1213TR-vs1 \(eff. 5/2022\)](#)

~~Tattooing Apprenticeship Sponsor Application, A450-12TATSPON v5 (eff. 7/2015)~~

[Tattooing Apprenticeship Sponsor Application, A450-12TATSPON-v6 \(rev. 9/2023\)](#)

[Tattooer Apprenticeship Certification Application, A450-TAT\\_SOA-v3 \(rev. 3/2015\)](#)

[Tattoo Apprenticeship Completion Form, A450-12TAC-v8 \(rev. 1/2020\)](#)

[Tattoo Client Disclosure Form, A450-12TDIS-v3 \(rev. 1/2020\)](#)

[Limited Term Tattooer License Application, A450-1233LIC-v12 \(rev. 9/2022\)](#)

[Limited Term Tattoo Parlor License Application, A450-1235LIC-v9 \(rev. 9/2022\)](#)

~~Permanent Cosmetic Tattooer Examination & License Application, A450-1236EXLIC v15 (eff. 5/2022)~~

~~Master Permanent Cosmetic Tattooer Examination & License Application, A450-1237EXLIC v13 (eff. 5/2022)~~

[Permanent Cosmetic Tattooer Examination & License Application, A450-1236EXLIC-v16 \(rev. 9/2023\)](#)

[Master Permanent Cosmetic Tattooer Examination & License Application, A450-1237EXLIC-v14 \(rev. 9/2023\)](#)

[License by Endorsement Application, A450-1213END-v18 \(rev. 9/2022\)](#)

[Body Piercing, Tattoo, Perm Cos Tattoo Experience Verification Form, A450-12BPTATT\\_EXP-v2 \(rev. 7/2022\)](#)

~~Body Piercing Salon/Tattooing Parlor License/Reinstatement Application, A450-12TATBP\_BUS v4 (rev. 9/2022)~~

[Salon, Shop, Spa & Parlor License-Reinstatement Application A450-1213BUS-v17 \(rev. 9/2023\)](#)

[Licensure Fee Notice, A450-1213FEE-v11 \(rev. 9/2022\)](#)

~~Instructor Certification Application, A450-1213INST-vs17 (rev. 10/2022)~~

[Instructor Certification Application, A450-1213INST-vs18 \(rev. 9/2023\)](#)

[Individuals - Reinstatement Application, A450-1213REI-v13 \(rev. 9/2022\)](#)

~~School License Application, A450-1213SCHL v18 (rev. 5/2023)~~

[School License Application, A450-1213SCHL-v19 \(rev. 9/2023\)](#)

[School Reinstatement Application, A450-1213SCHL-REIN-v9 \(rev. 9/2022\)](#)

[Tattoo-Body Piercing Universal App A450-1231-41ULR-v1 \(eff. 7/2023\)](#)

FORMS (18VAC41-60)

~~Body Piercer Examination & License Application, A450-1241EXLIC v15 (eff. 5/2022)~~

~~Body Piercing Apprenticeship Sponsor Application, A450-12BPSPON v5 (eff. 7/2015)~~

[Body Piercer Examination & License Application, A450-1241EXLIC-v16 \(rev. 9/2023\)](#)

[Body-Piercing Apprenticeship Sponsor Application, A450-12BPSPON-v6 \(rev. 9/2023\)](#)

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[Body-Piercing Apprentice Certification Application, A450-BP\\_SOA-v3 \(rev. 3/2015\)](#)

[Body-Piercing Apprenticeship Completion Form, A450-12BPAC-v8 \(rev. 1/2020\)](#)

[Body-Piercing Client Disclosure Form, A450-12BPDIS-v2 \(rev. 4/2013\)](#)

~~[Body Piercer Ear Only License Application, A450-1245LIC-v9 \(rev. 9/2022\)](#)~~

[Body Piercer Ear Only License Application, A450-1245LIC-v10 \(rev. 9/2023\)](#)

[License by Endorsement Application, A450-1213END-v18 \(rev. 9/2022\)](#)

[Body Piercing, Tattoo, Perm Cos Tattoo Experience Verification Form, A450-12BPTATT\\_EXP-v2 \(rev. 7/2022\)](#)

~~[Body Piercing Salon/Tattooing Parlor License/Reinstatement Application, A450-12TATBP\\_BUS v4 \(rev. 9/2022\)](#)~~

[Salon, Shop, Spa & Parlor License-Reinstatement Application A450-1213BUS-v17 \(rev. 9-2023\)](#)

[Licensure Fee Notice, A450-1213FEE-v11 \(rev. 9/2022\)](#)

[Individuals - Reinstatement Application, A450-1213REI-v13 \(rev. 9/2022\)](#)

[Tattoo-Body Piercing Universal App A450-1231-41ULR-v1 \(rev. 7/2023\)](#)

V.A.R. Doc. No. R24-7658; Filed August 4, 2023, 5:52 p.m.

## BOARD OF PHARMACY

### Final Regulation

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

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

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

**Effective Date:** September 27, 2023.

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

### Summary:

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

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

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

1. Synthetic 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-methylalloxy-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.

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 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: Cypuylone), 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-cyclohexylmethylaminopropiophenone (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-chloro butylcathinone, 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.

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

1. Synthetic opioid. N,N-diethyl-2-[5-nitro-2-(4-propoxybenzyl)-1H-benzimidazol-1-yl]ethanamine (other name: Protonitazene), 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. 1-(1,3-benzodioxol-5-yl)-2-(cyclohexylamino)butan-1-one (other names: Cybutylone, N-cyclohexyl 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.

3. Compounds expected to have depressant properties. 8-bromo-6-(2-chlorophenyl)-1-methyl-4H-[1,2,4]triazolo [4,3-a][1,4]benzodiazepine (other names: Clobromazolam, Phenazolam), 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.

4. Cannabimimetic agents.

a. 5-bromo-N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1H-indazole-3-carboxamide (other name: ADB-5Br-INACA), 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)-5-bromo-1-butylindazole-3-carboxamide (other name: ADB-5'Br-BUTINACA), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

The placement of drugs listed in this subsection shall remain in effect until July 31, 2024, 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. 2-methyl-N-phenyl-N-[1-(2-phenylethyl)piperidin-4-yl]butanamide (other name: 2-methyl

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butyryl fentanyl), 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-(7-methoxy-1,3-benzodioxol-5-yl)propan-2-amine (other names: 5-methoxy-3,4-methylenedioxy amphetamine, 3-methoxy MDA, MMDA), 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. 1-[1-(3-chlorophenyl)cyclohexyl]piperidine (other names: 3-Chloro Phencyclidine, 3Cl-PCP, 3-chloro PCP), 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. Compound expected to have depressant properties. 7-bromo-5-phenyl-1,3-dihydro-1,4-benzodiazepin-2-one (other names: Desalkylgizapam, Bromonordiazepam), 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.

4. Compound classified as a cannabimimetic agent. Methyl N-[(5-bromo-1H-indazol-3-yl)carbonyl]-3-methyl-valinate (other name: MDMB-5Br-INACA), 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 12, 2024, 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 compounds.

- a. N-(4-fluorophenyl)-N-(1-phenethylpiperidin-4-yl) pentanamide (other names: para-fluoro valeryl fentanyl, para-fluoro pentanoyl fentanyl), 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-fluorophenyl)-N-[1-(2-phenylethyl)piperidin-4-yl] acetamide (other name: para-fluoroacetyl fentanyl), 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-fluorophenyl)cyclohexyl]piperidine (other names: 3-fluoro Phencyclidine, 3F-PCP), 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)-2-(2-fluorophenyl)-cyclohexanone (other names: 2-fluoro-2-oxo PCE, 2-fluoro NENDCK), 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. Central nervous system stimulant. 2-(3-chlorophenyl)-3-methylmorpholine (other name: 3-chlorophenmetrazine), its salts, isomers (optical, position, and geometric), and salts of isomers.

The placement of drugs listed in this subsection shall remain in effect until March 27, 2025, unless enacted into law in the Drug Control Act.

VA.R. Doc. No. R24-7478; Filed August 4, 2023, 10:39 a.m.

## 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 27, 2023.

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

### Summary:

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

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

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

1. Synthetic 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.

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 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-cyclohexylmethylaminopropiophenone (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-chloro butylcathinone, 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-trimethylbenzeneethanamine, 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.

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

1. Synthetic opioid. N,N-diethyl-2-[5-nitro-2-(4-propoxybenzyl)-1H-benzimidazol-1-yl]ethanamine (other

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name: Protonitazene), 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. 1-(1,3-benzodioxol-5-yl)-2-(cyclohexylamino)butan-1-one (other names: Cybutylone, N-cyclohexyl 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.

3. Compounds expected to have depressant properties. 8-bromo-6-(2-chlorophenyl)-1-methyl-4H-[1,2,4]triazolo[4,3-a][1,4]benzodiazepine (other names: Clobromazolam, Phenazolam), 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.

4. Cannabimimetic agents.

a. 5-bromo-N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1H-indazole-3-carboxamide (other name: ADB-5Br-INACA), 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)-5-bromo-1-butylindazole-3-carboxamide (other name: ADB-5'Br-BUTINACA), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

The placement of drugs listed in this subsection shall remain in effect until July 31, 2024, 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. 2-methyl-N-phenyl-N-[1-(2-phenylethyl)piperidin-4-yl]butanamide (other name: 2-methyl butyryl fentanyl), 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-(7-methoxy-1,3-benzodioxol-5-yl)propan-2-amine (other names: 5-methoxy-3,4-methylenedioxy amphetamine, 3-methoxy MDA, MMDA), 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. 1-[1-(3-chlorophenyl)cyclohexyl]-piperidine (other names: 3-Chloro Phencyclidine, 3Cl-PCP, 3-chloro PCP), 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. Compound expected to have depressant properties. 7-bromo-5-phenyl-1,3-dihydro-1,4-benzodiazepin-2-one (other names: Desalkylgidazepam, Bromonordiazepam), 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.

4. Compound classified as a cannabimimetic agent. Methyl N-[(5-bromo-1H-indazol-3-yl)carbonyl]-3-methyl-valinate (other name: MDMB-5Br-INACA), 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 12, 2024, unless enacted into law in the Drug Control Act.

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

1. Synthetic opioids:

a. 2-(4-isopropoxybenzyl)-5-nitro-1-[2-(pyrrolidin-1-yl)ethyl]-1H-benzo[d]imidazole (other name: N-Pyrrolidino Isotonitazene), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation.

b. 5-nitro-2-(4-propoxybenzyl)-1-[2-(pyrrolidin-1-yl)ethyl]-1H-benzo[d]imidazole (other names: N-Pyrrolidino Protonitazene, Protonitazepyne), 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. N-phenyl-N-(1-propionyl-4-piperidinyl)-propanamide (other name: N-propionyl Norfentanyl), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation.

2. Compounds expected to have depressive properties:

a. 6-(4-chlorophenyl)-1-methyl-4H-[1,2,4]triazolo[4,3-a][1,4]benzodiazepine (other names: 4'-chloro Deschloroalprazolam, 4'Cl-Deschloroalprazolam), 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. 7-chloro-5-(2-chlorophenyl)-1-methyl-3H-1,4-benzodiazepin-2-one (other names: Diclazepam, 2-Chloro diazepam), 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 27, 2025, unless enacted into law in the Drug Control Act.

VA.R. Doc. No. R24-7580; Filed August 4, 2023, 10:38 a.m.

**Forms**

**REGISTRAR'S NOTICE:** Forms used in administering the regulation have been filed by the agency. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name of a form with a hyperlink to access it. The forms are also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, 900 East Main Street, 11th Floor, Richmond, Virginia 23219.

**Title of Regulation: 18VAC110-20. Regulations Governing the Practice of Pharmacy.**

**Agency Contact:** Erin Barrett, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 367-4688, or email [erin.barrett@dhp.virginia.gov](mailto:erin.barrett@dhp.virginia.gov).

**FORMS**

- [Application for a Pharmacy Permit \(rev. 10/2020\)](#)
- [Application for a Non-resident Pharmacy Registration \(rev. 10/2020\)](#)
- [Application for a Non-Resident Wholesale Distributor Registration \(rev. 10/2020\)](#)
- [Application for Registration as Nonresident Manufacturer \(rev. 10/2020\)](#)
- [Application for a Non-Resident Third Party Logistics Provider Registration \(rev. 10/2020\)](#)
- [Application for Registration as a Nonresident Warehouser \(rev. 10/2020\)](#)
- [Application for a Non-resident Outsourcing Facility Registration \(rev. 10/2020\)](#)
- [Application for an Outsourcing Facility Permit \(rev. 10/2020\)](#)
- [Application for a Medical Equipment Supplier Permit \(rev. 10/2020\)](#)

[Application for a Permit as a Restricted Manufacturer \(rev. 10/2020\)](#)

[Application for a Permit as a Non-Restricted Manufacturer \(rev. 10/2020\)](#)

[Application for a License as a Wholesale Distributor \(rev. 10/2020\)](#)

[Application for a Permit as Warehouser \(rev. 10/2020\)](#)

[Application for a Permit as a Third-Party Logistics Provider \(rev. 10/2020\)](#)

[Application for Registration as a Non-resident Medical Equipment Supplier \(rev. 10/2020\)](#)

[Application for a Controlled Substances Registration Certificate \(rev. 10/2020\)](#)

[Closing of a Pharmacy \(rev. 5/2018\)](#)

~~[Application for Approval of an Innovative \(Pilot\) Program \(rev. 10/2020\)](#)~~

[Application for Approval of an Innovative \(Pilot\) Program \(rev. 8/2023\)](#)

[Registration for a Pharmacy to be a Collection Site for Donated Drugs \(rev. 5/2018\)](#)

[Application for Approval of a Repackaging Training Program \(rev. 10/2020\)](#)

[Registration for a Facility to be an Authorized Collector for Drug Disposal \(rev. 5.2018\)](#)

[Application for Re-inspection of a Facility \(rev. 3/2023\)](#)

[Notification of Distribution Cessation due to Suspicious Orders \(rev. 5/2018\)](#)

VA.R. Doc. No. R24-7659; Filed August 7, 2023, 11:13 a.m.

**BOARD OF SOCIAL WORK**

**Final Regulation**

**REGISTRAR'S NOTICE:** The Board of Social Work 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: 18VAC140-20. Regulations Governing the Practice of Social Work (amending 18VAC140-20-50).**

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

**Effective Date:** September 27, 2023.



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Agency Contact: Jaime Hoyle, Executive Director, Board of Social Work, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4406, FAX (804) 527-4435, or email [jaime.hoyle@dhp.virginia.gov](mailto:jaime.hoyle@dhp.virginia.gov).

Summary:

*Chapter 498 of the 2023 Acts of Assembly expands the powers and duties of the Board of Social Work to require the board to maintain a list of the names and contact information of persons approved by the board to supervise candidates for licensure as a clinical social worker and allows supervisees pursuing licensure as a clinical social worker to change or add a supervisor from the board's list of currently approved supervisors without prior approval from the board. In response to Chapter 498, the amendment changes a requirement to allow that an individual obtaining supervised experience who changes or adds a supervisor during clinical training only needs to register the new supervisor if that supervisor is not already board approved.*

## **18VAC140-20-50. Experience requirements for a licensed clinical social worker.**

A. Supervised experience. Supervised post-master's degree experience without prior written board approval will not be accepted toward licensure, except supervision obtained in another United States jurisdiction may be accepted if it met the requirements of that jurisdiction. Prior to registration for supervised experience, a person shall satisfactorily complete the educational requirements of 18VAC140-20-49.

1. Registration. An individual who proposes to obtain supervised post-master's degree experience in Virginia shall, prior to the onset of such supervision, or whenever there is an addition or change of a supervisor to a supervisor not currently approved by the board:

- a. Register on a form provided by the board;
- b. Submit a copy of a supervisory contract completed by the supervisor and the supervisee;
- c. Submit an official transcript documenting a graduate degree and clinical practicum as specified in 18VAC140-20-49; and
- d. Pay the registration of supervision fee set forth in 18VAC140-20-30.

2. Hours. The applicant shall have completed a minimum of 3,000 hours of supervised post-master's degree experience in the delivery of clinical social work services and in ancillary services that support such delivery. A minimum of one hour and a maximum of four hours of face-to-face supervision shall be provided per 40 hours of work experience for a total of at least 100 hours. No more than 50 of the 100 hours may be obtained in group supervision, nor shall there be more than six persons being supervised in a group unless approved in advance by the board. The board may consider alternatives to face-to-face supervision if the applicant can

demonstrate an undue burden due to hardship, disability, or geography.

- a. Supervised experience shall be acquired in no less than two nor more than four consecutive years.
- b. Supervisees shall obtain throughout their hours of supervision a minimum of 1,380 hours of supervised experience in face-to-face client contact in the delivery of clinical social work services. The remaining hours may be spent in ancillary services supporting the delivery of clinical social work services.

3. An individual who does not complete the supervision requirement after four consecutive years of supervised experience may request an extension of up to 12 months. The request for an extension shall include evidence that demonstrates extenuating circumstances that prevented completion of the supervised experience within four consecutive years.

## B. Requirements for supervisors.

1. The supervisor shall hold an active, unrestricted license as a licensed clinical social worker in the jurisdiction in which the clinical services are being rendered with at least two years of post-licensure clinical social work experience. The board may consider supervisors with commensurate qualifications if the applicant can demonstrate an undue burden due to geography or disability or if supervision was obtained in another United States jurisdiction.

2. The supervisor shall have received professional training in supervision, consisting of a three-credit-hour graduate course in supervision or at least 14 hours of continuing education offered by a provider approved under 18VAC140-20-105. The graduate course or hours of continuing education in supervision shall be obtained by a supervisor within five years immediately preceding registration of supervision.

3. The supervisor shall not provide supervision for a family member or provide supervision for anyone with whom ~~he~~ the supervisor has a dual relationship.

4. The board may consider supervisors from jurisdictions outside of Virginia who provided clinical social work supervision if they have commensurate qualifications but were either (i) not licensed because their jurisdiction did not require licensure or (ii) were not designated as clinical social workers because the jurisdiction did not require such designation.

## C. Responsibilities of supervisors. The supervisor shall:

1. Be responsible for the social work activities of the supervisee as set forth in this subsection once the supervisory arrangement is accepted;
2. Review and approve the diagnostic assessment and treatment plan of a representative sample of the clients

assigned to the applicant during the course of supervision. The sample should be representative of the variables of gender, age, diagnosis, length of treatment, and treatment method within the client population seen by the applicant. It is the applicant's responsibility to ~~assure~~ ensure the representativeness of the sample that is presented to the supervisor;

3. Provide supervision only for those social work activities for which the supervisor has determined the applicant is competent to provide to clients;
4. Provide supervision only for those activities for which the supervisor is qualified by education, training, and experience;
5. Evaluate the supervisee's knowledge and document minimal competencies in the areas of an identified theory base, application of a differential diagnosis, establishing and monitoring a treatment plan, development and appropriate use of the professional relationship, assessing the client for risk of imminent danger, understanding the requirements of law for reporting any harm or risk of harm to self or others, and implementing a professional and ethical relationship with clients;
6. Be available to the applicant on a regularly scheduled basis for supervision;
7. Maintain documentation, for five years post-supervision, of which clients were the subject of supervision; and
8. Ensure that the board is notified of any change in supervision or if supervision has ended or been terminated by the supervisor.

D. Responsibilities of supervisees.

1. Supervisees may not directly bill for services rendered or in any way represent themselves as independent, autonomous practitioners, or licensed clinical social workers.
2. During the supervised experience, supervisees shall use their names and the initials of their degree, and the title "Supervisee in Social Work" in all written communications.
3. Clients shall be informed in writing of the supervisee's status and the supervisor's name, professional address, and ~~phone~~ telephone number.
4. Supervisees shall not supervise the provision of clinical social work services provided by another person.
5. While providing clinical social work services, a supervisee shall remain under board approved supervision until licensed in Virginia as a licensed clinical social worker.

V.A.R. Doc. No. R24-7588; Filed July 31, 2023, 2:47 p.m.



## TITLE 22. SOCIAL SERVICES

### STATE BOARD OF SOCIAL SERVICES

#### Fast-Track Regulation

Title of Regulation: **22VAC40-73. Standards for Licensed Assisted Living Facilities (amending 22VAC40-73-10, 22VAC40-73-430; adding 22VAC40-73-435).**

Statutory Authority: §§ 63.2-217, 63.2-1732, 63.2-1802, 63.2-1805, and 63.2-1808 of the Code of Virginia.

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: September 27, 2023.

Effective Date: November 27, 2023.

Agency Contact: Sharon Lindsay, Associate Director, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 972-0676, FAX (804) 726-7132, or email [sharon.lindsay@dss.virginia.gov](mailto:sharon.lindsay@dss.virginia.gov).

Basis: The State Board of Social Services has the legal authority to adopt regulations and requirements for licensing assisted living facilities (ALFs) in accordance with §§ 63.2-217, 63.2-217.1, 63.2-1732, 63.2-1805, and 63.2-1808 of the Code of Virginia. The Code of Virginia mandates promulgation of regulations to address involuntary discharge of ALF residents, including timeframes, notification requirements, conditions, and the process for appeal. This regulatory action will provide direction for involuntary discharge pursuant to § 63.2-1805 of the Code of Virginia as required by amendments made by Chapter 706 of the 2022 Acts of Assembly.

Purpose: This regulatory change is essential to protect the health, safety, and welfare of residents residing in an ALF by clearly describing conditions for involuntary discharge from an ALF, and requirements to notify residents of their right to appeal an involuntary discharge. This action will ensure that ALF residents are not discharged inappropriately, and allow residents a legal remedy to appeal the discharge if discharge requirements are not followed.

Rationale for Using Fast-Track Rulemaking Process: This rulemaking action is expected to be noncontroversial as it is required by § 63.2-1805 of the Code of Virginia and therefore appropriate for the fast-track rulemaking process. This action provides ALF and residents requirements for involuntary discharge situations and creates a discharge appeal process to follow should one be needed. This action is intended to expand protections and offer clarification for facilities and residents.

Substance: The amendments add a definition of "involuntary discharge" and clarify the terms and conditions for when and how this type of discharge is permitted, including timeframes and the option for a resident to appeal the facility's decision to discharge as well as providing requirements for an ALF resident to appeal certain discharge decisions should that resident choose to do so.

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Issues: The primary advantage of this action for the public is allowing residents in an ALF to appeal an involuntary discharge, which has not previously been permitted. There are no disadvantages to the public from this action. There are no advantages or disadvantages to the agency or Commonwealth, as this action is required by § 63.2-1805 of the Code of Virginia. There could be disadvantages to the regulated programs (ALFs) if the programs do not follow requirements when involuntarily discharging residents, as the residents can now appeal the discharge, and there is a legal remedy for residents that previously did not exist.

Department of Planning and Budget's Economic Impact Analysis:

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order 19. The analysis presented represents DPB's best estimate of these economic impacts.<sup>1</sup>

Summary of the Proposed Amendments to Regulation. As a result of a 2022 legislative mandate, the State Board of Social Services (Board) is proposing to update the regulation governing assisted living facilities (ALFs) to add requirements that address the involuntary discharge of a resident, including an appeals process.<sup>2</sup>

Background. ALFs are nonmedical residential settings that provide or coordinate personal and health care services, 24-hour supervision, and assistance for the care of four or more adults who are aged, infirm or disabled.<sup>3</sup> Chapter 706 of the 2022 Acts of Assembly created specific requirements for the regulation governing ALFs with respect to the circumstances in which residents may be involuntarily discharged, the opportunity to appeal an involuntary discharge, and the process for such an appeal.<sup>4</sup> The legislation specifies that residents may only be involuntarily discharged in accordance with Board regulations, provided that the ALF has met the regulatory requirements and has made reasonable efforts to meet the needs of the resident. Further, an involuntary discharge may only occur for one of the following reasons: (i) nonpayment of contracted charges, provided that the resident has been given at least thirty days to cure the delinquency after notice was provided to the resident and the resident's legal representative or designated contact person; (ii) for the resident's failure to substantially comply with the terms and conditions of the resident agreement between the resident and the ALF; (iii) if the ALF closes in accordance with the regulations;<sup>5</sup> or (iv) when the resident develops a condition or care need that the Code of Virginia or regulation indicate ALFs are not licensed to handle.<sup>6</sup>

Chapter 706 also requires ALFs to "make reasonable efforts, as appropriate, to resolve any issues with the resident upon which the decision to discharge is based and document such efforts in the resident's file" except when "an emergency discharge is necessary due to an immediate and serious risk to the health, safety, or welfare of the resident or others." Further,

the legislation requires an ALF to provide a written discharge notice to the resident and the resident's legal representative/designated contact person, as well as a copy of that notice to the Department of Social Services (DSS) and the State Long-Term Care Ombudsman at least 30 days prior to the involuntary discharge.<sup>7</sup> This notice is required to include the ALF's decision to discharge the resident, the reasons for the discharge, the date on which the discharge will occur, and information regarding the resident's right to appeal within the 30-day notice period.<sup>8</sup> Additionally, the legislation provides that the ALF shall provide relocation assistance to the resident prior to the involuntary discharge.<sup>9</sup> Lastly, the legislation directs the Board to "adopt regulations that establish a process for appeals filed pursuant to this [legislation]."

Accordingly, the proposed changes include adding a definition in 22VAC40-73-10 for "involuntary discharge" as "when a facility requires a resident to move out of the [ALF] and not be allowed to return." 22VAC40-73-430 (Discharge of residents) would be revised significantly to reorder current requirements and incorporate the changes required by Chapter 706. These changes are summarized as follows:

The current requirement that the ALF adopt and conform to a written policy that provides for a general notice of an intent to move within a certain timeframe would be replaced with the more specific requirement that the ALF provide written notice 30 days prior to discharge. The written notice must include the decision to discharge, the reason for discharge, discharge date, and the place the resident will be discharged to.

Reasons for involuntary discharge would be added, identical to those listed in statute, as well as the requirement that the written notice inform residents and their legal representatives of their right to file an appeal within the 30-day notice period.

Language stating that "the responsibility of moving the resident's belongings would rest with the resident or his legal representative" would be removed since the regulation does not otherwise address residents' responsibilities.<sup>10</sup>

Emergency discharge requirements would be updated to conform to the changes to § 63.2-1805 of the Code of Virginia pursuant to Chapter 706, including that the ALF shall provide a copy of the department's discharge notice form to the regional licensing office and the State Long-Term Ombudsman within five days after the emergency discharge. The emergency discharge notice would also have to include information regarding the resident's right to appeal within 30 days from the emergency discharge date, plus the additional five days granted to the ALF to provide the discharge notice following an emergency.

References to "eligibility worker" would be changed to "assigned staff at the local department of social services" to reflect current terminology. A current requirement that such staff be informed at least 14 days prior to the discharge date, as well as current exemptions from this requirement for emergencies, would be preserved as is.

Lastly, 22VAC40-73-435 would be added to incorporate requirements promulgated by Chapter 706 relating to appeals of emergency or involuntary discharge. This section contains the following requirements for ALFs: (i) ALFs shall "assist the resident and the resident's legal representative, if any, when the resident is filing an appeal";<sup>11</sup> (ii) ALFs shall allow the resident to continue to reside in the facility, free from retaliation, until the appeal has reached its final department case decision, except in the case of emergency discharges or if the resident has developed a condition or care need prohibited by § 63.2-1805 D; (iii) the ALF must inform the resident of their continued right to reside in accordance with this requirement; and (iv) the ALF shall provide a postage prepaid envelope addressed to the department to use if the appeal is mailed, if requested by the resident. This section would also state that residents who have been removed pursuant to an emergency discharge can still file an appeal, and note that appeals are considered filed upon receipt by the agency's Division of Appeals and Fair Hearings.

**Estimated Benefits and Costs.** The proposed changes would primarily benefit residents of ALF by clarifying the grounds for involuntary discharge, providing them with 30-day written notice of an involuntary discharge (or within five days after an emergency discharge), establishing a process to appeal the involuntary discharge with DSS during the 30-day advance notice period (or following an emergency discharge), as well as the right to remain in the ALF until the DSS Commissioner has made a final case decision (unless an emergency discharge has already occurred).<sup>12</sup> These changes broadly serve to help residents and their families better plan for the residents' accommodation and care needs post-discharge. However, these changes would create new costs for DSS as well as for ALFs.

DSS reports that their Division of Appeals and Fair Hearings would need two staff, a Senior Hearing Officer and an Administrative Technician, to process ALF involuntary discharge appeals. The reported cost for the staff is \$198,034 for fiscal year (FY) 2023 and \$187,708 each year thereafter; DSS reports that appropriations for these positions have been provided in the state budget.<sup>13</sup> In addition, DSS Licensing would need to upgrade the licensing information system to track and monitor ALF discharges and appeals. The estimated one-time cost is \$500,000 for FY2023; this amount has also been appropriated in the state budget.

ALFs would incur initial costs relating to updating their documentation procedures for involuntary and emergency discharges to comply with the written notice and recordkeeping requirements. Costs relating to the appeals may arise from helping the resident or resident's legal representative compile the appeal and send it to DSS. Most of these costs would depend on the number of involuntary and emergency discharges, and the number of such decisions that are appealed.<sup>14</sup> An ALF could be particularly impacted if a resident appealed an involuntary discharge that was based on nonpayment and remained in the facility until DSS made a

final case determination, while continuing not to pay.<sup>15</sup> However, the likelihood of this happening is unknown; thus, while it does not directly create a cost for ALFs, it increases the financial risk that they are subject to.

Generally, ALFs would face reduced flexibility and increased oversight in determining whether residents need to be discharged. Currently, ALF decisions to discharge individuals can only be appealed with the facility, if they have an appeals process. The proposed changes may reduce the number of discharges if ALFs were discharging individuals on grounds that would not meet the new criteria for involuntary or emergency discharges or would be likely to face an appeal. Essentially, ALFs' ability to turnover residents that were expensive to accommodate or care for would be reduced. To this extent this occurs it could affect the composition of payors in the ALF's resident pool, or the mix of residents' care needs, such that the ALFs revenues are decreased or operating costs (mainly staffing needs) are increased. However, these costs are unavoidable and can be attributed to the legislation requiring these changes.

**Businesses and Other Entities Affected.** DSS reports that there are currently 564 licensed ALFs. Most are considered small businesses. As of March 2022, four ALFs were operated by community services boards and one ALF is operated by a locality health center commission.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.<sup>16</sup> An adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined. As noted, the new requirements would create new costs for DSS and for ALFs. Thus, an adverse impact is indicated.

**Small Businesses<sup>17</sup> Affected.**<sup>18</sup> The proposed amendments do appear to adversely affect small businesses.

**Types and Estimated Number of Small Businesses Affected:** As indicated, DSS reports that most of the 564 licensed ALFs would be considered small businesses. DSS does not collect information on whether individual licensees meet the criteria for small businesses.

**Costs and Other Effects:** The proposed amendments create direct costs in terms of required documentation and procedural changes. ALFs may incur costs depending on the number of involuntary or emergency discharges they make and the number of such discharges that are appealed, as well as face additional financial risk since the number and nature of appeals may be difficult to predict. ALFs may also incur other indirect economic impacts by being restricted in their ability to discharge residents. Thus, an adverse economic impact is indicated for ALFs.

**Alternative Method that Minimizes Adverse Impact:** There are no clear alternative methods that both reduce adverse impact and implement the requirements of Chapter 706 or the 2022 Acts of Assembly.

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# Regulations

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Localities<sup>19</sup> Affected.<sup>20</sup> As mentioned previously, four ALFs are operated by community services boards and one ALF is operated by a locality health center commission. These local governments would be affected to the extent that any higher costs incurred by the ALF are passed on to them.

**Projected Impact on Employment.** The proposed amendments are unlikely to impact total employment.

**Effects on the Use and Value of Private Property.** The proposed amendments would increase costs and financial risks for ALFs, thereby making them less profitable and reducing the value of these businesses. The proposed amendment would not affect real estate development costs.

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

<sup>2</sup>See <https://townhall.virginia.gov/L/viewmandate.cfm?mandateid=1299>.

<sup>3</sup>See <https://www.dss.virginia.gov/facility/alf.cgi>. The website further specifies that, "Assisted living facilities are not nursing homes. A nursing home is a facility in which the primary function is the provision, on a continuing basis, of nursing services and health-related services for the treatment and inpatient care of two or more non-related individuals. Nursing homes are regulated by the Virginia Department of Health."

<sup>4</sup>See <https://leg1.state.va.us/cgi-bin/legp504.exe?221+ful+CHAP0706>.

<sup>5</sup>The legislation states that a resident may appeal any of the discharge decisions based on the other factors, but that an involuntary discharged based on a facility's closure is not appealable.

<sup>6</sup>Some of these include ventilator dependency, certain types of ulcers, intravenous therapy or injections, airborne infectious disease, and individuals who present an imminent physical threat or danger to self or others. The list of these conditions appears in § 63.2-1805 D of the Code of Virginia. See <https://law.lis.virginia.gov/vacode/title63.2/chapter18/section63.2-1805/>.

<sup>7</sup>The legislation provides an exception for emergency discharges and requires that notice be "provided as soon as possible but not later than five days" after the emergency discharge. According to the legislation, these residents retain the right to appeal even if they no longer reside in the facility.

<sup>8</sup>DSS is required to furnish a discharge notice form that includes information regarding the process for initiating an appeal, the number for a toll-free information line, a hearing request form, the facility's obligation to assist the resident in filing an appeal and provide, upon request, a postage prepaid envelope addressed to the agency, and a statement of the resident's right to continue to reside in the facility, free from retaliation, until the appeal has a final department case decision, subject to an emergency discharge or development of a certain type of condition or care need.

<sup>9</sup>DSS reports that this requirement appears in the current regulation at 22VAC40-73-430, and that it does not mean the ALF has to find the resident another placement. Rather, the requirement applies to situational assistance such as packing belongings, providing a list of possible alternative accommodations, working with the family to help the person transition to another level of care, and preparing copies of records.

<sup>10</sup>See Agency Background Document (ABD), page 7: [https://townhall.virginia.gov/l/GetFile.cfm?File=73/6132/9853/AgencyState ment\\_DSS\\_9853\\_v4.pdf](https://townhall.virginia.gov/l/GetFile.cfm?File=73/6132/9853/AgencyState%20ment_DSS_9853_v4.pdf).

<sup>11</sup>DSS does not believe that this requirement is a conflict of interest, since residents "commonly need at least minimal support for instrumental activities of daily living," and that this assistance could include contacting family members or connecting the resident with an advocate.

<sup>12</sup>This decision may be further appealed in court, and it is unclear if the resident's right to remain in the ALF would extend through any subsequent court proceedings.

<sup>13</sup>ABD, page 4.

<sup>14</sup>DSS reports that they do not have data on the number of involuntary decisions in recent years or how many may be appealed going forward.

<sup>15</sup>DSS reports that the Division of Appeals and Fair Hearings has a procedure to hold hearings within 90 days of the appeal. Involuntary discharge based on nonpayment requires that residents and their representatives be given 30-days' notice of nonpayment. Thus, it is possible that a resident may stay for up to five months without the ALF receiving payment.

<sup>16</sup>Pursuant to Code § 2.2-4007.04 D: In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance. Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation.

<sup>17</sup>Pursuant to § 2.2-4007.04, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million."

<sup>18</sup>If the proposed regulatory action may have an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to § 2.2-4007.1 of the Code of Virginia, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

<sup>19</sup>"Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

<sup>20</sup>Section 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

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

Summary:

*Pursuant to Chapter 706 of the 2022 Acts of Assembly, the amendments (i) add a definition of "involuntary discharge"; (ii) provide the terms and conditions for an involuntary discharge; and (iii) outline an appeal process for an assisted living facility resident to appeal certain discharge decisions should a resident choose to do so.*

**22VAC40-73-10. Definitions.**

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

"Activities of daily living" or "ADLs" means bathing, dressing, toileting, transferring, bowel control, bladder control, and eating/feeding. A person's degree of independence in performing these activities is a part of determining appropriate level of care and services.

"Administer medication" means to open a container of medicine or to remove the ordered dosage and to give it to the resident for whom it is ordered.

"Administrator" means the licensee or a person designated by the licensee who is responsible for the general administration and management of an assisted living facility and who oversees the day-to-day operation of the facility, including compliance with all regulations for licensed assisted living facilities.

"Admission" means the date a person actually becomes a resident of the assisted living facility and is physically present at the facility.

"Advance directive" means, as defined in § 54.1-2982 of the Code of Virginia, (i) a witnessed written document, voluntarily executed by the declarant in accordance with the requirements of § 54.1-2983 of the Code of Virginia or (ii) a witnessed oral statement, made by the declarant subsequent to the time ~~he~~ the declarant is diagnosed as suffering from a terminal condition and in accordance with the provisions of § 54.1-2983 of the Code of Virginia.

"Ambulatory" means the condition of a resident who is physically and mentally capable of self-preservation by evacuating in response to an emergency to a refuge area as defined by 13VAC5-63, the Virginia Uniform Statewide Building Code, without the assistance of another person, or from the structure itself without the assistance of another person if there is no such refuge area within the structure, even if such resident may require the assistance of a wheelchair, walker, cane, prosthetic device, or a single verbal command to evacuate.

"Assisted living care" means a level of service provided by an assisted living facility for adults who may have physical or mental impairments and require at least moderate assistance with the activities of daily living. Included in this level of service are individuals who are dependent in behavior pattern (i.e., abusive, aggressive, disruptive) as documented on the uniform assessment instrument.

"Assisted living facility" means, as defined in § 63.2-100 of the Code of Virginia, any congregate residential setting that provides or coordinates personal and health care services, 24-hour supervision, and assistance (scheduled and unscheduled) for the maintenance or care of four or more adults who are aged, infirm, or disabled and who are cared for in a primarily

residential setting, except (i) a facility or portion of a facility licensed by the State Board of Health or the Department of Behavioral Health and Developmental Services, but including any portion of such facility not so licensed; (ii) the home or residence of an individual who cares for or maintains only persons related to ~~him~~ that individual by blood or marriage; (iii) a facility or portion of a facility serving infirm or disabled persons between the ages of 18 and 21 years, or 22 years if enrolled in an educational program for the handicapped pursuant to § 22.1-214 of the Code of Virginia, when such facility is licensed by the department as a children's residential facility under Chapter 17 (§ 63.2-1700 et seq.) of Title 63.2 of the Code of Virginia, but including any portion of the facility not so licensed; and (iv) any housing project for persons 62 years of age or older or the disabled that provides no more than basic coordination of care services and is funded by the U.S. Department of Housing and Urban Development, by the U.S. Department of Agriculture, or by the Virginia Housing Development Authority. Included in this definition are any two or more places, establishments, or institutions owned or operated by a single entity and providing maintenance or care to a combined total of four or more aged, infirm, or disabled adults. Maintenance or care means the protection, general supervision, and oversight of the physical and mental well-being of an aged, infirm, or disabled individual.

"Attorney-in-fact" means strictly, one who is designated to transact business for another: a legal agent.

"Behavioral health authority" means the organization, appointed by and accountable to the governing body of the city or county that established it, that provides mental health, developmental, and substance abuse services through its own staff or through contracts with other organizations and providers.

"Board" means the State Board of Social Services.

"Building" means a structure with exterior walls under one roof.

"Cardiopulmonary resuscitation" or "CPR" means an emergency procedure consisting of external cardiac massage and artificial respiration; the first treatment for a person who has collapsed, has no pulse, and has stopped breathing; and attempts to restore circulation of the blood and prevent death or brain damage due to lack of oxygen.

"Case management" means multiple functions designed to link clients to appropriate services. Case management may include a variety of common components such as initial screening of needs, comprehensive assessment of needs, development and implementation of a plan of care, service monitoring, and client follow-up.

"Case manager" means an employee of a public human services agency who is qualified and designated to develop and coordinate plans of care.

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# Regulations

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"Chapter" or "this chapter" means these regulations, that is, Standards for Licensed Assisted Living Facilities, 22VAC40-73, unless noted otherwise.

"Chemical restraint" means a psychopharmacologic drug that is used for discipline or convenience and not required to treat the resident's medical symptoms or symptoms from mental illness or intellectual disability and that prohibits the resident from reaching his highest level of functioning.

"Commissioner" means the commissioner of the department, ~~his~~ the commissioner's designee, or authorized representative.

"Community services board" or "CSB" means a public body established pursuant to § 37.2-501 of the Code of Virginia that provides mental health, developmental, and substance abuse programs and services within the political subdivision or political subdivisions participating on the board.

"Companion services" means assistance provided to residents in such areas as transportation, meal preparation, shopping, light housekeeping, companionship, and household management.

"Conservator" means a person appointed by the court who is responsible for managing the estate and financial affairs of an incapacitated person and, where the context plainly indicates, includes a "limited conservator" or a "temporary conservator." The term includes (i) a local or regional program designated by the Department for Aging and Rehabilitative Services as a public conservator pursuant to Article 6 (§ 51.5-149 et seq.) of Chapter 14 of Title 51.5 of the Code of Virginia or (ii) any local or regional tax-exempt charitable organization established pursuant to § 501(c)(3) of the Internal Revenue Code to provide conservatorial services to incapacitated persons. Such tax-exempt charitable organization shall not be a provider of direct services to the incapacitated person. If a tax-exempt charitable organization has been designated by the Department for Aging and Rehabilitative Services as a public conservator, it may also serve as a conservator for other individuals.

"Continuous licensed nursing care" means around-the-clock observation, assessment, monitoring, supervision, or provision of medical treatments provided by a licensed nurse. Individuals requiring continuous licensed nursing care may include:

1. Individuals who have a medical instability due to complexities created by multiple, interrelated medical conditions; or
2. Individuals with a health care condition with a high potential for medical instability.

"Days" means calendar days unless noted otherwise.

"Department" means the Virginia Department of Social Services.

"Department's representative" means an employee or designee of the Virginia Department of Social Services, acting as an authorized agent of the Commissioner of Social Services.

"Dietary supplement" means a product intended for ingestion that supplements the diet, is labeled as a dietary supplement, is not represented as a sole item of a meal or diet, and contains a dietary ingredient or ingredients, (e.g., vitamins, minerals, amino acids, herbs or other botanicals, dietary substances (such as enzymes), and concentrates, metabolites, constituents, extracts, or combinations of the preceding types of ingredients). Dietary supplements may be found in many forms, such as tablets, capsules, liquids, or bars.

"Direct care staff" means supervisors, assistants, aides, or other staff of a facility who assist residents in the performance of personal care or daily living activities.

"Discharge" means the movement of a resident out of the assisted living facility.

"Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.

"Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

"Emergency placement" means the temporary status of an individual in an assisted living facility when the person's health and safety would be jeopardized by denying entry into the facility until the requirements for admission have been met.

"Emergency restraint" means a restraint used when the resident's behavior is unmanageable to the degree an immediate and serious danger is presented to the health and safety of the resident or others.

"General supervision and oversight" means assuming responsibility for the well-being of residents, either directly or through contracted agents.

"Guardian" means a person appointed by the court who is responsible for the personal affairs of an incapacitated person, including responsibility for making decisions regarding the person's support, care, health, safety, habilitation, education, therapeutic treatment, and, if not inconsistent with an order of involuntary admission, residence. Where the context plainly indicates, the term includes a "limited guardian" or a "temporary guardian." The term includes (i) a local or regional program designated by the Department for Aging and Rehabilitative Services as a public guardian pursuant to Article 6 (§ 51.5-149 et seq.) of Chapter 14 of Title 51.5 of the Code of Virginia or (ii) any local or regional tax-exempt charitable organization established pursuant to § 501(c)(3) of the Internal Revenue Code to provide guardian services to incapacitated persons. Such tax-exempt charitable organization shall not be a provider of direct services to the incapacitated person. If a tax-exempt charitable organization has been designated by the Department for Aging and Rehabilitative Services as a public guardian, it may also serve as a guardian for other individuals.

"Habilitative service" means activities to advance a normal sequence of motor skills, movement, and self-care abilities or to prevent avoidable additional deformity or dysfunction.

"Health care provider" means a person, corporation, facility, or institution licensed by this Commonwealth to provide health care or professional services, including a physician or hospital, dentist, pharmacist, registered or licensed practical nurse, optometrist, podiatrist, chiropractor, physical therapist, physical therapy assistant, clinical psychologist, or health maintenance organization.

"Household member" means any person domiciled in an assisted living facility other than residents or staff.

"Imminent physical threat or danger" means clear and present risk of sustaining or inflicting serious or life threatening injuries.

"Independent clinical psychologist" means a clinical psychologist who is chosen by the resident of the assisted living facility and who has no financial interest in the assisted living facility, directly or indirectly, as an owner, officer, or employee or as an independent contractor with the facility.

"Independent living status" means that the resident is assessed as capable of performing all activities of daily living and instrumental activities of daily living for himself without requiring the assistance of another person and is assessed as capable of taking medications without the assistance of another person. If the policy of a facility dictates that medications are administered or distributed centrally without regard for the residents' capacity, this policy shall not be considered in determining independent status.

"Independent physician" means a physician who is chosen by the resident of the assisted living facility and who has no financial interest in the assisted living facility, directly or indirectly, as an owner, officer, or employee or as an independent contractor with the facility.

"Individualized service plan" or "ISP" means the written description of actions to be taken by the licensee, including coordination with other services providers, to meet the assessed needs of the resident.

"Instrumental activities of daily living" or "IADLs" means meal preparation, housekeeping, laundry, and managing money. A person's degree of independence in performing these activities is a part of determining appropriate level of care and services.

"Intellectual disability" means disability, originating before the age of 18 years, characterized concurrently by (i) significantly subaverage intellectual functioning as demonstrated by performance on a standardized measure of intellectual functioning, administered in conformity with accepted professional practice, that is at least two standard deviations below the mean and (ii) significant limitations in

adaptive behavior as expressed in conceptual, social, and practical adaptive skills.

"Intermittent intravenous therapy" means therapy provided by a licensed health care professional at medically predictable intervals for a limited period of time on a daily or periodic basis.

"Involuntary discharge" means when a facility requires a resident to move out of the assisted living facility and not be allowed to return.

"Legal representative" means a person legally responsible for representing or standing in the place of the resident for the conduct of his affairs. This may include a guardian, conservator, attorney-in-fact under durable power of attorney ("durable power of attorney" defines the type of legal instrument used to name the attorney-in-fact and does not change the meaning of attorney-in-fact), trustee, or other person expressly named by a court of competent jurisdiction or the resident as ~~his~~ the resident's agent in a legal document that specifies the scope of the representative's authority to act. A legal representative may only represent or stand in the place of a resident for the ~~function or~~ functions for which ~~he~~ the legal representative has legal authority to act. A resident is presumed competent and is responsible for making all health care, personal care, financial, and other personal decisions that affect ~~his~~ the resident's life unless a representative with legal authority has been appointed by a court of competent jurisdiction or has been appointed by the resident in a properly executed and signed document. A resident may have different legal representatives for different functions. For any given standard, the term "legal representative" applies solely to the legal representative with the authority to act in regard to the ~~function or~~ functions relevant to that particular standard.

"Licensed health care professional" means any health care professional currently licensed by the Commonwealth of Virginia to practice within the scope of ~~his~~ that health care professional's profession, such as a nurse practitioner, registered nurse, licensed practical nurse (nurses may be licensed or hold multistate licensure pursuant to § 54.1-3000 of the Code of Virginia), clinical social worker, dentist, occupational therapist, pharmacist, physical therapist, physician, physician assistant, psychologist, and speech-language pathologist. Responsibilities of physicians referenced in this chapter may be implemented by nurse practitioners or physician assistants in accordance with their protocols or practice agreements with their supervising physicians and in accordance with the law.

"Licensee" means any person, association, partnership, corporation, company, or public agency to whom the license is issued.

"Manager" means a designated person who serves as a manager pursuant to 22VAC40-73-170 and 22VAC40-73-180.



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# Regulations

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"Mandated reporter" means persons specified in § 63.2-1606 of the Code of Virginia who are required to report matters giving reason to suspect abuse, neglect, or exploitation of an adult.

"Maximum physical assistance" means that an individual has a rating of total dependence in four or more of the seven activities of daily living as documented on the uniform assessment instrument. An individual who can participate in any way with performance of the activity is not considered to be totally dependent.

"Medical/orthopedic restraint" means the use of a medical or orthopedic support device that has the effect of restricting the resident's freedom of movement or access to ~~his~~ the resident's body for the purpose of improving the resident's stability, physical functioning, or mobility.

"Medication aide" means a staff person who has current registration with the Virginia Board of Nursing to administer drugs that would otherwise be self-administered to residents in an assisted living facility in accordance with the Regulations Governing the Registration of Medication Aides (18VAC90-60). This definition also includes a staff person who is an applicant for registration as a medication aide in accordance with subdivision 2 of 22VAC40-73-670.

"Mental illness" means a disorder of thought, mood, emotion, perception, or orientation that significantly impairs judgment, behavior, capacity to recognize reality, or ability to address basic life necessities and requires care and treatment for the health, safety, or recovery of the individual or for the safety of others.

"Mental impairment" means a disability that reduces an individual's ability to reason logically, make appropriate decisions, or engage in purposeful behavior.

"Minimal assistance" means dependency in only one activity of daily living or dependency in one or more of the instrumental activities of daily living as documented on the uniform assessment instrument.

"Moderate assistance" means dependency in two or more of the activities of daily living as documented on the uniform assessment instrument.

"Nonambulatory" means the condition of a resident who by reason of physical or mental impairment is not capable of self-preservation without the assistance of another person.

"Nonemergency restraint" means a restraint used for the purpose of providing support to a physically weakened resident.

"Physical impairment" means a condition of a bodily or sensory nature that reduces an individual's ability to function or to perform activities.

"Physical restraint" means any manual method or physical or mechanical device, material, or equipment attached or adjacent

to the resident's body that the resident cannot remove easily, which restricts freedom of movement or access to ~~his~~ the resident's body.

"Physician" means an individual licensed to practice medicine or osteopathic medicine in any of the 50 states or the District of Columbia.

"Premises" means a building or group of buildings, under one license, together with the land or grounds on which located.

"Prescriber" means a practitioner who is authorized pursuant to §§ 54.1-3303 and 54.1-3408 of the Code of Virginia to issue a prescription.

"Private duty personnel" means an individual hired, either directly or through a licensed home care organization, by a resident, family member, legal representative, or similar entity to provide one-on-one services to the resident, such as a private duty nurse, home attendant, personal aide, or companion. Private duty personnel are not hired by the facility, either directly or through a contract.

"Private pay" means that a resident of an assisted living facility is not eligible for an auxiliary grant.

"Psychopharmacologic drug" means any drug prescribed or administered with the intent of controlling mood, mental status, or behavior. Psychopharmacologic drugs include not only the obvious drug classes, such as antipsychotic, antidepressants, and the antianxiety/hypnotic class, but any drug that is prescribed or administered with the intent of controlling mood, mental status, or behavior, regardless of the manner in which it is marketed by the manufacturers and regardless of labeling or other approvals by the U.S. Food and Drug Administration.

"Public pay" means that a resident of an assisted living facility is eligible for an auxiliary grant.

"Qualified" means having appropriate training and experience commensurate with assigned responsibilities, or if referring to a professional, possessing an appropriate degree or having documented equivalent education, training, or experience. There are specific definitions for "qualified assessor" and "qualified mental health professional" in this section.

"Qualified assessor" means an individual who is authorized to perform an assessment, reassessment, or change in level of care for an applicant to or resident of an assisted living facility. For public pay individuals, a qualified assessor is an employee of a public human services agency trained in the completion of the uniform assessment instrument (UAI). For private pay individuals, a qualified assessor is an employee of the assisted living facility trained in the completion of the UAI or an independent private physician or a qualified assessor for public pay individuals.

"Qualified mental health professional" means a behavioral health professional who is trained and experienced in providing psychiatric or mental health services to individuals who have a psychiatric diagnosis, including (i) a physician licensed in Virginia; (ii) a psychologist: an individual with a master's degree in psychology from a college or university accredited by an association recognized by the U.S. Secretary of Education, with at least one year of clinical experience; (iii) a social worker: an individual with at least a master's degree in human services or related field (e.g., social work, psychology, psychiatric rehabilitation, sociology, counseling, vocational rehabilitation, or human services counseling) from a college or university accredited by an association recognized by the U.S. Secretary of Education, with at least one year of clinical experience providing direct services to persons with a diagnosis of mental illness; (iv) a registered psychiatric rehabilitation provider (RPRP) registered with the International Association of Psychosocial Rehabilitation Services (IAPRSRS); (v) a clinical nurse specialist or psychiatric nurse practitioner licensed in the Commonwealth of Virginia with at least one year of clinical experience working in a mental health treatment facility or agency; (vi) any other licensed mental health professional; or (vii) any other person deemed by the Department of Behavioral Health and Developmental Services as having qualifications equivalent to those described in this definition. Any unlicensed person who meets the requirements contained in this definition shall either be under the supervision of a licensed mental health professional or employed by an agency or organization licensed by the Department of Behavioral Health and Developmental Services.

"Rehabilitative services" means activities that are ordered by a physician or other qualified health care professional that are provided by a rehabilitative therapist (e.g., physical therapist, occupational therapist, or speech-language pathologist). These activities may be necessary when a resident has demonstrated a change in ~~his~~ the resident's capabilities and are provided to restore or improve ~~his~~ the resident's level of functioning.

"Resident" means any adult residing in an assisted living facility for the purpose of receiving maintenance or care. The definition of resident also includes adults residing in an assisted living facility who have independent living status. Adults present in an assisted living facility for part of the day for the purpose of receiving day care services are also considered residents.

"Residential living care" means a level of service provided by an assisted living facility for adults who may have physical or mental impairments and require only minimal assistance with the activities of daily living. Included in this level of service are individuals who are dependent in medication administration as documented on the uniform assessment instrument, although they may not require minimal assistance with the activities of daily living. This definition includes the services provided by the facility to individuals who are assessed as capable of maintaining themselves in an independent living status.

"Respite care" means services provided in an assisted living facility for the maintenance or care of aged, infirm, or disabled adults for a temporary period of time or temporary periods of time that are regular or intermittent. Facilities offering this type of care are subject to this chapter.

"Restorative care" means activities designed to assist the resident in reaching or maintaining ~~his~~ the resident's level of potential. These activities are not required to be provided by a rehabilitative therapist and may include activities such as range of motion, assistance with ambulation, positioning, assistance and instruction in the activities of daily living, psychosocial skills training, and reorientation and reality orientation.

"Restraint" means either "physical restraint" or "chemical restraint" as these terms are defined in this section.

"Safe, secure environment" means a self-contained special care unit for residents with serious cognitive impairments due to a primary psychiatric diagnosis of dementia who cannot recognize danger or protect their own safety and welfare. There may be one or more self-contained special care units in a facility or the whole facility may be a special care unit. Nothing in this definition limits or contravenes the privacy protections set forth in § 63.2-1808 of the Code of Virginia.

"Sanitizing" means treating in such a way to remove bacteria and viruses through using a disinfectant solution (e.g., bleach solution or commercial chemical disinfectant) or physical agent (e.g., heat).

"Serious cognitive impairment" means severe deficit in mental capability of a chronic, enduring, or long-term nature that affects areas such as thought processes, problem-solving, judgment, memory, and comprehension and that interferes with such things as reality orientation, ability to care for self, ability to recognize danger to self or others, and impulse control. Such cognitive impairment is not due to (i) acute or episodic conditions, ~~nor~~ (ii) conditions arising from treatable metabolic or chemical imbalances, or ~~caused by~~ (iii) reactions to medication or toxic substances. For the purposes of this chapter, serious cognitive impairment means that an individual cannot recognize danger or protect ~~his~~ the individual's own safety and welfare.

"Significant change" means a change in a resident's condition that is expected to last longer than 30 days. It does not include short-term changes that resolve with or without intervention, a short-term acute illness or episodic event, or a well-established, predictive, cyclic pattern of clinical signs and symptoms associated with a previously diagnosed condition where an appropriate course of treatment is in progress.

"Skilled nursing treatment" means a service ordered by a physician or other prescriber that is provided by and within the scope of practice of a licensed nurse.

"Skills training" means systematic skill building through curriculum-based psychoeducational and cognitive-behavioral interventions. These interventions break down complex objectives for role performance into simpler components, including basic

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cognitive skills such as attention, to facilitate learning and competency.

"Staff" or "staff person" means personnel working at a facility who are compensated or have a financial interest in the facility, regardless of role, service, age, function, or duration of employment at the facility. "Staff" or "staff person" also includes those individuals hired through a contract with the facility to provide services for the facility.

"Substance abuse" means the use of drugs enumerated in the Virginia Drug Control Act (§ 54.1-3400 et seq. of the Code of Virginia), without a compelling medical reason, or alcohol that (i) results in psychological or physiological dependence or danger to self or others as a function of continued and compulsive use or (ii) results in mental, emotional, or physical impairment that causes socially dysfunctional or socially disordering behavior; and (iii) because of such substance abuse, requires care and treatment for the health of the individual. This care and treatment may include counseling, rehabilitation, or medical or psychiatric care. All determinations of whether a compelling medical reason exists shall be made by a physician or other qualified medical personnel.

"Systems review" means a physical examination of the body to determine if the person is experiencing problems or distress, including cardiovascular system, respiratory system, gastrointestinal system, urinary system, endocrine system, musculoskeletal system, nervous system, sensory system, and the skin.

"Transfer" means movement of a resident to a different assigned living area within the same licensed facility.

"Trustee" means one who stands in a fiduciary or confidential relation to another; especially, one who, having legal title to property, holds it in trust for the benefit of another and owes a fiduciary duty to that beneficiary.

"Uniform assessment instrument" or "UAI" means the department designated assessment form. There is an alternate version of the form that may be used for private pay residents. Social and financial information that is not relevant because of the resident's payment status is not included on the private pay version of the form.

"Volunteer" means a person who works at an assisted living facility who is not compensated. An exception to this definition is a person who, either as an individual or as part of an organization, is only present at or facilitates group activities on an occasional basis or for special events.

## **22VAC40-73-430. Discharge of residents.**

A. The facility shall adopt and conform to a written policy regarding the number of days' notice that is required when a resident wishes to move from the facility. The policy shall not require more than 30 days' notice for a resident-initiated discharge.

B. When actions, circumstances, conditions, or care needs, or resident's preferences occur that will result in the discharge of a resident, discharge planning shall begin immediately, and

~~there shall be documentation of such, including the beginning date of discharge planning. The resident shall be moved within 30 days, except that if persistent efforts have been made and the time frame is not met, the facility shall document the reason and the efforts that have been made. The date that discharge planning began shall be documented.~~

1. The facility shall assist the resident and resident's legal representative, if any, in the discharge or transfer process. The facility shall help the resident prepare for relocation, including discussing the resident's destination.

2. The facility shall notify the resident, the resident's legal representative, and designated contact person, if any, of the reason of the discharge and the plan for the discharge to take place.

3. The facility shall provide written discharge notice to the resident, the resident's legal representative, and contact person, if any, at least 30 days preceding the actual discharge date.

4. The discharge notice shall be dated and include the following:

a. Facility's decision to discharge the resident;

b. Reasons for discharge;

c. Date on which the discharge will occur; and

d. Place the resident will be discharged to.

5. If the discharge timeframe is not met, although persistent efforts have been made, the facility shall document the reason.

~~B. As soon as discharge planning begins, the assisted living facility shall notify the resident, the resident's legal representative and designated contact person if any, of the planned discharge, the reason for the discharge, and that the resident will be moved within 30 days unless there are extenuating circumstances relating to inability to place the resident in another setting within the time frame referenced in subsection A of this section. Written notification of the actual discharge date and place of discharge shall be given to the resident, the resident's legal representative and contact person, if any, and additionally for public pay residents, the eligibility worker and assessor, C. The assigned staff at the local department of social services and the assessor for public pay residents shall be notified at least 14 days prior to the date that the resident will be discharged.~~

~~C. The assisted living facility shall adopt and conform to a written policy regarding the number of days notice that is required when a resident wishes to move from the facility. Any required notice of intent to move shall not exceed 30 days.~~

~~D. The facility shall assist the resident and his legal representative, if any, in the discharge or transfer process. The facility shall help the resident prepare for relocation, including discussing the resident's destination. Primary responsibility for~~

transporting the resident and his possessions rests with the resident or his legal representative.

~~E. When a resident's condition presents an immediate and serious risk to the health, safety, or welfare of the resident or others and emergency discharge is necessary, the 14 day advance notification of planned discharge does not apply, although the reason for the relocation shall be discussed with the resident and, when possible, his legal representative prior to the move.~~

~~F. Under emergency conditions, the~~ D. Emergency discharge of residents.

1. The resident's legal representative, designated contact person, family, caseworker, social worker, or any other persons, as appropriate, shall be informed as rapidly as possible, but no later than the close of the day following discharge, of the reasons reason for the move. For public pay residents, the eligibility worker and assessor shall also be so informed of the emergency discharge within the same time frame. No

2. When an emergency discharge is necessary due to an immediate and serious risk to the health, safety, or welfare of the resident or others, the department's discharge notice form shall be provided as soon as possible, but no later than five days after the emergency discharge, the information shall be provided in writing to all those notified. The department's discharge notice form for emergency discharge shall be dated and include the:

- a. Facility's decision to discharge the resident;
- b. Reasons for discharge;
- c. Date on which the discharge will occur;
- d. Place the resident will be discharged to; and
- e. Information regarding the resident's right to appeal within 30 days from the emergency discharge date. An additional five days is permitted for the resident to appeal to allow time for the assisted living facility to provide the department's discharge notice form pursuant to § 63.2-1805 A 5 of the Code of Virginia.

3. For public pay residents, the assigned staff at the local department of social services and assessor shall be informed as rapidly as possible of the reason to move. The 14-day advance notice of planned discharge described in subsection C of this section does not apply when a resident's condition presents an immediate and serious risk to the health, safety, or welfare to the resident or others, necessitating an emergency discharge.

4. The assisted living facility shall provide a copy of the department's discharge notice form to the regional licensing office and the State Long-Term Care Ombudsman within five days after the emergency discharge.

E. Involuntary discharge of residents may occur under the following circumstances:

1. For nonpayment of contracted charges, provided that the resident has been given at least 30 days to cure the delinquency after notice of such nonpayment was provided to the resident and the resident's legal representative or designated contact person.

2. For the resident's failure to substantially comply with the terms and conditions, as allowed by this chapter, of the resident agreement between the resident and assisted living facility.

3. The facility closes in accordance with regulations.

4. The resident develops a condition or care need that is prohibited pursuant to § 63.2-1805 D of the Code of Virginia and 22VAC40-73-310 H.

5. The assisted living facility has met the following requirements and the facility has made reasonable efforts to meet the needs of the resident:

a. The facility administrator or designated staff member shall ensure that an evaluation of the individual is or has been conducted by a qualified mental health professional as defined in 22VAC40-73-10 if there are observed behaviors or patterns of behavior indicative of mental illness, intellectual disability, substance abuse, or behavioral disorders, as documented in the uniform assessment instrument completed pursuant to § 63.2-1804 of the Code of Virginia.

b. If the evaluation indicates a need for mental health, developmental, substance abuse, or behavioral disorder services, the facility shall provide a notification of the resident's need for such services to the designated contact person of record when available and a notification of the resident's need for such services to the community services board or behavioral health authority established pursuant to Title 37.2 of the Code of Virginia that serves the city or county in which the facility is located or other appropriate licensed provider.

c. Unless an emergency discharge is necessary due to an immediate and serious risk to the health, safety, or welfare of the resident or others, the facility shall, prior to involuntarily discharge of a resident, make reasonable efforts, as appropriate, to resolve any issues with the resident upon which the decision to discharge is based. The decision and such efforts shall be documented in the resident's file.

d. The department shall not take adverse action against a facility that has demonstrated and documented a continual good faith effort to meet the requirements of this subsection.

6. The department's discharge notice form for involuntary discharges shall include all requirements of subdivisions B 3 and B 4 of this section and shall include information regarding the resident's right to appeal within the 30-day notice period.

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7. The assisted living facility shall provide a copy of the department's discharge notice form to the regional licensing office and the State Long-Term Care Ombudsman at least 30 days prior to an involuntary discharge.

~~G. F.~~ For public pay residents, in the event of a resident's death, the assisted living facility shall provide written notification to the ~~eligibility worker~~ assigned staff at the local department of social services and assessor within five days after the resident's death.

~~H. G.~~ Discharge statement.

1. At the time of discharge, the assisted living facility shall provide to the resident and, as appropriate, ~~his~~ the resident's legal representative and designated contact person a dated statement signed by the licensee or administrator that contains the following information:

- a. The date on which the resident, ~~his~~ the resident's legal representative, or designated contact person was notified of the planned discharge and the name of the legal representative or designated contact person who was notified;
- b. The reason ~~or reasons~~ for the discharge;
- c. The actions taken by the facility to assist the resident in the discharge and relocation process; and
- d. The date of the actual discharge from the facility and the resident's destination.

2. A copy of the ~~written~~ discharge statement shall be retained in the resident's record.

~~I. H.~~ When the resident is discharged and moves to another caregiving facility, the assisted living facility shall provide to the receiving facility such information related to the resident as is necessary to ensure continuity of care and services. Original information pertaining to the resident shall be maintained by the assisted living facility from which the resident was discharged. The assisted living facility shall maintain a listing of all information shared with the receiving facility.

~~J. I.~~ Within 60 days of the date of discharge, each resident or ~~his~~ resident's legal representative shall be given a final statement of account, any refunds due, and return of any money, property, or things of value held in trust or custody by the facility.

**22VAC40-73-435. Appeal of an emergency or involuntary discharge.**

A. A resident may appeal any involuntary or emergency discharge other than discharges resulting from the assisted living facility closing in accordance with this chapter.

B. The facility shall provide the resident with the department's discharge notice form describing the resident's right to appeal and the appeal process pursuant to § 63.2-1805 of the Code of Virginia. The form shall state that the appeal

notice shall be sent to the department's Division of Appeals and Fair Hearings.

1. In the event of an emergency discharge, the facility shall provide the department's discharge notice form as soon as possible, but no later than five days after the emergency discharge.

2. In the event of an involuntary discharge, the facility shall provide the department's discharge notice form at least 30 days prior to an involuntary discharge.

C. The facility shall assist the resident and resident's legal representative, if any, when the resident is filing an appeal.

D. The facility shall provide a postage prepaid envelope addressed to the department to use if the appeal is mailed, if requested by the resident.

E. The facility shall inform the resident of the resident's rights to continue to reside in the facility, free from retaliation, until the appeal has a final department case decision unless the discharge is an emergency discharge or the resident has developed a condition or care need that is prohibited by 22VAC40-73-310 H in accordance with § 63.2-1805 D of the Code of Virginia.

F. Any appeal of an involuntary discharge must be filed within the 30-day discharge notice period.

G. A resident removed under an emergency discharge and who no longer resides in the facility retains the right to file an appeal pursuant to § 63.2-1805 of the Code of Virginia and 22VAC40-73-430 D.

H. An appeal is considered filed upon receipt by the department's Division of Appeals and Fair Hearings.

**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 (22VAC40-73)

~~Report of Tuberculosis Screening (eff. 10/2011)~~

~~Virginia Department of Health Report of Tuberculosis Screening Form (undated)~~

~~Virginia Department of Health TB Control Program Risk Assessment Form, TB 512 (eff. 9/2016)~~

[Assisted Living Facilities Discharge Notice \(eff. 8/2023\)](#)

VA.R. Doc. No. R23-7391; Filed July 24, 2023, 9:01 a.m.

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# GUIDANCE DOCUMENTS

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## 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: [Continuing Professional Education Violation Penalties Guidelines](#).

Public Comment Deadline: September 27, 2023.

Effective Date: September 28, 2023.

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

### STATE BOARD OF EDUCATION

Title of Document: [Career and Technical Education High Quality Work-Based Learning Guide 2023-2024](#).

Public Comment Deadline: September 27, 2023.

Effective Date: September 28, 2023.

Agency Contact: Jim Chapman, Director of Board Relations, Department of Education, James Monroe Building, 101 North 14th Street, 25th Floor, Richmond, VA 23219, email [jim.chapman@doe.virginia.gov](mailto:jim.chapman@doe.virginia.gov).

### BOARD OF FUNERAL DIRECTORS AND EMBALMERS

Title of Document: [Guidance on Surface Transportation and Removal Services](#).

Public Comment Deadline: September 27, 2023.

Effective Date: September 28, 2023.

Agency Contact: Erin Barrett, Director of Legislative and Regulatory Affairs, Department of Health Professions, Perimeter Center, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 367-4688, or email [erin.barrett@dhp.virginia.gov](mailto:erin.barrett@dhp.virginia.gov).

### MARINE RESOURCES COMMISSION

Title of Document: [Subaqueous Guidelines](#).

Public Comment Deadline: September 27, 2023.

Effective Date: September 28, 2023.

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

### BOARD OF NURSING

Titles of Documents: [Continued Competency Violations for Nurses and Licensed Massage Therapists](#).

[Scope of Practice for Registered Nurses and Licensed Practical Nurses](#).

Public Comment Deadline: September 27, 2023.

Effective Date: September 28, 2023.

Agency Contact: Erin Barrett, Director of Legislative and Regulatory Affairs, Department of Health Professions, Perimeter Center, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 367-4688, or email [erin.barrett@dhp.virginia.gov](mailto:erin.barrett@dhp.virginia.gov).

### BOARD OF OPTOMETRY

Title of Document: [Guidance on Light Adjustable Lens](#).

Public Comment Deadline: September 27, 2023.

Effective Date: September 28, 2023.

Agency Contact: Erin Barrett, Director of Legislative and Regulatory Affairs, Department of Health Professions, Perimeter Center, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 367-4688, or email [erin.barrett@dhp.virginia.gov](mailto:erin.barrett@dhp.virginia.gov).

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# Guidance Documents

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## **BOARD OF PHARMACY**

Titles of Documents: [Approved Chemicals for Use as Hydrocarbon or Other Flammable Solvents by Pharmaceutical Processors.](#)

[Cannabis Product Packaging Requirements.](#)

Public Comment Deadline: September 27, 2023.

Effective Date: September 28, 2023.

Agency Contact: Erin Barrett, Director of Legislative and Regulatory Affairs, Department of Health Professions, Perimeter Center, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 367-4688, or email [erin.barrett@dhp.virginia.gov](mailto:erin.barrett@dhp.virginia.gov).

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# GENERAL NOTICES

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## DEPARTMENT OF ENVIRONMENTAL QUALITY

### Proposed Enforcement Action for Charles City County

The Department of Environmental Quality (DEQ) is proposing an enforcement action for Charles City County for violations of State Water Control Law and regulations in Charles City County at the Charles City County Administration Building sewage treatment plant, Ruthville Community Center wastewater treatment plant, Mt. Zion and Rustic water treatment plant, and the Hideaway sewage treatment plant. The proposed order is available from the DEQ contact or at <https://www.deq.virginia.gov/permits/public-notices/enforcement-orders>. The DEQ contact will accept written comments from August 28, 2023, through September 27, 2023.

Contact Information: Kristen Sadtler, Water Enforcement Coordinator and Adjudication Officer, Department of Environmental Quality, 1111 East Main Street, Richmond, VA 23219, telephone (804) 664-3864, or email [kristen.sadtler@deq.virginia.gov](mailto:kristen.sadtler@deq.virginia.gov).

### Proposed Enforcement Action for Christendom Educational Corporation

An enforcement action has been proposed for Christendom Educational Corporation for alleged violations in Warren County, Virginia. The Department of Environmental Quality (DEQ) proposes to issue a consent order with penalty to Christendom Educational Corporation to address noncompliance with State Water Control Law. A description of the proposed action is available at the DEQ office named listed in this notice or online at [www.deq.virginia.gov](http://www.deq.virginia.gov). Celeste Horton will accept comments from August 28, 2023, through September 27, 2023.

Contact Information: Celeste Horton, Senior Enforcement Specialist, Department of Environmental Quality, 4411 Early Road, P.O. Box 3000, Harrisonburg, VA 22801, FAX (804) 698-4178, or email [celeste.horton@deq.virginia.gov](mailto:celeste.horton@deq.virginia.gov).

### Proposed Enforcement Action for Gardy's Mill Solar LLC

The Department of Environmental Quality (DEQ) is proposing an enforcement action for Gardy's Mill Solar LLC for violations of State Water Control Law and regulations in Westmoreland County. The proposed order is available from the DEQ contact or at <https://www.deq.virginia.gov/permits/public-notices/enforcement-orders>. The DEQ contact will accept written comments from August 28, 2023, through September 27, 2023.

Contact Information: Gary Wooldridge, Enforcement Coordinator, Department of Environmental Quality, 1111 East

Main Street, Richmond, VA 23219, telephone (804) 584-6716, or email [gary.wooldridge@deq.virginia.gov](mailto:gary.wooldridge@deq.virginia.gov).

### Proposed Enforcement Action for GDC Contractors Inc.

An enforcement action has been proposed for GDC Contractors Inc. for violations of State Water Control Law and regulations and applicable permit at the Range 1 and Range 14C facilities located in Quantico, Virginia. The proposed consent order is available from the Department of Environmental Quality (DEQ) contact or at <https://www.deq.virginia.gov/permits/public-notices>. The DEQ contact will accept written comments from August 28, 2023, to September 28, 2023.

Contact Information: Katherine Mann, Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, or email [katherine.mann@deq.virginia.gov](mailto:katherine.mann@deq.virginia.gov).

### Proposed Enforcement Action for William A. Hamp III, Trustee, for William A. Hamp III Revocable Trust

An enforcement action has been proposed for William A. Hamp III, Trustee, for William A. Hamp III Revocable Trust for violations of State Water Control Law, regulations, and applicable permit at the Eastern Clearing Inc. facility located in Bealeton, Virginia. The proposed consent order is available from the Department of Environmental Quality (DEQ) contact or at <https://www.deq.virginia.gov/permits/public-notices>. The DEQ contact will accept written comments from August 28, 2023, to September 28, 2023.

Contact Information: Jim Datko, Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, or email [james.datko@deq.virginia.gov](mailto:james.datko@deq.virginia.gov).

### Proposed Enforcement Action for Dinesh Patel

The Department of Environmental Quality (DEQ) is proposing an enforcement action for Dinesh Patel for violations of State Water Control Law and regulations in Petersburg, Virginia at the Traveler's Inn wastewater treatment plant. The proposed order is available from the DEQ contact or at <https://www.deq.virginia.gov/permits/public-notices/enforcement-orders>. The DEQ contact will accept written comments from August 28, 2023, through September 27, 2023.

Contact Information: Kristen Sadtler, Water Enforcement Coordinator and Adjudication Officer, Department of Environmental Quality, 1111 East Main Street, Richmond, VA 23219, telephone (804) 664-3864, or email [kristen.sadtler@deq.virginia.gov](mailto:kristen.sadtler@deq.virginia.gov).



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## General Notices

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### **Public Meeting and Opportunity for Public Comment for a Cleanup Study for the Mountain Run Watershed in Culpeper County**

Purpose of notice: The Department of Environmental Quality (DEQ) seeks public comment on the development of a cleanup study, also known as a total maximum daily load (TMDL) report, for the Mountain Run Watershed in Culpeper County. These streams are listed as impaired since monitoring data does not meet Virginia's water quality standards for polychlorinated biphenyls (PCBs). Section 303(d) of the Clean Water Act and § 62.1-44.19:7 C of the State Water Control Law requires DEQ to develop cleanup studies to address pollutants responsible for causing waters to be on Virginia's § 303(d) list of impaired waters. A component of a cleanup study is the waste load allocation (WLA); therefore, this notice is provided pursuant to § 2.2-4006 A 14 of the Code of Virginia for adoption of the WLA into the Water Quality Management Planning Regulation (9VAC25-720) after completion of the study. The adoption of the WLA may require new or additional requirements for entities holding a Virginia Pollutant Discharge Elimination System (VPDES) permit in the Mountain Run Watershed.

A study has been completed for the Mountain Run Watershed to identify pollutant sources and recommend reductions needed from the sources to meet water quality standards. At the meeting, DEQ will present the results of the study and provide an overview of the draft report. Citizens are invited to provide comment on the study.

Cleanup study location: The cleanup study addresses the following impaired stream segments: Mountain Run, located in Culpeper County, is 24.53 miles long and begins at the outlet of Lake Pelham and continues downstream to the confluence with the Rappahannock River. Unnamed tributary to Mountain Run (stream code 3-XBE), located in Culpeper County, is 0.6 mile long and begins at the perennial headwaters and continues downstream to the confluence with Mountain Run. Unnamed tributary to Mountain Run (stream code 3-XIH), located in Culpeper County, is 1.12 miles long and begins at the perennial headwaters and continues downstream to the confluence with Mountain Run.

Advisory Committee: TMDL Technical Advisory Committee meetings to assist in development of this cleanup study were convened on January 12, 2021, and July 26, 2022.

Public meeting: The final public meeting on the development of the cleanup study will be held at Culpeper County Board of Supervisors conference room, 302 North Main Street, Culpeper, Virginia, on September 6, 2023, at 5:30 p.m. In the event of inclement weather, the meeting will be held on September 14, 2023, at the same time and location provided.

Public comment period: September 6, 2023, through October 6, 2023.

How to comment: DEQ accepts written comments by email, fax, or postal mail. All comments must be received by DEQ during the comment period. Submittals must include the name, organization being represented (if any), mailing addresses, and telephone numbers of the commenter or requester.

Contact the agency staff listed for public comments, document requests, and additional information. The public may review the cleanup study at the following website address: <https://www.deq.virginia.gov/our-programs/water/water-quality/tmdl-development/tmdls-under-development>.

Contact Information: Rebecca Shoemaker, TMDL Coordinator, Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, Virginia 23193, telephone (571) 866-6502, or email [rebecca.shoemaker@deq.virginia.gov](mailto:rebecca.shoemaker@deq.virginia.gov).

### **Staunton PV-UT LLC Notice of Intent for a Small Renewable Energy Project (Solar) - City of Staunton**

Staunton PV-UT 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 the City of Staunton. The project name is Staunton Utility Solar Project, the owner is Staunton PV-UT LLC, and the project number is RE0000292. The proposed project is located on the east side of U.S. Route 11 (Lee Highway and Commerce Road) north of State Route 254 on approximately 65 acres. The centroid coordinates are 38.1564100, -79.0462167. The project will have up to a rated capacity of 11 megawatts alternating current and use approximately 25,000 photovoltaic solar modules affixed to a fixed-tilt racking system. The project developer is Oikos Solar System Inc.

Contact Information: Amber Foster, Renewable Energy Permit by Rule Coordinator, Department of Environmental Quality, 1111 East Main Street, Richmond, VA 23219, telephone (804) 774-8474, or email [amber.foster@deq.virginia.gov](mailto:amber.foster@deq.virginia.gov).

## **MARINE RESOURCES COMMISSION**

### **Public Notice for Tidal Wetlands**

Pursuant to Chapter 13 (§ 28.2-1300 et seq.) of Title 28.2 of the Code of Virginia, the public is hereby notified that a public hearing will be held by the Virginia Marine Resources Commission (VMRC) at the commission's meeting beginning at 9:30 a.m. on Tuesday, August 22, 2023, in the commission meeting room at 380 Fenwick Road, Building 96, Fort Monroe, Virginia, to consider an application submitted by John Bland to construct a new 130-foot long bulkhead two feet channelward of an existing bulkhead, four 18-foot long low profile groins, each with an eight-foot long T-head and nourish the groin areas with beach quality sand, along the York River at 361 Simpson Creek Road in King and Queen County. The project requires a Tidal Wetlands Permit. View the project

drawings by selecting 2023-0844 at <https://webapps.mrc.virginia.gov/public/habitat>.

Comments and inquiries may be submitted prior to the hearing to Marine Resources Commission, Habitat Management Division, 380 Fenwick Road, Building 96, Fort Monroe, Virginia 23651.

If an individual needs reasonable accommodations due to a disability, please advise the Commission Secretary at telephone (757) 247-2215 no less than five work days prior to the meeting time and identify necessary accommodations for attendance.

Contact Information: Beth Howell, Office Manager, Marine Resources Commission, 380 Fenwick Road, Building 96, Fort Monroe, VA 23651, telephone (757) 247-2214.

### **Bland Tidal Wetlands Board Meeting**

Pursuant to Chapter 13 (§ 28.2-1300 et seq.) of Title 28.2 of the Code of Virginia, the public is hereby notified that a public hearing will be held by the Virginia Marine Resources Commission (VMRC) at the commission's meeting beginning at 9:30 a.m. on Tuesday, August 22, 2023, in the commission meeting room at 380 Fenwick Road, Building 96, Fort Monroe, Virginia, to consider an application submitted by John Bland to construct two low profile groins extending 50 feet channelward of mean high water, each with a 30-foot long T-head, along the York River at 195 Shore Drive in King and Queen County. The project requires a Tidal Wetlands Permit. View the project drawings by selecting 2023-1639 at <https://webapps.mrc.virginia.gov/public/habitat>.

Comments or inquiries may be submitted prior to the hearing to Marine Resources Commission, Habitat Management Division, 380 Fenwick Road, Building 96, Fort Monroe, Virginia 23651.

If an individual needs reasonable accommodations due to a disability, please advise the Commission Secretary at telephone (757) 247-2215 no less than five work days prior to the meeting time and identify necessary accommodations for attendance.

Contact Information: Beth Howell, Office Manager, Marine Resources Commission, 380 Fenwick Road, Building 96, Fort Monroe, VA 23651, telephone (757) 247-2241.

### **Gill Tidal Wetlands Board Meeting**

Pursuant to Chapter 13 (§ 28.2-1300 et seq.) of Title 28.2 of the Code of Virginia, the public is hereby notified that a public hearing will be held by the Virginia Marine Resources Commission (VMRC) at the commission's meeting beginning at 9:30 a.m. on Tuesday, August 22, 2023, in the commission meeting room at 380 Fenwick Road, Building 96, Fort Monroe, Virginia, to consider an application submitted by Ranjodh and Tejinder Gill to install one riprap revetment, extending a

maximum six-foot channelward of mean high water, at 2030 Channel View Terrace, which is situated along the James River in Chesterfield County. The project requires a Tidal Wetlands Permit. View the project drawings by selecting 2019-1126 at <https://webapps.mrc.virginia.gov/public/habitat>.

Comments or inquiries may be submitted prior to the hearing to Marine Resources Commission, Habitat Management Division, 380 Fenwick Road, Building 96, Fort Monroe, Virginia 23651.

If an individual needs reasonable accommodations due to a disability, please advise the Commission Secretary at telephone (757) 247-2215 no less than five work days prior to the meeting time and identify necessary accommodations for attendance.

Contact Information: Beth Howell, Office Manager, Marine Resources Commission, 380 Fenwick Road, Building 96, Fort Monroe, VA 23651, telephone (757) 247-2241.

## **BOARD OF PHARMACY**

### **Notice of Public Hearing for Scheduling Chemicals in Schedule I Pursuant to § 54.1-3443 of the Code of Virginia**

Pursuant to § 54.1-3443 D of the Code of Virginia, the Board of Pharmacy is giving notice of a public hearing to consider placement of chemical substances in Schedule I of the Drug Control Act. The public hearing will be conducted at 9:05 a.m. on September 26, 2023. Instructions will be included in the agenda for the board meeting, also on September 26, 2023. Public comment may also be submitted electronically or in writing prior to September 26, 2023, via email to Caroline Juran, Executive Director of the Board of Pharmacy at [caroline.juran@dhp.virginia.gov](mailto:caroline.juran@dhp.virginia.gov).

Pursuant to § 54.1-3443 D of the Code of Virginia, the Virginia Department of Forensic Science (DFS) has identified two compounds for recommended inclusion into Schedule I of the Drug Control Act (§ 54.1-3400 et seq. of the Code of Virginia).

The following compound is classified as a synthetic opioid. Compounds of this type have been placed in Schedule I pursuant to subdivision 1 of § 54.1-3446 of the Code of Virginia in previous legislative sessions.

N-ethyl-2-[5-nitro-2-[(4-propan-2-yloxyphenyl)methyl]benzimidazol-1-yl]ethanamine (other name: N-desethyl Isotonitazene), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation.

The following compound is classified as a cannabimimetic agent. Compounds of this type have been placed in Schedule I via subdivision 6 of § 54.1-3446 of the Code of Virginia in previous legislative sessions.

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## General Notices

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Ethyl-3,3-dimethyl-2-[(1-(pent-4-enylindazole-3-carbonyl) amino]butanoate (other name: EDMB-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.

**Contact Information:** Caroline Juran, RPh, Executive Director, Board of Pharmacy, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 367-4456, FAX (804) 527-4472.

### 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](mailto: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.

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# ERRATA

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## STATE BOARD OF HEALTH

Title of Regulation: **12VAC5-410. Regulations for the Licensure of Hospitals in Virginia.**

Publication: 37:19 VA.R. 2838-2842 May 10, 2021.

Correction to Final Regulation:

Page 2842, DOCUMENTS INCORPORATED BY REFERENCE (12VAC5-410) line 6, remove the link behind the words "Facility Guidelines Institute,"

VA.R. Doc. No. R13-23; Filed August 21, 2023, 11:30 a.m.

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# Errata

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